

**Remarks of FCC Commissioner Michael O’Rielly
Before the Federal Communications Bar Association
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(As Prepared for Delivery)**

Internet Governance and Freedom

Let me begin by thanking the Federal Communications Bar Association—the FCBA—its President, Joe DiScipio, its President-elect, David Gross, and its Executive Director, Stan Zenor, for the privilege to speak before you this afternoon. It is a great honor that you would take a few moments of your day to listen to a minority Commissioner of the Federal Communications Commission with only five months under his belt.

I look around the room and see so many people with whom I have worked in one capacity or another over the years. Your smiling faces do not hide the underlying burning question: How the heck did THAT GUY ever get to be a Commissioner? Fair point, fair point. The question I am asking myself is: Who leaves a powerful staff position in the U.S. Senate for the FCC when his party is on the rise? I read the stories about how senior Republican Senate staffers are being courted to join the lucrative lobbying community and ask myself: WHAT THE HECK WAS I THINKING? But seriously, I have very much enjoyed my time so far at the FCC. And I am humbled by the opportunity.

Today being April Fools’ Day, I will not insult your intelligence by suggesting that outlandish things are somehow now true. This crowd cannot be fooled into thinking that I am renouncing my party affiliation in order to unite with Chairman Wheeler to push his net neutrality agenda forward. You are not gullible enough to accept that Commissioner Rosenworcel and I meet every afternoon at 4:00 pm for high tea. And, you would never believe that former President Bill Clinton and I share common views on a certain communications policy. Actually, on that one, you should.

This brings me to the topic I will discuss today: Internet governance. Before the eye rolling begins, I believe this issue is extremely important to the entire communications industry. And let me give you the key take away: We should all maintain a deep skepticism about the U.S. Government’s recent announcement that it plans to transition away next year from its oversight of the Internet Corporation for Assigned Names and Numbers (ICANN).¹ A recent Bloomberg article on the ICANN 49 meeting held last week probably summed it up best, and I quote: “A group of nerds and wonks [has been] having some hideously boring meetings this week in Singapore. You should care: What they produce could change the nature of the Internet.”²

Those who have raised concerns about the National Telecommunications and Information Administration’s (NTIA) announcement have been labeled as Republican partisans,³ but even former President Bill Clinton is concerned about NTIA’s plan. He recently stated that he thinks the U.S. has “done a . . . good job of keeping the Internet open and free.”⁴ While a multi-stakeholder process would be nice in theory, he adds, and I quote: “I just know that a lot of these so-called multi-stakeholders are really governments that want to gag people and restrict access to the internet.”⁵

Before I delve into the policy details about ICANN, Internet governance, and NTIA’s announcement, I need to provide a bit of technical background for some of you. In order for the global Internet to work smoothly, some key parts need to be coordinated.⁶

To access the mesh of computers that makes up the Internet, numeric Internet Protocol (IP) addresses are assigned to locate a computer that contains content.⁷ To make it easier for us to browse the Internet and locate certain sites, the Domain Name System (DNS) converts the IP numbers into the web

addresses that we use every day, such as www.fcc.gov.⁸ Actually, let's use transition.fcc.gov instead. I understand there is some frustration throughout this crowd with the new FCC website.

ICANN establishes the so-called top-level domain names, such as .edu, .travel and,⁹ potentially, as Senator Rockefeller has complained about, .sucks.¹⁰ And, pursuant to a contract with NTIA, it performs the administration of the DNS root zone file, the database that contains the authoritative list of root name servers.¹¹ To put this into layman's terms, NTIA has a contract with ICANN to coordinate IP addresses and maintain and make changes to the master database of domain names. Without this database or addressing system, it would be difficult, if not impossible, to navigate the global Internet.

Now turning to the announcement, just a little over two weeks ago, on a Friday afternoon at 5:30 p.m., NTIA publicly announced its "intent to transition key Internet domain name functions to the global multi-stakeholder community."¹² We've all been in Washington, D.C. long enough to know the significance of this timing. As U.S. Senator Tim Scott aptly observed when responding to a question, and I quote: "[I]t seems that the tradition has been that [when] you want [something] to go unnoticed, you put [it] out on the last day of the week."¹³ Maybe it didn't work in this case.

Although the announcement did not provide a lot of detail, ICANN was directed to convene global stakeholders to solicit proposals that would potentially transition the current oversight role played by NTIA.¹⁴ Any entity that would replace NTIA has to meet four aspirational principles that are meant to maintain a free, secure and reliable Internet.¹⁵ However, the most attention—or controversy—came from NTIA's follow-on declaration that it will not accept a proposal where its role is replaced by a "*government-led or an inter-governmental organization solution.*"¹⁶

While NTIA's proposal may sound like a good idea, when you dig deeper, transitioning the domain name functions to a new, global multi-stakeholder community raises some serious concerns that must be addressed prior to moving forward. The ability to control domain names may provide the ability to control Internet content and access, so the stakes are extremely high. This announcement raises three issues that I'd like to cover with you:

First, and foremost, the fatal flaw in NTIA's announcement is the potential involvement of foreign governments or quasi-governmental bodies in Internet governance. Although many have interpreted NTIA's announcement as a prohibition on accepting any proposals that would involve foreign governments, last Thursday, NTIA Administrator Larry Strickling openly admitted that this prohibition only applied to *government-led* organizations.¹⁷ This means that there is room for NTIA to consider foreign governments as part of any new multi-stakeholder community that will be involved in the future oversight of ICANN. I fundamentally disagree with this position, because I worry that foreign government involvement could grow into undue influence or power over the functions of the Internet. In an ideal world, if we are going to move away from the current structure, it should be toward a system in which no governments are involved.

But let's assume for a minute that NTIA comes to my way of thinking and refuses to allow foreign government or quasi-governmental organization involvement in the new oversight body. Even if ICANN can create a proposal that meets this goal and the transition occurs, the threat to Internet freedom may, in fact, increase. My concern is, once the United States gives up its oversight, how can it prevent any new multi-stakeholder model from ever being usurped by a foreign government or quasi-governmental entity in the future? What happens if governmental or quasi-governmental entities are eventually given board seats, leadership positions, or more? Who will demand continued compliance with NTIA's principles and who will step in and correct any undue influence should problems arise?

There is no guarantee that there will be a policing ability to ensure that governments cannot take control of ICANN or the domain name functions. United Nations (U.N.) officials have made very clear that they would like to be involved in such a governance body. When asked if the U.N. expects to take over NTIA's duties, the response was “[w]e cannot foresee how the transition will unfold.”¹⁸ That is reassuring.

If this proposal is to go forward, it must be with verifiable, crystal clear, airtight guarantees that there cannot be a role for foreign governments or quasi-governmental entities in Internet governance now or in the future. NTIA should explicitly put this question on the table. But, I don't see how contract law or any other mechanism could provide some type of reclamation or reversion authority to the U.S. should something go wrong with this multi-stakeholder body. And without it, all we would have is our hopes that the new organization would be able to resist totalitarian regimes. That is too great a risk to take given the importance of the Internet.

Second, from the point of view of maintaining the stability of the Internet, even with ICANN's flaws, the current oversight structure by NTIA has been an incredible success. It is not clear that a new structure—even one that is free of government involvement—would be better than the current U.S. stewardship. The U.S. government's hands-off, but watchful eye approach has provided the right system of checks and balances to enable ICANN to function rather independently while still protecting certain basic rights and principles of Internet users. For instance, ICANN has not stretched its authority in policymaking in a way that would put it at odds with the First Amendment to the U.S. Constitution. While this principle is beloved by so many Americans, it is not universally shared throughout the world. I recall a congressional hearing a number of years back involving a Canadian official who highlighted how Canada doesn't have that “pesky First Amendment thing.” Let's be honest: I don't suspect Canada will be our problem. But going forward, I worry how a new egalitarian, multi-stakeholder oversight body combined with the existing ICANN, in which neither is tethered to America, can be trusted to safeguard the fundamental protections enjoyed on the Internet today. And, the bottom line is there is no imminent need to change the status quo. Perhaps, as the old saying goes, if it isn't broken, don't fix it.

Third, past history and current events show us that numerous foreign governments are more than willing to meddle with the Internet and its use by their citizens. This should factor heavily into our decision-making when it comes to Internet governance. As I mentioned earlier, Former President Bill Clinton agrees that we must be skeptical about the U.S. giving up all oversight of Internet domain names and IP addresses.¹⁹ Specifically, he stated opponents of U.S. oversight are doing so “for the sole purpose of cracking down on Internet freedom and limiting it and having governments protect their backsides instead of empowering their people.”²⁰

Foreign governments and inter-governmental bodies, such as the U.N. or the International Telecommunication Union (ITU), have a history of attempting to gain control of the Internet.²¹ In December 2012, during the World Conference on International Telecommunications (WCIT), a select group of countries tried to make ITU control of the Internet a reality.²² Countries, including China, Russia, Iran and Saudi Arabia, pushed proposals that would have provided the ITU with authority over not only domain names, but also the ability to affect the operations, content and economics of the Internet.²³

Additionally, it is clear that a number of foreign nations have a far different view of what should be permitted on the Internet. For instance, a little over a week ago, the Turkish Prime Minister attempted to block access to Twitter, ignoring international outcry, including objections by the White House and former Secretary of State Hillary Clinton.²⁴ Then last Thursday, Turkey's telecommunications authority blocked YouTube, just days before their local elections.²⁵

Not to be outdone, Russia has been blocking websites and blogs, including those of Ukrainian opposition leaders and those critical of President Putin's policies.²⁶ The reason for the shutdowns? They promote, and I quote: "illegal activities and participation in public events held in violation of the established order."²⁷ A new Russian law allows authorities to order ISPs to block access to websites with "extremist" content or call[ing] for unauthorized public gatherings."²⁸ Other websites are preemptively removing their content to avoid the Russian government's crackdown.²⁹

Oppressive regimes routinely try to quell dissent by blocking access to the Internet. China censors websites critical of the Communist Party and Twitter, Facebook, and YouTube are inaccessible in that country.³⁰ Iran blocks access to social media to prevent antigovernment protests.³¹ The Egyptian government blocked social media services during the Arab Spring in an attempt to stop the protesters.³² And, the Assad-led government in Syria shut down web access entirely when opposition groups gained ground in its civil war.³³

While it is clear that foreign governments will not hesitate to interfere with Internet services and applications when doing so suits their national needs, they also will not hesitate to point out the hypocrisy if and when the United States adopts its own controls over the Internet.

This is an added reason why I am concerned that the FCC will press forward with new network neutrality regulations.³⁴ At this pivotal moment for Internet freedom, the FCC's network neutrality proceeding could severely contradict and undermine the U.S. government's international position. FCC action sends the wrong message: that it is acceptable for nations to impose the strong arm of the government on the Internet. In addition to our domestic concerns, we must also consider the influence of our decisions on other countries, given the strength of our voice worldwide.

Some may try to argue that the situation in the U.S. is different—that any FCC network neutrality rules would prevent blocking and discrimination by service providers, not the government. But that nuance will likely be lost on others, if not ignored outright. The bottom line is that we cannot argue for an unregulated Internet internationally while we try to regulate the Internet at home.

Internet governance issues cannot be viewed in a vacuum. There are much larger substantive and political issues at play, in which Internet governance is just one small cog. It is impossible to separate these issues from the larger foreign policy debates, such as the one raging over NSA surveillance and the various military altercations occurring elsewhere in the world. In light of these issues, the Administration may be tempted to look at ICANN oversight as low hanging fruit; something they can give away to mitigate international criticism. Was the Administration's announcement part of a larger diplomatic effort? We should keep this possibility in mind, and analyze NTIA's decision accordingly.

In conclusion, I urge all of you to follow closely, with a critical eye, NTIA's and ICANN's proposals as they develop. The United States created the Internet and shared it with the world. Now we have an obligation to safeguard it from harm. We all owe a debt of gratitude to the hard work and leadership of the many government officials who have been doing just that on the international stage. This includes my predecessor at the FCC, Robert McDowell, Ambassador David Gross, Ambassador Phil Verveer—who we are incredibly fortunate to have with us at the Commission—and the current Ambassador Daniel Sepulveda, who I consider a dear friend.

For some of you out there who appeared to be slightly less than focused during my speech, perhaps even using the Internet at times, there may have been a bit of April Fools' trickery involved after all, as I just made you spend about 20 minutes listening to a speech about ICANN.

Thank you very much for hosting me at this luncheon. I have enjoyed my time at the numerous FCBA events and I look forward to working with your organization on this and many other issues in the months and years ahead.

¹ National Telecommunications & Internet Association, U.S. Department of Commerce, *NTIA Announces Intent to Transition Key Internet Domain Name Functions*, Mar. 14, 2014 (*NTIA Announcement*), <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>.

² Editorial, *Who Should Oversee the Internet*, BLOOMBERG VIEW, Mar. 4, 2014, <http://www.bloombergvie.com/articles/2014-03-24/who-should-oversee-the-internet>.

³ See, e.g., Jessica Meyers & Erin Mershon, *Defenders of Net transition: GOP off base*, POLITICO, Mar. 17, 2014, <http://www.politico.com/story/2014/03/icann-transition-criticism-104751.html>.

⁴ Amy Schatz, *Bill Clinton Would Prefer U.S. Oversight of the Internet*, RE/CODE, Mar. 23, 2014, <http://recode.net/2014/03/23/bill-clinton-would-prefer-u-s-oversight-of-the-internet/>.

⁵ *Id.*

⁶ Internet Assigned Numbers Authority, *Introducing IANA*, <https://www.iana.org/about> (last visited Mar. 31, 2014) (stating that “[t]he Internet Assigned Numbers Authority (IANA) is a department of ICANN responsible for coordinating some of the key elements that keep the Internet running smoothly. Whilst the Internet is renowned for being a worldwide network free from central coordination, there is a technical need for some key parts of the Internet to be globally coordinated, and this coordination role is undertaken by IANA.”); International Corporation for Assigned Names and Numbers, *About Us*, <http://www.icann.org/en/about/welcome> (last visited Mar. 31, 2014).

⁷ Information Systems & Technology, *IP Addresses, Host Names, and Domain Names*, MASS. INST. OF TECH, <https://ist.mit.edu/network/ip> (last visited Mar. 31, 2014).

⁸ James Ball, *Meet the seven people who hold the keys to worldwide internet security*, THE GUARDIAN, Feb. 28, 2014, <http://www.theguardian.com/technology/2014/feb/28/seven-people-keys-worldwide-internet-security-web>.

⁹ *A Quick Look at ICANN*, <https://www.icann.org/en/about/learning/factsheets/quick-look-icann-01nov13-en.pdf> (last visited Mar. 31, 2014).

¹⁰ Brian Feldman, *Senator Jay Rockefeller Opposes the '.sucks' Domain*, THE WIRE, Mar. 13, 2014, <http://www.thewire.com/technology/2014/03/senator-jay-rockefeller-opposes-sucks-domain/359118>.

¹¹ ICANN, *supra* note 6; Cyrus Farivar, *In sudden announcement, US to give up control of DNS root zone*, ARSTECHNICA, Mar. 14, 2014, <http://arstechnica.com/tech-policy/2014/03/in-sudden-announcement-us-to-give-up-control-of-dns-root-zone/>.

¹² *NTIA Announcement*, *supra* note 1.

¹³ Charles C.W. Cooke, *Tim Scott, Free-Speech Savior?*, NAT’L REV. ONLINE, Mar. 28, 2014, <http://www.nationalreview.com/article/374508/tim-scott-free-speech-savior-charles-c-w-cooke>.

¹⁴ *NTIA Announcement*, *supra* note 1.

¹⁵ *Id.*, stating that the transition proposal has to address four principles:

- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

¹⁶ *Id.* (emphasis added).

¹⁷ Kieren McCarthy, *What the Government Said About IANA in Singapore*, CIRCLEID, Mar. 26, 2014, http://www.circleid.com/posts/print/20140327_what_the_us_government_said_about_iana_in_singapore.

¹⁸ Benny Avni, *Obama Wants a Global Community to Run the Internet, but It Could End Up in the Hands of China. Or Putin*, NEWSWEEK, Mar. 25, 2014, http://mag.newsweek.com/2014/04/04/obama-global-community-run-internet-end-up.html?piano_t=1.

¹⁹ Schatz, *supra* note 4.

²⁰ *Id.*

²¹ David A. Gross, *Walking the talk: The Role of U.S. Leadership in the Wake of WCIT*, BLOOMBERG L., <http://about.bloomberglaw.com/practitioner-contributions/walking-the-talk-the-role-of-u-s-leadership-in-the-wake-of-wcit-by-david-a-gross/> (last visited Mar. 23, 2014).

²² See *Fighting for Internet Freedom: Dubai and Beyond Before the Subcomm. on Comm. and Tech. of the H. Comm. on Energy and Com. and the Subcomm. on Terrorism, Nonproliferation, and Trade of the H. Comm. on Foreign Aff., and the Subcomm. on Africa, Global Health, Global Human Rights, and Int'l Org. of the H. Comm. on Foreign Aff.*, 112th Cong. (2013) (statement of Robert M. McDowell, Commissioner, Federal Communications Commission), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-318727A1.doc.

²³ Gross, *supra* note 21; McDowell, *supra* note 22.

²⁴ Rebecca Shabad, *Clinton to Turkey: Restore access to Twitter*, THE HILL, Mar. 22, 2014, <http://thehill.com/blogs/twitter-room/other-news/201441-clinton-calls-on-turkish-government-to-restore-access-to#ixzz2wiHQxSvn>.

²⁵ Joe Parkinson & Emre Peker, *Turkey Muzzles YouTube, Media Ahead of Elections*, WALL ST. J., Mar. 27, 2014, <http://online.wsj.com/news/articles/SB10001424052702304418404579465283912697784?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304418404579465283912697784.html>.

²⁶ Ellen Barry, *Russian Blocks Web Content Amid Tension over Ukraine*, N.Y. TIMES, Mar. 13, 2014, http://www.nytimes.com/2014/03/14/world/europe/russia-blocks-web-content-amid-tension-over-ukraine.html?_r=0&gwh=551879FF74A8ABA5558E08803A634D94&gwt=regi; Steven Wilson, *The Logic of Russian Internet Censorship*, WASH. POST, Mar. 16, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/03/16/the-logic-of-russian-internet-censorship/>.

²⁷ Barry, *supra* note 26.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Lulu Yilun Chen, *Chinese Internet Outage May Be Result of Censorship Changes*, BLOOMBERG, Jan. 13, 2014, <http://www.bloomberg.com/news/2014-01-23/china-internet-outage-caused-by-cyber-attack-government-says.html>.

³¹ Thomas Erdbrink, *Iran Bars Social Media Again After a Day*, N.Y. TIMES, Sept. 17, 2013, <http://www.nytimes.com/2013/09/18/world/middleeast/facebook-and-twitter-blocked-again-in-iran-after-respite.html>.

³² Juan Carlos Perez, *Egypt's Internet block aims at social media*, COMPUTERWORLD, Jan. 28, 2011, http://www.computerworld.com/s/article/9206980/Egypt_s_Internet_block_aims_at_social_media.

³³ Martin Chulov, *Syria shuts off internet access across the country*, THE GUARDIAN, Nov. 29, 2012, <http://www.theguardian.com/world/2012/nov/29/syria-blocks-internet>; Andrea Peterson, *Syria hit with a near nationwide Internet outage for seven plus hours*, WASH. POST, Mar. 20, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/03/20/syria-hit-with-a-near-nationwide-internet-outage/>.

³⁴ See Statement by FCC Chairman Tom Wheeler on the FCC's Open Internet Rules (Feb. 19, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0219/DOC-325654A1.pdf (outlining a proposal for new network neutrality rules). The FCC also opened a new docket to consider how it should proceed in light of the D.C. Circuit's opinion in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), in which the court vacated and remanded parts of the FCC's network neutrality rules. See *New Docket Established to Address Open Internet Remand*, GN Docket No. 14-28, Public Notice, DA 14-211 (rel. Feb. 19, 2014); see also *Preserving the Open Internet*, GN

Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 (2010) (*Open Internet Order*),
aff'd in part, vacated and remanded in part sub nom. Verizon, 740 F.3d at 623.