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A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION

BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

HEARING:
PRESERVING THE MULTISTAKEHOLDER MODEL OF INTERNET GOVERNANCE

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Testimony: Fadi Chehadé, ICANN

Mr. Chairman, Ranking Member, and members of the Committee, I am Fadi Chehadé, the President and CEO of ICANN, the Internet Corporation for Assigned Names and Numbers. I am very pleased to be testifying before you today.

The subject of today's hearing, "Preserving the Multistakeholder Model of Internet Governance" comes at a very timely point in the work of ICANN's multistakeholder community. Nearly one year ago, on March 14, 2014, the Department of Commerce's National Telecommunications and Information Administration announced its intent to continue its ongoing transition of Internet governance oversight to the multistakeholder model by calling upon the ICANN community to convene a process to develop a proposal that meets a clear set of criteria for that transition and that will ensure that no government-led solution or intergovernmental organization could gain control of the IANA functions.

The U.S. Government demonstrated great vision in its initial decision so many years ago to privatize the management of the domain name system. Republican and Democratic Administrations have remained true to the vision, gradually reducing government oversight of the ICANN multistakeholder community.   In this light, the announcement to complete the privatization and transfer NTIA's stewardship of the IANA functions to the multistakeholder community is the logical extension of the U.S. Government's long-standing support for the multistakeholder model.

How Did We Get Here?: A Brief Background

NTIA's announcement was a long time coming. In 1998, NTIA entered into the IANA (or Internet Assigned Numbers Authority) Functions Contract with ICANN. That same year, ICANN was purpose-built to perform the IANA functions, which consist of the coordination of unique Internet identifiers (domain names, IP numbers and protocol parameters). ICANN has performed the IANA functions pursuant to its no-fee contract with the U.S. government ever since, while maintaining the security, stability and resiliency of the Internet. This technical mandate does not give ICANN control over content on the Internet;

instead it is key to maintaining a single, global, unified and interoperable Internet.

The relationship between ICANN and NTIA has remained strong over the past 17 years. For many reasons, I expect that our relationship with the U.S. Government will remain strong even when the IANA Functions Contract comes to an end. Apart from its stewardship role, NTIA represents the U.S. Government within ICANN's Governmental Advisory Committee. It is also our partner in the Affirmation of Commitments. Further, ICANN has its global headquarters in the United States, and there are no plans for that to change.

At the time of ICANN's formation, it was envisioned that the U.S. Government would transition its stewardship role over the key unique Internet identifier functions within two years. This temporary arrangement lasted far longer than anyone anticipated, but ICANN is now recognized as mature enough to perform its work under a multistakeholder-based stewardship model as opposed to any single government control. The successful completion of the transition is essential to the upholding of the multistakeholder model for Internet policy and governance. The eyes of the world are watching this process and ICANN and the U.S.'s commitment to see this transition through. NTIA's announcement preserves and prolongs the free and open Internet that has brought so much economic growth and social and cultural development.

Both ICANN and the U.S. government have championed the multistakeholder model, in which standards and policies are developed by large and small businesses, the technical community, not-for-profit organizations, civil society, intellectual property experts, governments, academia, and Internet users from around the globe. American corporations – such as AT&T, Cisco, Google, Microsoft, Neustar, Verisign and Verizon – and the Internet technical community (the Internet Architecture Board, Internet Engineering Task Force, the Internet Society, the Regional Internet Registries and the World Wide Web Consortium) also participate in and demonstrate support for the multistakeholder model. These entities have welcomed the U.S. government's announcement as the way to bring more countries to

support the multistakeholder approach to Internet governance, moving them away from a model in which only governments hold sway.

A few weeks after NTIA's announcement, I was called to testify before the House of Representatives' Energy and Commerce Subcommittee on Communications and Technology on "Ensuring the Security, Stability, Resilience, and Freedom of the Internet." There, Assistant Secretary for Communications and Information Lawrence Strickling and I testified about the work initiated following NTIA's announcement. Much work has progressed since that time, and I will discuss that below.

There are areas however in which not much has changed. There are still many who challenge multistakeholder governance of the Internet when one single government is seen as exercising control over the IANA functions. There are other governments and intergovernmental organizations that are eager to challenge the U.S.'s unique stewardship role. I testified in March 2014 of the threats posed by governments who seek to use United Nations processes to challenge that singular stewardship model and assert more diverse participation of other governments in Internet governance, and the import of the U.S. stepping out of the stewardship role to diffuse that threat.

If we succeed, we will diffuse arguments that are being strongly used now by governments that seek to expand their perceived limited and advisory role in Internet governance while one other single government enjoys a special role. Success will also lessen support for the creation of intergovernmental mechanisms for Internet policy development at the UN General Assembly, or for governments to expand control over the management of core Internet resources and possibly fragmenting the Internet.

Congress itself recognized the threat by those who argue for increased government control over the Internet, and reaffirmed its commitment to the multistakeholder model of Internet governance, in its 2012 S.Con.Res.50 and H.Con.Res.127. This announcement by NTIA to end its stewardship role over the IANA functions further cements this commitment.

Without a completion of this transition, we risk not only the continued vitality of the multistakeholder model, but the ability to maintain a unified, global Internet free from governmental interference. The global community now sees this transition effort as a fork in the road for the multistakeholder model of Internet Governance; we are being watched closely. The timely transition will encourage governments to participate in the multistakeholder model with the private sector, with the technical community, civil society and academia to keep one, global, non-fragmented, stable and resilient Internet. This will benefit U.S. businesses and end users and will promote the long-standing U.S. objective of maintaining a single open, free, innovative global Internet. As Ambassador David Gross testified at that same March 2014 hearing, the transition will lead to a "better Internet" and "better Internet Governance situation."

Multistakeholder Work Towards the Transition

The multistakeholder community has stepped up to the task that NTIA laid before it. The support for the transition has been broad and deep, with a demonstrated commitment to transparency in the dialogues. After community consultation, an IANA Stewardship Transition Coordination Group, or ICG, was formed with 30 members from across a variety of stakeholders, including not only the customers of the IANA functions, but also representatives from the business community, civil society, governments, root server operators, and security and stability advisory members. The ICG, in turn, submitted a request for proposals from each of the operational communities that are in direct operational or service relationships with ICANN as the IANA functions operator. Each of these three operational communities quickly organized discussions – many happening outside of ICANN – to respond to the ICG:

- The protocol parameters community, through the Internet Engineering Task Force, conducted an open dialogue in which all could participate. This community delivered its response to the ICG in January of this year.
- The numbering community, through a team convened by the five Regional Internet Registries (from North American, Asia-Pacific, Europe, Africa and the Latin American/Caribbean regions), held open dialogues throughout the communities they serve. The team also delivered its proposal in January of this year.

- The naming community formed a Cross-Community Working Group, made up of business, operators, governments and civil society, to develop its proposal. The work is ongoing.

The hallmark of the proposal developments at each stage is open, with global participation across stakeholders.

A tremendous number of hours have been devoted to this work, and I am humbled by the devotion of the volunteers who are working so hard toward this effort. Some highlights include:
  - 90 meetings/calls, 5 of which were ICANN-funded face-to-face meetings
  - Over 9,700 mailing list exchanges
  - 190 hours of meetings/calls, not including drafting/document development
  - 7 transition working or engagement sessions at ICANN Meetings
    - This does not include community-run sessions where the transition was discussed, or when members of working groups presented to other parts of the ICANN community
  - Over 250 events globally for awareness building and discussion
    - In at least 63 different countries spanning North America, Latin America/Caribbean, Europe, Asia, Africa, the Middle East, and Australasia/Pacific

When all proposals are in, the ICG is charged with assessing them and assembling a complete proposal for the transition. The proposal will be submitted to ICANN, which will in turn submit it (along with the accountability proposal discussed below) to NTIA for consideration. NTIA has specified that the proposal must meet certain criteria, which are:

- Support and enhance the multistakeholder 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.

In addition, the NTIA made clear that it will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

It is important to note that within the transition process, each of the communities served by the IANA functions have stated their satisfaction with ICANN's performance of those functions. ICANN has received repeated high marks on an annual IANA Functions Satisfaction Survey. Even as ICANN is facilitating this important process, my key focus remains on maintaining operational excellence and the security, stability and resiliency of the Internet DNS.

ICANN's Performance Standards for timeliness and accuracy of processing stakeholder's requests are published on a monthly basis. In addition, ICANN is subject to an annual audit of the security of the IANA functions systems. Further, after an independent assessment, the IANA Functions Department received recognition from an international organization for its business excellence. We are ready operationally to maintain this quality of work even without NTIA in its stewardship role.

Enhancing ICANN Accountability – A Parallel Process

When NTIA made its announcement, many in the ICANN community questioned whether ICANN could remain accountable without the perceived backstop of NTIA in the absence of the IANA Functions Contract. As a result, ICANN initiated the Enhancing ICANN Accountability process, another cross-community effort, to arrive at recommendations for how ICANN's accountability mechanisms can be enhanced or newly developed to address the community concerns. NTIA is supportive of this effort, and has made clear that the issues of accountability are related to the transition of the stewardship over the IANA functions; NTIA will only consider the stewardship transition proposal alongside recommendations on how ICANN's accountability can be improved.

The group performing the Enhancing ICANN Accountability review has broad representation across the multistakeholder community, with members from business, civil society, governments and others. Asst. Secretary Strickling served as one of the selectors of experts to advise the accountability working group, including experts on global accountability and governance. The group has 25 designated members and over 130 participants from across the globe, and has made

substantial progress towards the development of recommendations in the few months it has been active. Their work is open,transparent and fully accessible around the globe.

The work relating to accountability in light of the changing historical relationship with the US is looking at whether and how to enhance opportunities for community input into key processes within ICANN, such as the budget approval and key Bylaws changes. It is also considering enhancing opportunities for review and redress of ICANN decisions. Though the Affirmation of Commitments between ICANN and the Department of Commerce is not impacted by the transition announcement, and no change in that relationship is anticipated, the accountability group is considering if there are some items set out within that Affirmation that are so important that they should be housed within the ICANN Bylaws. The group is aware of the need to "stress test" their proposed solutions against key potential risks, and has been very active in defining those risks.

The community work is very much in line with the ideas put forward by Chairman Thune and Senator Rubio in a July 31, 2014 letter submitted to ICANN on enhancing ICANN accountability. There, six concrete ideas were set forth on how ICANN could enhance its accountability. Some of these protections already exist, and those that do not are already under discussion within the accountability working group. For example:

- The letter discussed the import of limiting possibility of governments exercising undue influence through mechanisms such as not allowing government representatives to sit on the ICANN Board; limiting governments to an advisory role within ICANN through the Governmental Advisory Committee; and amending bylaws to require board to consider only consensus advice issued by the Governmental Advisory Committee.
    - The ICANN Bylaws already prohibit a government representative from holding a voting position on the ICANN Board, and governments hold only an advisory role through the Governmental Advisory Committee. These are important items that need to remain in place.

- o The accountability group is already discussing issues relating to consensus advice from the Governmental Advisory Committee and how to address this concern.

- There was a call to keep the IANA functions operations as separate from the policy-development processes that define those policies that are implemented through the IANA function.
    - o That exists today and there are no recommendations to modify that separation.

- The recommendation that major decisions of the Board, including changes to Bylaws, should be increased to 4/5 of all voting members is in line with the community discussions. The community is also considering mechanisms for enhanced community participation in these key decisions.

- In the letter, there is a call for increased oversight tools for the community such as a requirement for an annual audit over the organization and the development of an Inspector General's office to develop reports on the activities of the community; the development of a Freedom of Information Act-like process for document disclosure; and a form of "parliamentarian" to guide people through ICANN processes.
    - o Through the Audit Committee of the ICANN Board, ICANN has an independent financial audit performed each year by an external audit firm; these financial audits are available online, and have consistently returned with clean results. If this process can be enhanced, I would be in full support.
    - o Similarly, ICANN maintains a document disclosure process (called the Documentary Information Disclosure Policy) through which requests for non-public information are weighed against community-vetted, publicly available conditions for non-disclosure. I understand that the accountability process will likely be suggesting enhancements to this disclosure process.
    - o I am in full support of any tools, such as a parliamentarian, that make ICANN's processes easier to follow and more open for participation.

- The recommendation for enhanced, independent dispute resolution processes to provide confidence to community that redress is possible when board or staff errs or fairness of process is called into question is one of the main focuses of the accountability work today, and I expect to see significant progress on this issue.

- Finally, there was a call to amend the ICANN Bylaws to make the Affirmation of Commitments, including the community reviews, a permanent part of ICANN, removing the ability for a 120-day termination of the Affirmation.
    - First, ICANN is deeply committed to the Affirmation of Commitments and has no plans to terminate our obligations under that agreement. Notwithstanding that fact, the accountability group is already working on this exact idea of incorporating the Affirmation of Commitments into the Bylaws, including requirements for higher voting thresholds in the event of future attempts to modify these obligations.

I, along with my fellow Board members, confirmed to the community, and confirm to you today, that we are open to considering any possible recommendations, even if those recommendations result in enhanced community input in the removal of Board members for cause. We are committed to this process and to a positive outcome.

ICANN's 52nd Public Meeting Focused on Transition Activities

I have just returned from Singapore, where ICANN convened its 52nd public meeting, which we call ICANN52. We had over 1800 people in attendance at this meeting, including representatives from across business and civil society, including 21st Century Fox, Apple, the Center for Democracy and Technology, Facebook, Google, the Heritage Foundation, the Motion Picture Association of America and others. Volunteers were in sessions starting at 7:00 a.m., often not concluding their meeting days until well into the evening. The week was marked with intense, serious deliberations. Volunteers returned from such an intense week of ICANN52 without pause to continue with rigorous schedules of conference calls to maintain the momentum and bring this work to a close.

Next Steps

Where do we go from here? The base term on the current IANA Functions Contract is set to expire in September of this year. However, I have been clear – as has Asst. Secretary Strickling – that the end of the current contract term is not an artificial deadline. This is the community's process and I am not imposing any deadline on the completion of any of the work underway. It is important to get this done right. Remarkably, the global response to the NTIA announcement has ICANN currently in a place where it is still feasible to deliver a proposal to NTIA in time for a transition to occur at the expiration of the contract. Much work has been completed in a relatively short time. The areas where work is still ongoing, particularly within the names community and the accountability working group, have intensive work schedules over the next few weeks with the hope of having documents available for consultation shortly. Of course, if more time is needed, it can be taken; there are opportunities for extensions under the current IANA Functions Contract, and we are committed to tracking this issue closely with the NTIA to address any timing concerns.

I am aware of the Congressional interest in this topic, both on the Senate and House sides. The February 5, 2015 designation of an "Internet Governance Awareness Week" to correspond to ICANN52 was appreciated in helping to call further attention to the important issues raised through this transition process. As discussed, the ICANN52 participants met your call for focusing on important issues such as accountability and maintaining the global, unified Internet that we have all come to rely on. And we stand with you on this. For example, there remains clear consensus on the need to maintain the IANA functions operations as separate from the policy-development processes that define those policies that are implemented through the IANA function. That exists today and there are no recommendations to modify that separation. I stand with you on making sure that the stewardship role is not now, nor susceptible in the future, to being led by any government, group of governments, or intergovernmental solution. Similarly I stand with you that no other stakeholder or group of stakeholders should be in a position to exercise undue influence over ICANN.

Finally, I wish to assure you that the transition will not take place in the dead of night. The community work is conducted in an open and transparent manner, including calls for public comment on draft proposals. Once the proposals are finalized, there will be ample time for Congress and other interested parties to review them. I look forward to meeting with you again to discuss the final proposals.

Thank you for inviting me to testify. I would be happy to answer any questions you may have.