

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

April 9, 2013

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
**Re: Subcommittee Markup of H.R. _____ Affirming the Policy of the United States
Regarding Internet Governance**

On Wednesday, April 10, 2013, at 4:00 p.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will meet for opening statements on H.R._____, a bill “to affirm the policy of the United States regarding Internet governance” through the creation of a statutory policy statement. The Subcommittee will reconvene on Thursday, April 11, 2013, at 2:15 p.m. in room 2123 of the Rayburn House Office Building to commence marking up the legislation. The Subcommittee held a hearing on February 5, 2013, to consider draft legislation and to discuss the measures considered by the International Telecommunication Union (ITU) at the World Conference on International Telecommunications (WCIT) in December 2012.

**I. SUMMARY OF OUTCOMES AT THE WORLD CONFERENCE ON
INTERNATIONAL TELECOMMUNICATIONS (WCIT)**

In December 2012, the ITU hosted the WCIT in Dubai, Arab Emirates, representing the first time ITU member states were able to revise the International Telecommunication Regulations (ITRs) since 1988.¹ A simple majority of member states is required to approve

¹ See David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/). The ITRs set the basic terms for interconnection of international telephone networks.

changes to the ITRs and approximately 144 out of 193 member states participated in the conference.² After two weeks of deliberation, the United States and 54 other member states either declined to sign the final treaty or deferred a decision.³ For the 89 signatory member states, the treaty will formally go into effect on January 1, 2015.⁴

Of the proposals ultimately adopted at the WCIT, the U.S. delegation strongly objected to efforts that would extend the scope of the ITRs to cover Internet governance or content.⁵ Rather than focusing on promoting global telecommunications interconnectivity, as the United States has consistently advocated, the treaty included language that would give member states responsibilities to ensure the “security and robustness” of international telecommunications services, assert control over “unsolicited bulk electronic communications,” and establish “human rights” to access telecommunications.⁶ The treaty would also expand the scope of the ITRs to include a potentially broader group of providers (known as “authorized operating agencies”) than those providers that were subject to the 1988 treaty.⁷ In addition, two non-binding resolutions were adopted that would expand the role of the ITU to “foster an enabling environment for the greater growth of the Internet” as well as open the door for ITU member states to inject themselves into private commercial agreements for international telecommunications traffic.⁸

² See Robert M. McDowell, *The U.N. Threat to Internet Freedom*, Wall Street Journal (Feb. 21, 2012).

³ Philip Verveer, *U.S. Engagement at the World Conference on International Telecommunications*, U.S. Department of State Blog (Dec. 21, 2012) (online at blogs.state.gov/index.php/site/entry/wcit_2012). This group of nations includes the United States, Canada, almost all of Europe, India, Japan, Kenya, the Philippines, Israel, Australia, New Zealand, as well as Central and South American states like Colombia, Peru, and Chile.

⁴ The signatory member states included Russia, China, nations in the Middle East, Africa, Asia, and South America.

⁵ Philip Verveer, *U.S. Engagement at the World Conference on International Telecommunications*, U.S. Department of State Blog (Dec. 21, 2012) (online at blogs.state.gov/index.php/site/entry/wcit_2012).

⁶ See *WCIT Daily Updates from Dubai*, Internet Society (Dec. 14, 2012) (online at www.internetsociety.org/wcit-daily-updates). See also Sherwin Siy, *On the Results at the WCIT*, Public Knowledge Policy Blog (Dec. 14, 2012) (online at publicknowledge.org/blog/results-wcit).

⁷ *Id.* For example, the Department of Defense, as operator of SIPRNet and NIPRNet, could potentially be covered by this new definition.

⁸ *Id.*

Nevertheless, the conference produced several positive outcomes from the U.S. perspective. First, the conference highlighted the commitment from many member states to the “inclusive multi-stakeholder Internet governance model.”⁹ Second, it showed “broad and deep support for broadband deployment facilitated by open, liberalized markets.”¹⁰ The treaty also modernizes accounting rate provisions for traditional telecom traffic arrangements and encourages transparency and competition on mobile roaming services. In addition, multiple efforts to institute governmental control over key aspects of Internet governance, such as naming and numbering, Internet traffic routing, and Internet Protocol interconnection were rejected.¹¹

II. PAST CONGRESSIONAL ACTIVITY AND DRAFT LEGISLATION

On December 5, 2012, Congress unanimously passed S. Con. Res. 50, a concurrent resolution “expressing the sense of Congress regarding actions to preserve and advance the multi-stakeholder governance model under which the Internet has thrived.”¹² The resolution closely mirrored H. Con. Res. 127, a bipartisan resolution introduced by members of the House Energy and Commerce Committee on May 30, 2012. The resolution directs the Secretary of State, in consultation with the Secretary of Commerce, to continue to promote a global Internet free from government control and preserve and advance the successful multi-stakeholder model that governs the Internet today.

Draft legislation to convert the bipartisan resolution into statutory policy statement was circulated at the February 5, 2013, Subcommittee hearing. The draft bill states that it is “the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multi-stakeholder model that governs the Internet.” Although the text of the draft legislation closely resembles language contained in S. Con. Res. 50, if adopted the draft bill would create a statutory directive regarding Internet governance.

Many stakeholders and government officials have expressed reservations about this approach. Specifically, the staffs of the Department of State, the Federal Communications Commission, the National Telecommunications and Information Administration, and the Department of Justice have all expressed significant concerns about the unintended impact of such a broad policy statement on the Administration’s flexibility to conduct foreign policy and

⁹ See Philip Verveer, *U.S. Engagement at the World Conference on International Telecommunications*, U.S. Department of State Blog (Dec. 21, 2012) (online at blogs.state.gov/index.php/site/entry/wcit_2012).

¹⁰ *Id.*

¹¹ *Id.*

¹² S. Con. Res. 50, 112th Cong. (2012).

engage in critical activities online. These agencies have noted that the proposed policy statement might undermine the U.S. relationship with existing multi-stakeholder institutions, such as ICANN, by creating uncertainty about the term “government control.” Moreover, because of uncertainty about the definition of “government control,” some have suggested that this policy statement could undermine the FCC’s Open Internet rules or limit the Commission’s ability to manage the Internet Protocol (IP) transition. In addition, this policy statement could, among other things, negatively impact domestic efforts to protect intellectual property, address cybersecurity threats, combat online fraud and other cybercrimes, allow public safety to engage in standard law enforcement activities online, and protect consumer privacy. It could also create significant challenges for the U.S. in a variety of international negotiations.

Ranking Member Eshoo raised concerns with the majority’s proposed legislation in a letter dated February 25, 2013. A copy of Ranking Member Eshoo’s letter is attached hereto.