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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-2927
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MEMORANDUM

May 6, 2014

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Full Committee Markup of H.R. 3301, the "North American Energy Infrastructure Act," H.R. 4342, the "Domain Openness Through Continued Oversight Matters of 2014," and H.R. ____, a bill to amend the Communications Act of 1934 to extend expiring provisions relating to the retransmission of signals of television broadcast stations, and for other purposes.

On Wednesday, May 7, 2014, at 4:00 p.m. in room 2123 of the Rayburn House Office Building, the full Committee on Energy and Commerce will conduct opening statements for the markup of H.R. 3301, the "North American Energy Infrastructure Act, " H.R. 4342, the "Domain Openness Through Continued Oversight Matters of 2014," and H.R. ____, a bill to amend the Communications Act of 1934 to extend expiring provisions relating to the retransmission of signals of television broadcast stations, and for other purposes. The Committee will reconvene on Thursday, May 8, 2014, at 10:00 a.m. in room 2123 of the Rayburn House Office Building.

I. H.R. 3301, THE "NORTH AMERICAN ENERGY INFRASTRUCTURE ACT

A. Current Permitting Process for Transboundary Energy Projects

Proposed oil pipelines, natural gas pipelines, and electric transmission lines that cross the U.S. boundary with Mexico or Canada are required to obtain presidential permits pursuant to executive orders.[1] Additional statutory requirements apply to transboundary natural gas pipelines and electric transmission lines, as well as to exports of natural gas and electricity commodities.

[1] The executive branch authority to issue presidential permits for cross-border energy project derives from the President's constitutional authority to conduct foreign affairs. *See* Congressional Research Service, *Presidential Permits for Border Crossing Energy Facilities* (Oct. 29, 2013)(R43261).

1. *Oil Pipelines*

In order to construct and operate an oil pipeline that crosses the U.S. boundary with Canada or Mexico, an applicant must obtain a presidential permit. The President has delegated the authority to permit transboundary oil pipeline projects to the State Department pursuant to Executive Orders 11423 and 13337, which require a finding that a project is in the national interest.[2] Prior to making the national interest determination, the National Environmental Policy Act (NEPA) requires the State Department to prepare, with notice and public comment, an environmental impact statement that assesses impacts on the environment that would result from a project and evaluates alternatives that would avoid or minimize adverse environmental effects.[3] Executive Order 13337 recognizes that these complex decisions involve matters within the expertise of multiple federal agencies, and it provides specified federal agencies 90 days to comment on the application.[4]

2. *Natural Gas Pipelines and Exports*

In order to construct and operate a natural gas pipeline that crosses the U.S. boundary with Canada or Mexico, an applicant must obtain a presidential permit from the Federal Energy Regulatory Commission (FERC). Under Executive Order 10485, FERC is authorized to issue a presidential permit if it finds the project "to be consistent with the public interest" and receives favorable recommendations from the Secretary of State and Secretary of Defense.[5] FERC may set conditions on a permit to protect the public interest.

A cross-border natural gas pipeline must also obtain FERC approval under section 3 of the Natural Gas Act. FERC is required to grant an application unless it finds that the proposed export will not be consistent with the public interest. Under FERC's regulations, an applicant applies for the Natural Gas Act approval and the presidential permit simultaneously in a single application package. One environmental review is performed for the entire submission.

An entity seeking to export natural gas as a commodity through a pipeline or as liquefied natural gas (LNG) must obtain approval from the Department of Energy (DOE). Under section 3 of the Natural Gas Act, DOE is required to grant an application to export natural gas to a country without a free trade agreement with the United States unless it finds that the proposed export will not be consistent with the public interest. For export to countries with a free trade agreement (including Canada and Mexico), the Natural Gas Act requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.

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[2] Exec. Order No. 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968); Exec. Order No. 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

[3] National Environmental Policy Act of 1969, Pub. L. No. 94-83; U.S. Department of State, *Draft Environmental Impact Statement for the Keystone XL Oil Pipeline Project*, at 1-1 (Apr. 16, 2010) (online at keystonepipeline-xl.state.gov/documents/organization/182325.pdf).

[4] Exec. Order No. 13337 § 1(c), 69 Fed. Reg. 25299 (Apr. 30, 2004).

[5] Exec. Order No. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953).

3. *Electric Transmission Lines and Electricity Exports*

A presidential permit is required in order to construct and operate an electric transmission line that crosses the U.S. boundary with Canada or Mexico. Under Executive Order 10485, DOE is authorized to issue a presidential permit if it finds the project "to be consistent with the public interest" and receives favorable recommendations from the Secretary of State and Secretary of Defense.[6] DOE makes the public interest determination "by evaluating the electric reliability impacts, the potential environmental impacts, and any other factors that DOE may also consider relevant to the public interest."[7] An environmental analysis is required to comply with NEPA. DOE may set conditions on a permit to protect the public interest.

Under section 202(e) of the Federal Power Act, the transmission of electricity from the U.S. to another country requires approval from DOE. DOE is required to approve an application unless it finds that the proposed transmission of electricity would "impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of [electric] facilities."[8] DOE may set conditions on the approval.

B. <u>Pending Applications</u>

The bill would affect the permitting requirements for a number of pending projects, including oil pipelines to transport tar sands oil from Canada, as well as natural gas pipelines that cross the Mexican border. This section briefly describes a few of these projects.

1. *Keystone XL Pipeline Northern Route*

On May 4, 2012, TransCanada submitted a new application for a presidential permit for the northern portion of the Keystone XL tar sands pipeline, which would extend 875 miles from the border crossing in Montana to Steele City, Nebraska.[9] The State Department has completed draft and final Supplemental Environmental Impact Statements (SEIS) for the project, and provided a 30-day period for public comment on the national interest determination, which

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[6] *Id.*

[7] U.S. Department of Energy, *Interpretative Guidance on the Requirements of 10 C.F.R. § 205.322* (Jun. 2, 2011) (online at energy.gov/sites/prod/files/oeprod/DocumentsandMedia/Interpretive_Guidance_FINAL.pdf).

[8] Federal Power Act, § 202(e); 16 U.S.C. 824 a(e).

[9] TransCanada Keystone Pipeline LP, *Presidential Permit Application* (May 4, 2012) (online at keystonepipelinexl.state.gov/proj_docs/permitapplication/index.htm); U.S. Department of State, *Draft Supplemental Environmental Impact Statement (SEIS) for the Keystone XL Project* (Mar. 1, 2013) (online at keystonepipeline-xl.state.gov/draftseis/index.htm) (*hereinafter Draft SEIS).*

closed on March 7, 2014.[10] On April 18, 2014, the Department of State notified the eight federal agencies involved in the national interest determination process that they would have additional time for the submission of their views due to the uncertainty created by the on-going litigation in the Nebraska Supreme Court, which could ultimately affect the pipeline route in that state.[11] The State Department further announced that it would use the additional time to review and consider the unprecedented 2.5 million new public comments on the public interest determination.[12]

2. *Alberta Clipper Pipeline Expansion*

Enbridge has submitted an application to the State Department to amend its presidential permit to allow the expansion of the Alberta Clipper tar sands pipeline (also known as Line 67) from 450,000 barrels per day (bpd) to 880,000 bpd.[13] The pipeline runs from Hardisty, Alberta to a border crossing in North Dakota, and continues for 327 miles through North Dakota and Minnesota to Superior, Wisconsin.[14] It is part of Enbridge's Lakehead System of pipelines, which carry tar sands crude to Stockbridge, Michigan and to refineries in Chicago.[15] The State Department has issued a notice of intent to conduct a supplemental environmental impact statement for the proposal, and the period for public comments on the scope of that study closed on May 13, 2013.[16] The Alberta Clipper expansion project is highly controversial due to concerns about increased dependence on tar sands crude and local impacts, including spills.

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[10] U.S. Department of State, *Draft SEIS*; U.S. Department of State, *New Keystone XL Pipeline Application* (online at www.keystonepipeline-xl.state.gov).

[11] U.S. Department of State, *Media Note: Keystone XL Pipeline Project Review Process: Provision of More Time for Submission of Agency Views* (Apr. 18, 2014).

[12] *Id.*

[13] Enbridge Energy, *Application of Enbridge Energy, Limited Partnership for an amendment to the August 3, 2009 Presidential Permit for Line 67 to increase the operational capacity of pipeline facilities at the international boundary between Canada and the United States* (Dec. 21, 2012) (online at www.state.gov/documents/organization/202645.pdf).

[14] *Id.*

[15] Enbridge Energy, *Enbridge U.S. Operations, Liquid Pipelines* (online at www.enbridgeus.com/Delivering-Energy/Pipeline-Systems/Liquids-Pipelines). From Stockbridge, another pipeline that is not part of the Lakehead System delivers crude to be refined in Toledo. *Id.*

[16] U.S. Department of State, *Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) and To Conduct Scoping and To Initiate Consultation Consistent With the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) for the Proposed Enbridge Energy, Limited Partnership, Line 67 Capacity Expansion Project*, 78 Fed. Reg. 16565 (Mar. 15, 2013) (online at www.gpo.gov/fdsys/pkg/FR-2013-03-15/pdf/2013-06039.pdf); U.S. Department of State, *Notice of Decision To Extend the Scoping Period for the Proposed Enbridge Energy Partners, Line 67 Capacity Expansion Project To May 13, 2013*, 78 FR 26101 (May 3, 2013) (online at https://www.federalregister.gov/articles/2013/05/03/2013-10563/scoping-period-extended-for-the-proposed-enbridge-energy-partners-line-67-capacity-expansion-project).

3. *Portland-Montreal Pipeline Reversal*

Reversal of the Portland-Montreal pipeline would complete a project to bring tar sands crude from Canada through New Hampshire and Vermont to Portland, Maine, where it would be loaded onto tankers for further transport. The 600,000 bpd Portland-Montreal pipeline currently carries light sweet crude from Maine to Montreal, where it connects to Enbridge's Line 9, which runs to Sarnia, Ontario. Enbridge is in the process of reversing Line 9, to move tar sands crude from Sarnia to Montreal.[17] It is widely expected that the Portland Pipe Line Corporation/Montreal Pipe Line Limited (which are largely owned by ExxonMobil and Suncor) will also soon apply for authorization for a reversal.[18]

The Portland-Montreal pipeline reversal is highly controversial due to concerns about increased dependence on tar sands crude and local impacts, including the impact of a spill on local economies that are dependent on tourism linked to outdoor recreation. The Governors of New Hampshire and Vermont have written to the State Department to request a thorough environmental review, and 42 towns and municipalities have passed resolutions opposing the project.[19]

4. *Pending Natural Gas Pipeline Projects*

There is one transboundary natural gas pipeline application pending with FERC. El Paso Natural Gas and Kinder Morgan submitted an application for the Sierrita Lateral Project in Arizona. The proposed 36-inch pipeline would run approximately 60 miles from an existing natural gas pipeline near Tucson, Arizona to the U.S.-Mexico border at Sasabe, Arizona. The pipeline would be connected to a Mexican pipeline through a new international border crossing. An environmental impact statement was completed on March 28, 2014.

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[17] Enbridge Energy, *Line 9A Reversal (Phase I) Overview* (online at www.enbridge.com/ECRAI/Line9ReversalProject.aspx); Enbridge Energy, *Line 9B Reversal (Phase II) and Line 9 Capacity Expansion Project Overview* (online at www.enbridge.com/ECRAI/Line9BReversalProject.aspx).

[18] *See, e.g., Pipeline plan to send crude from Montreal to Maine raises ire in New England,* Financial Post (May 22, 2013) (online at business.financialpost.com/2013/05/22/portland-montreal-pipe-line/?__lsa=c505-a3da); Natural Resources Defense Council, *Going in Reverse: The Tar Sands Oil Threat to Central Canada and New England* (Jul. 3, 2013) (online at www.nrdc.org/energy/going-in-reverse.asp).

[19] State of New Hampshire, *Governor Hassan Calls on Federal Government to Protect NH from Potentially Dangerous Tar Sands Oil Pipeline* (Apr. 22, 2013) (online at www.governor.nh.gov/media/news/2013/pr-2013-04-22-tar-sands.htm); State of Vermont, *Gov. Shumlin Calls for New Federal Review of Proposed Tar Sands Pipeline Route* (Jun. 20, 2013) (online at governor.vermont.gov/blog-gov-shumlin-urges-sec-john-kerry-pipeline-review); National Wildlife Federation, *Vermont Towns Protect Wildlife and Vote 'No' on Tar Sands* (Mar. 6, 2014) (online at blog.nwf.org/2014/03/vermont-towns-protect-wildlife-and-vote-no-on-tar-sands/).

C. Analysis of the North American Energy Infrastructure Act

The following is a brief summary of the bill, which raises a number of significant concerns.

1. *Summary of the Bill*

Section 3 of the bill eliminates the current requirement to obtain a presidential permit for transboundary oil or natural gas pipelines and electric transmission lines. The bill instead requires that such projects obtain approval under a new process. Under the new process, the responsible agency is required to approve an application within 120 days, unless the agency finds that the project "is not in the national security interests of the United States." The responsible agencies are the Department of Commerce for oil pipelines, FERC for natural gas pipelines, and DOE for electric transmission lines. Section 3(b)(3) explicitly states that an approval under this process "shall not be construed to constitute a major Federal action for purposes of the National Environmental Policy Act."

The new approval requirement does not apply to the following types of projects: (1) a project that is already operating at the border as of the date of enactment of the bill; (2) a project that has already received a presidential permit prior to the date of enactment of the bill; (3) a project that has previously been approved under the new approval process established by the bill; or (4) a project with an application for a presidential permit pending on the date of enactment of the bill until the earlier of (a) the date on which the application is denied or (b) July 1, 2016. No approval under the new process is required for modification to construction or operation of existing pipelines or transmission lines, including reversal of flow direction, change in ownership, volume expansion, downstream or upstream interconnection, or adjustments to maintain flow (such as an increase or decrease in the number of pump or compressor stations).

Section 4 of the bill amends section 3 of the Natural Gas Act to eliminate the requirement to obtain DOE authorization for the export or import of natural gas to or from Canada or Mexico.

Section 5 of the bill repeals section 202(e) of the Federal Power Act, which requires approval from DOE for the transmission of electricity from the U.S. to another country.

Section 6 of the bill sets an effective date of July 1, 2015, for sections 3, 4, and 5 of the bill. The responsible agencies are required to promulgate implementing regulations for the new approval process within one year of enactment of the bill (with proposed regulations issued within 180 days).

Section 2 of the bill includes a Congressional finding that "the United States should establish a more uniform, transparent, and modern process for the construction, connection, operation, and maintenance of oil and natural gas pipelines and electric transmission facilities for the import and export of oil, natural gas, and electricity to or from Canada and Mexico."

2. *Issues Raised by the Bill*

This legislation raises several major issues. The written hearing testimony of the Department of Energy and Department of Commerce indicated that the Administration has "serious concerns" about the bill.

First, the bill would replace the established presidential permit requirement with a rushed process that eliminates consideration of environmental and other important impacts and effectively requires approval of all transboundary pipeline and transmission projects. Controversial modifications to existing cross-border pipelines or transmission lines would not require an approval or any review.

The current requirement that the responsible agency determine that a project is broadly in the "national interest" or "public interest" would be replaced by a much narrower "national security interests" standard that would eliminate any consideration of many effects of a project. When determining whether to approve a transboundary pipeline or electric transmission project, the responsible agency would no longer have the authority to consider, much less condition or reject a project based on, environmental, safety, electric reliability, economic, or competitiveness impacts. The written hearing testimony of the Department of Energy confirms that "[t]he bill would prevent the thorough consideration of complex issues that could have serious safety, environmental, and other ramifications."[20] It is also unclear whether the Department of Commerce, DOE, and FERC have the necessary expertise to make purely national security determinations with respect to transboundary infrastructure projects.

Second, the bill's treatment of projects with pending applications for presidential permits, including the Keystone XL pipeline and the Alberta-Clipper pipeline expansion, raises significant issues. The Administration would have until July 1, 2016, to act on any applications pending as of the date of enactment of the bill. Any pending project not resolved by that date would no longer be required to obtain a presidential permit and would fall under the new approval process, which would effectively require approval by November 1, 2016. However, any project with a pending application for a presidential permit that is denied before July 1, 2016, would be able to gain approval under the new process even earlier. If an applicant reapplied after such a denial, that project would be subject to the new approval process on July 1, 2015, and would have to be approved by November 1, 2015, unless the project was determined to be not in the national security interests of the United States. Thus, a project pending at the time of the bill's enactment that is later determined to not be in the broad national interest would nevertheless almost certainly be approved under the bill's new process. Also, because modifications to existing cross-border pipelines or transmission lines would not require any approval or review beginning on July 1, 2015, companies with controversial projects may have an incentive to wait until that date to proceed with the projects in order to avoid the current permitting requirement.

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[20] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Submitted Statement for the Hearing Record, Dr. Michael Knotek, Deputy Under Secretary for Science and Energy, U.S. Department of Energy, *Hearing on H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Oct. 29, 2013).

Moreover, the bill's NEPA waiver provision, in combination with the deadline for project approvals, would effectively eliminate federal environmental reviews for cross-border pipelines and transmission lines. The Department of Energy and Department of Commerce have stated in written testimony before this Committee that the bill would eliminate environmental reviews that are currently required by NEPA. According to the agencies, "eliminating the [NEPA] compliance for projects will undermine the reasoned consideration of the environmental effects of such projects and impede the opportunity to consider alternatives with less adverse impacts on communities and the environment."[21] Even if the NEPA language did not directly remove the NEPA requirements, the 120-day deadline for approval under the new process would not provide sufficient time for an environmental review, substantial public comment, or stakeholder involvement. The clock on this deadline begins to run when a request for approval is submitted, even if it is incomplete. Furthermore, under the new process, controversial modifications of existing pipelines and transmission lines would not need either a presidential permit or an approval, and thus would not require any review under NEPA.

In addition, the bill significantly alters the current approval process for LNG exports. The bill would apparently allow unrestricted amounts of LNG to be exported to Canada or Mexico before being re-exported to other countries for which a DOE approval is currently required. These unlimited LNG exports through Canada and Mexico would no longer be subject to any DOE approval, review, or conditions.

Finally, it is unclear how the bill's elimination of the presidential permit requirement for transboundary natural gas pipelines would accelerate the permitting of such projects. Under the bill, it appears that FERC approval for such projects would still be required under section 3 of the Natural Gas Act. The statutory approval process is currently conducted simultaneously with the presidential permitting process, which generally takes less time than the statutory approval. At the October 29, 2013, Energy and Power Subcommittee hearing on H.R. 3301, the career Director of FERC's Office of Energy Projects testified that the bill "would not speed up the process" for natural gas pipelines.[22]

D. Markup in the Subcommittee on Energy and Power

On November 19, 2013, the Subcommittee on Energy and Power marked up H.R. 3301. Rep. Waxman offered an amendment, defeated by a voice vote, to allow final decisions on currently pending permit applications, such as the Keystone XL pipeline, to be made under the existing permitting process. Rep. Castor offered an amendment, rejected by a vote of 8 to 18, to

[21] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Submitted Statement for the Hearing Record, Kevin J. Wolf, Assistant Secretary for Export Administration, U.S. Department of Commerce, *Hearing on H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Oct. 29, 2013).

[22] House Committee on Energy and Commerce, Subcommittee on Energy and Power, Testimony of Jeff Wright, Director of Office of Energy Projects, Federal Energy Regulatory Commission, *Hearing on H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Oct. 29, 2013).

allow the relevant permitting agency to reject a cross-border permit application if the agency finds the project is not in the national interest. Rep. Dingell offered and withdrew an amendment to allow time for environmental reviews of the proposed projects under NEPA. The bill was favorably reported by a vote of 19 to 10.[23]

II. H.R. 4342, THE DOMAIN OPENNESS THROUGH CONTINUED OVERSIGHT MATTERS (DOTCOM) ACT OF 2014

On March 27, 2014, Representatives John Shimkus, Todd Rokita, and Marsha Blackburn introduced the DOTCOM Act. This Act would prevent the National Telecommunications and Information Administration (NTIA) from "relinquishing responsibility over the Internet domain name system" until the Comptroller General provides a report to Congress on the transition proposal submitted by the multistakeholder community through a process convened by the Internet Corporation for Assigned Names and Numbers (ICANN). The bill provides one year for the Comptroller General to complete and submit the study, thereby prohibiting NTIA from implementing the transition plan for up to one year. In a press release announcing the introduction of the bill, Rep. Blackburn stated, "America shouldn't surrender its leadership on the world stage to a 'multistakeholder model' that's controlled by foreign governments."[24]

On May 6, 2014, the Obama Administration wrote Chairman Upton formally opposing the legislation.[25]

As introduced, the DOTCOM Act could call into question Congress' previously unanimous commitment to the multistakeholder model. The House of Representatives has voted three times in the last two years to reaffirm the U.S. government's commitment to a global multistakeholder model of Internet governance.[26] At an April 2, 2014, Subcommittee hearing, both NTIA and ICANN restated their commitment to such a model, citing unequivocal support from the U.S. Congress.[27] A key element of this commitment is the termination of the Internet

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[23] House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Markup of H.R. 3301, the "North American Energy Infrastructure Act,"* 113th Cong. (Nov. 19, 2013).

[24] Rep. John Shimkus, *Shimkus, Rokita & Blackburn Seek Review of Obama Administration Plan to Relinquish U.S. Oversight of the Internet* (Mar. 27, 2014).

[25] Letter from Kelly R. Welsh, General Counsel of the United States Department of Commerce to The Honorable Fred Upton, Chairman, Committee on Energy and Commerce (May 6, 2014).

[26] H. Con. Res. 127, Roll Call Vote No. 555, 112th Cong. (Aug. 2, 2012); S. Con. Res. 50, Roll Call Vote No. 617, 112th Cong. (Dec. 5, 2012); and H.R. 1580, Roll Call Vote No. 145, 113th Cong. (May 14, 2013).

[27] House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information Administration, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014); House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Fadi Chehade,

Assigned Numbers Authority (IANA) functions contract between NTIA and ICANN, which represents the final stage of the privatization of the domain name system (DNS) first initiated 16 years ago. NTIA's recent announcement to initiate the final transition process was a critical effort to inject fresh confidence into the multistakeholder model that has been under increasing attack in recent years. By inserting a unilateral role for the United States to question the consensus reached through ICANN's multistakeholder process, the DOTCOM Act signals a lack of confidence in the multistakeholder model.

Further, the DOTCOM Act would create an artificial delay in the implementation of a consensus transition plan and suggests governmental meddling in the multistakeholder process is entirely appropriate. Although the legislation is characterized as a stand against anti-democratic nations seeking a greater governmental role in Internet management, the DOTCOM Act could have the unintended consequence of emboldening efforts by authoritarian regimes to seize control of the global Internet. Authoritarian regimes use continued U.S. government stewardship of technical Internet functions as evidence for a need to move these functions to another governmental or intergovernmental entity like the United Nations. Indeed, the witness representing civil society organizations stated at the April 2, 2014, hearing that "by forestalling the transfer of the IANA functions to the global multistakeholder community, [the DOTCOM Act] could further empower critics who favor a governmental or intergovernmental model of internet governance."[28]

Finally, the DOTCOM Act reflects a fundamental misunderstanding of the United States' role in the management of the global Internet domain name system. Contrary to assertions that the United States "controls" the Internet through the IANA functions contract, NTIA's role with respect to the technical functions of the Internet domain name system has always been ministerial and largely symbolic.[29] The U.S. government has never had any legal or statutory responsibility to manage the domain name system. This very limited role was also always intended to be temporary, until such time as the Internet community could manage these functions itself.

III. H.R. ____, A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934 TO EXTEND EXPIRING PROVISIONS RELATING TO THE RETRANSMISSION OF SIGNALS OF TELEVISION BROADCAST STATIONS, AND FOR OTHER PURPOSES

President and CEO of ICANN, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014).

[28] House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Carolina Rossini, Project Director, Internet Governance and Human Rights Program, New America Foundation, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014).

[29] House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information Administration, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014).

On March 6, 2014, Chairman Walden released a discussion draft of a bill to reauthorize the Satellite Television and Localism Act (STELA) and address other video-related provisions of the Communications Act. This discussion draft was circulated in the majority notice for the markup. Section 2 of the discussion draft would extend for five years the expiring provisions of STELA that provide the retransmission consent exemption for distant signals, the requirement for good faith retransmission consent negotiations, and the prohibition on exclusive broadcaster contracts for carriage.

Section 3 of the Walden discussion draft would prohibit a broadcast television station from negotiating jointly with another television station in the same local market for retransmission consent unless the stations are considered to be "directly or indirectly owned, operated, or controlled by the same entity" under the Federal Communication Commission's (FCC) "Local Television Multiple Ownership Rule," or a multichannel video programming distributor agrees to negotiate with multiple broadcasters on a joint basis.[30] Section 4 of the discussion draft prohibits the FCC from modifying its attribution rules for sharing and other joint arrangements between television broadcast stations in the same market until the Commission takes action on the Quadrennial Review of its media ownership rules.

Section 5 of the discussion draft eliminates the "sweeps" carriage requirement for cable companies. Section 6 contains language identical to H.R. 3196, a bill to repeal the set-top box "integration ban" and prohibit the FCC from adopting any new rules that prohibit companies from using set-top boxes with integrated security functions. Section 7 requests a Government Accountability Office (GAO) study, also contained in STELA, on necessary changes to carriage rules if Congress phases out compulsory copyright licenses. Section 8 extends a requirement contained in STELA for satellite providers to provide annual reports to the FCC on the availability of local television broadcast stations and satellite capacity for retransmitting local signals.

At the Subcommittee mark up on March 25, Mr. Walden and Ms. Eshoo introduced an amendment that made changes to Sections 4 and 6. The amendment bracketed Section 4 to indicate that it was the subject of ongoing negotiations. Section 6 was revised to simply eliminate the integration ban from the FCC's rules while not limiting the FCC's authority to reinstate such ban. Mr. Waxman and Ms. Eshoo also indicated that concerns regarding Section 3 needed to be addressed before full Committee consideration of the legislation.

[30] The Local Television Ownership Rule, also known as the "Duopoly Rule," allows a single company to own two television stations in a market if either the service areas of the two stations do not overlap or at least one of the stations is not among the four highest-ranked stations in the market and at least eight independently-owned television stations remain in the market.