

Questions for the Record
Sept. 17, 2014 Judiciary Committee Hearing
Senator Lee

For Dr. Eisenach:

1. At the Committee's hearing, you expressed concern that FCC net neutrality regulations might encourage rent-seeking behavior. In particular, you mentioned that the FCC has had a regrettable history of encouraging rent seeking by special interests.
 - a. Please elaborate on the FCC's past experience with rent-seeking behavior by regulated parties.

Answer: As Nobel Prize winner Ronald Coates discussed in his 1959 article on "The Federal Communications Commission" (Attachment A), the FCC's ability to allocate broadcast licenses, set prices and determine other economic rights is in effect the power to allocate wealth among private parties. The affected parties react by employing lobbyists, attorneys and others in an effort to turn the Commission's decision in their favor. I describe the history of rent seeking at the FCC in a paper jointly authored with Hal Singer, "Avoiding Rent-Seeking in Secondary Market Spectrum Transactions." (Attachment B.)

- b. Do you believe the proposed net-neutrality regulations could lead to similar problems?

Answer: Yes. By establishing itself as the arbiter of what services can be provided by ISPs to other firms in the Internet ecosystem, and at what prices, the FCC would create powerful incentives for all such firms to engage in rent seeking, that is to seek to expand or contract the Commission's authorities (depending on their self-interests) and to assure that pricing and other regulatory decisions are set in such a way as to contribute to their profitability. Firms which feel they would benefit from the FCC's "non-discrimination" rules will have strong incentives to have them enforced as expansively as possible, including, for example, challenging in court any efforts by the Commission to forbear from or exercise discretion in its use of such authority.

2. Apart from the net-neutrality regulations discussed at the hearing, I would like to ask you about a related subject concerning the future of the Internet: the transition of oversight of the domain name system from the U.S. National Telecommunications and Information Administration to the independent Internet Corporation for Assigned Names and Numbers (ICANN).
 - a. A number of groups and individuals have expressed concerns with the Administration's vague announcement that it would not renew its

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contract with ICANN—and that ICANN must implement a new mechanism, built on a multi-stakeholder model, that maintains the openness of the Internet. Some of these groups have proposed a minimum set of protections that should be in place before the United States agrees to relinquish its oversight. What protections do you believe ICANN should implement before the United States relinquishes its oversight, and why are such protections necessary?

Answer: The IANA function which is immediately at issue in the transition announced by the Department of Commerce is inherently technical in nature, but the technical outcomes that result from that process have potentially far reaching implications. Heretofore, technical decisions have been made on technical grounds through a transparent process, with the U.S. government serving as a backstop against politicization. Before any changes are made, it is essential for the U.S. government to be assured that whatever new process is put in place is both transparent and insulated from politicization.

- b. If the transition is not completed in a thoughtful way, is there any potential for other governments or intergovernmental organizations to hijack the Internet and threaten its openness?

Answer: Yes.

- c. In your opinion, assuming adequate protections are in place, will the proposed transition create a more open and freedom-enhancing Internet?

Answer: In my opinion, the effect of the transition depends both on how it is structured and on the going-forward effectiveness of U.S. diplomacy in the Internet space. The fact that the U.S. is in the position of being pressured to divest the IANA function is a signal that we have not been as effective as we would like in persuading the international community of the value of having a strong U.S. role in these issues.