

Testimony of Ambassador Philip Verveer

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Hearing on

International Proposals to Regulate the Internet

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Chairman Walden, Ranking Member Eshoo, and distinguished Committee Members, thank you for the opportunity to testify about international proposals to regulate the Internet. I am pleased to participate with my friend Commissioner Robert McDowell. And I am very happy that the Subcommittee will hear from my friend and distinguished predecessor Ambassador David Gross, from Sally Wentwerth, who contributed a great deal to Internet governance issues during her service at the U.S. State Department, and from Vint Cerf, without whom there might well be no Internet to disrupt.

At the onset, it's imperative to note that international proposals on Internet issues have been recently discussed in multiple bodies under the aegis of the United Nations – including, for example, the General Assembly, the Commission on Science and Technology for Development (CSTD), and the International Telecommunication Union (ITU). Our reaction to these proposals reflects the consistent bi-partisan approach to Internet governance issues that has prevailed since the privatization of the Internet in the 1990s.

The U.S. Government – joined by civil society, industry, and like-minded governments – has successfully opposed such proposals. At the United Nations General Assembly last year, four nations introduced for discussion a proposed “code of conduct” for global information security, but they did not introduce a resolution to adopt or endorse the proposed code of conduct and the General Assembly took no formal action. At the CSTD, a UN body that

provides the General Assembly with advice on technology particularly with respect to developing countries, a few nations last week sought to establish – but failed – a UN entity to mandate international public policy relating to the Internet. And, at the most recent ITU Plenipotentiary conference in 2010, we joined with other nations in defeating efforts to expand the ITU’s remit to Internet policymaking and regulation.

In all bilateral encounters and multilateral meetings, the United States consistently opposes the extension of intergovernmental controls over the Internet. Remitting the Internet to intergovernmental control – whether the ITU or otherwise – would produce two very bad outcomes. It inevitably would diminish the dynamism of the Internet. As stressed in the President’s Cyberspace Policy Review, policymakers “must be careful not to create policy and regulation that inhibits innovation or results in inefficiencies or less security” and his *International Strategy for Cyberspace* set as a top policy priority promoting and enhancing multi-stakeholder venues for the discussion of these issues. For reasons that cannot be overcome, intergovernmental institutions are slow in taking decisions, a quality incompatible with the unremitting desire for efficiency that we see with the Internet. They do not meaningfully include the crucial views of civil society, academia and industry – all essential stakeholders in Internet public policy making. In addition, intergovernmental controls inevitably would open the way for the introduction of extraneous considerations, the most noxious of which would be censorship or content controls by repressive regimes.

As an alternative to regulation or intergovernmental controls, the United States Government encourages governments to work in the established, successful multi-stakeholder, transparent environment to achieve international public policy goals and strengthen international cooperation on Internet related issues. This encouragement most recently occurred at a high-level ministerial meeting at the Organisation for Economic Co-operation and Development (OECD) in June 2011. There, representatives from business, civil society, and the Internet technical communities from 34 countries joined government officials in discussing the importance of a free and open Internet, and the OECD Member States, together with business and technical communities joined in a communiqué of fundamental Internet policy-making principles that was subsequently adopted by all OECD Member States. These Internet Policymaking Principles are an important milestone in our effort to secure a free and open Internet globally because as

an OECD Recommendation, they represent a commitment by all current OECD Member States, and form a standard against which new Member States applications to join the OECD will be judged.

Today, my testimony will consist of three parts: first, to describe how the absence of governmental or intergovernmental controls greatly aided the Internet's development thus far; second, to provide background about the International Telecommunication Union; and finally, to describe efforts undertaken by the U.S. Government thus far in advance and in preparation for the 2012 World Conference on International Telecommunications (WCIT).

A. The Internet's development relied upon – and continues to rely upon – an amalgam of innovators, volunteers, and civil society members that have succeeded in the absence of intergovernmental regulation.

In the space of half a generation, the Internet has become one of the most important mechanisms on the planet for both the developed and developing world. Every human being, whether aware of it or not, depends upon it for material well being and for broader, non-economic benefits in social, cultural, political and other realms.

The Internet's unprecedented growth is not the only unusual thing about it. Equally unusual is that it is the largest and most successful cooperative venture in history. It has emerged without much significant guidance from above – not planned in a conventional sense and not constructed pursuant to comprehensive legal and regulatory strictures. It is, in President Obama's words, "one of the finest examples of a community self-organizing."

Rather, the Internet evolved from its Arpanet origins as a result of the efforts of innumerable parties in interest – some essentially academic and financially uninterested, some decidedly financially interested, and some in between. In a genuine sense, an amalgam of volunteers inspired by a very wide range of motivations has created and operates this indispensable network of networks.

Global interconnection is, of course, the single greatest imperative for a network of networks. And here the absence of governmental or intergovernmental controls is particularly striking. The physical and

economic arrangements necessary for – that in a real sense constitute – interconnection have been worked out through normal adherence to international technical standards and through commercial negotiation. National governments, let alone international institutions, have not intervened to direct the creation of the controlling technical standards, have not mandated that the standards be observed, and have not prescribed the economic transfers that take place between and among the participating networks. This doesn't reflect an absence of law. The laws of property, contract, and tort apply as they do in any commercial realm. And, competition and consumer protection laws restrain businesses on-line.

Accordingly, the Internet we enjoy today did not develop by happenstance. It emerged as the hard work of multi-stakeholder organizations such as the Internet Society, the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Wide Web Consortium (W3C). These organizations and others have played a major role in designing and operating the Internet we know today. These multi-stakeholder processes have succeeded by their very nature of openness and inclusiveness. They are most capable of addressing issues with the speed and flexibility required in this rapidly changing Internet environment.

B. The Scope of the International Telecommunications Regulations Should Not Be Expanded.

The International Telecommunication Union was founded in 1865. It is the second oldest international organization in existence. It does a great deal to advance the extent and the efficiency of international communications, most famously and most importantly serving as the organization that coordinates the world's use of radio frequencies.

Over time, it developed very detailed regulation for international telegraphy and rather less detailed regulation for international telephony. Separate Telephone Regulations emerged in 1932. Five plus decades later, in 1988, at the World Administrative Telegraph and Telephone Conference (WATTC) in Melbourne, the previously separate Telegraph Regulations and Telephone Regulations were merged into a single set of regulations—the International Telecommunication Regulations (ITRs) dealing with the international telephone network, methods of charging, and international accounting. And in 1992, in Geneva, another ITU conference substituted the

WATTC in favor of future World Conferences on International Telecommunications (WCIT). And that is where things stand today.

The 1988 ITRs—unavoidably—to some extent reflect the narrowband world in which they were created. They also reflect and reinforce—for different reasons, unavoidably—the conventions that governed international telephony at the time, including an environment in most of the world where each country owned or regulated a monopoly telecommunications service provider. Thus, the ITRs address the functioning of international networks, methods of charging for international communications, and methods of accounting for the charges in that context. A similar approach today would be impossible given the multiplicity of players.

There are numerous reasons why an attempt to apply updated ITRs to the Internet would be counterproductive, and why we must resist them as a matter of the utmost priority. Governmental proposals to expand the ITR's to include centralized control over the Internet through a top-down government approach would put political dealmakers, rather than innovators and experts, in charge of the future of the Internet. This would slow the pace of innovation, hamper global economic development, and potentially lead to an era of unprecedented control over what people can say and do online. Centralized control would threaten the ability of the world's citizens to freely connect and express themselves by placing decision-making power in the hands of global leaders some of whom inevitably will have ambiguous attitudes about the value of free speech.

C. U.S. Government Preparation for and in Advance of the WCIT

The U.S. State Department – and the entire U.S. Government – is actively engaged with our global partners in a variety of international fora, including the ITU, and remains committed to working with all Internet stakeholders to defend and strengthen the open, interoperable, secure, reliable, and innovative Internet.

In 2011, President Obama released his International Strategy for Cyberspace, which stated that, “[p]reserving, enhancing, and increasing access to an open, global Internet is a clear policy priority.” This strategy has provided our government with clear direction to support the multi-stakeholder model of Internet governance while resisting attempts to create intergovernmental mechanisms of control.

The Department of State, for example, is coordinating with the private sector and international allies in opposing any renewed calls for the establishment of a new, intergovernmental mechanism within the UN system to coordinate international public policy pertaining to the internet at the fall session of the UN General Assembly.

To assure consistent implementation of the President's strategy across the Administration, we formed the National Science and Technology Committee's Subcommittee on Global Internet Governance¹ to provide an interagency body to monitor and advise developments in the range of international fora with the goal of preserving and supporting the multi-stakeholder approach to Internet governance.

With respect to the ITU, the United States' delegation went to the most recent ITU Plenipotentiary meeting in Guadalajara, Mexico in October 2010 with the aim of maintaining and, where appropriate, strengthening the ITU's important functions. We also went to Guadalajara with the strong intention of dissuading national administrations from seeking to expand the ITU's remit beyond useful limits, and especially from asserting additional claims to a privileged policy position, or outright jurisdiction over Internet issues.

We succeeded. The conference affirmed the importance of the practical Internet-related technical and developmental assistance the ITU is rendering its members and it defined the ITU's appropriately limited place in the Internet eco-system. As to the latter, the Plenipotentiary called for "greater collaboration and coordination between the ITU and the relevant organizations" (including but not limited to) the Internet Corporation for Assigned Names and Numbers, the Regional Internet Registries, the Internet Engineering Task Force, the Internet Society, and the World Wide Web Consortium. We believe that this reflects an accurate statement of the ITU's place. It is one among many, and the majority of the others are a reflection of the multi-stakeholder universe that has advanced and sustained the Internet's development. Stated differently, the Plenipotentiary resolution that contained this language recognizes that it would be inappropriate to assign the ITU a role beyond the bounds of its technical competence, let

¹ http://www.whitehouse.gov/sites/default/files/microsites/ostp/gig_charter_signed.pdf

alone to assign it responsibilities for the Internet's evolving architecture or mechanisms for economic integration.

Many other governments joined with the United States in securing this outcome. Unsurprisingly, democratic nations around the world are among those most anxious to prevent the Internet from falling under intergovernmental control. The factors, among others, that account for this are the commitment to freedom of expression as well as a qualified belief that the marketplace will produce satisfactory outcomes more often than not.

Following the Plenipotentiary and partially in anticipation of WCIT, the United States then focused on furthering that coalition through the development of the OECD's Internet Policymaking Principles. These principles, designed to preserve the fundamental openness of the Internet while ensuring its continued growth and dynamism, are predicated on the idea of using multistakeholder processes to address key Internet policy issues as opposed to international treaty based regimes.

In December of this year, 193 nations will gather at the WCIT in Dubai to revisit the International Telecommunication Regulations. One year ago, there was concern that WCIT would be a battle over investing the ITU with explicit authority for Internet issues, and that the U.S. would be confronting wholly new, stand-alone draft treaty texts proposing Internet governance provisions. In response, the US Government developed a detailed WCIT position that sought to use the existing ITRs as the basis for treaty negotiations and – within the more narrowly subscribed scope and focus of those existing provisions – achieve further deregulation and liberalization of international telecommunications markets.

By any measure, calendar year 2011 bore fruit for the U.S. in this regard. The existing ITRs have been accepted as a framework for negotiations. There are no pending proposals to vest the ITU with direct Internet governance authority. Instead, thus far, traditional telecom issues such as roaming and fraud have taken center stage. Based on formal filings made thus far, and informal proposals being considered by various ITU regions, much of the world seems to be saying that practical telecom issues should be the focus of WCIT to address the many issues relating from wireline to wireless communications. There are, however, some proposals related to the Internet, which, if accepted, could limit the Internet as an open and innovative platform by potentially allowing governments to monitor and

restrict content or impose economic costs upon international data flows. While such proposals are outliers amongst the more traditional telecommunications issues, we are taking their existence seriously and working closely with our allies to prevent their inclusion.

The United States Government has, as is typical, been actively coordinating its efforts with the private sector and international allies for many months. The U.S. State Department has convened a core delegation of government officials that includes senior level representatives from the Departments of Commerce, Defense, Homeland Security, and the Federal Communications Commission to prepare a US submission to the Conference by early August. The US submission will reinforce the US commitment to not expand the ITRs to issues relating to Internet governance. Earlier this week, the White House advised the Congress that it has selected a Head of Delegation for this conference. We have held a number of preparatory meetings with key engagement regions, and have reached an understanding with many countries that issues relating to “Internet governance” not be included in any update of the ITRs.

We look forward to continuing to work with you in the months ahead.

I appreciate the opportunity the Subcommittee is providing today to spread greater awareness of the WCIT as well as for the bipartisan offers of support and help.

I would be pleased to respond to any questions you may have.