Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

In the Matter of	)	
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Input on Proposals and Positions for 2016 World Telecommunication Standardization Assembly	)	Docket No. 160509408-6408-01
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COMMENTS OF THE INTERNET GOVERNANCE COALITION

The Internet Governance Coalition[1] welcomes the opportunity to comment on the National Telecommunications and Information Administration's ("NTIA") Request for Comment ("Request") on proposals and positions for the International Telecommunication Union's ("ITU") upcoming 2016 World Telecommunication Standardization Assembly ("WTSA"), the managing conference of the ITU's standardization sector ("ITU-T").[2]

I. INTRODUCTION AND SUMMARY

At the ITU's 2014 Plenipotentiary Conference, the United States built a broad consensus that led to success on Internet and cybersecurity issues, keeping the ITU's work focused on its current mandate. The United States worked with other Member States to avoid fundamental changes to the ITU's Constitution and Convention that would have improperly expanded the scope of ITU work and inhibited the robust, innovative, multistakeholder Internet we enjoy today, while also providing clear guidance to the ITU on the efforts it can and should work on.

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[1] The Internet Governance Coalition is an industry association with broad representation from the communications, Internet, and related industries, including Amazon, AT&T, Inc., Charter Communications Inc., Cisco Systems, Inc., Comcast NBCUniversal, Facebook, GoDaddy, Google Inc., Juniper Networks, Inc., Microsoft Corporation, Telefónica, S.A., The Walt Disney Company, Twenty-First Century Fox Inc., and Verizon Communications Inc.

[2] *Input on Proposals and Positions for 2016 World Telecommunication Standardization Assembly*, Notice and Request for Public Comment, Docket No. 160509408-6408-01, 81 Fed. Reg. 30518 (May 17, 2016).

The result was the highly-praised "Busan Consensus" that Internet governance issues will be addressed in other international fora, and the ITU's Members will be given greater transparency.

Nevertheless, resolutions adopted at the Plenipotentiary reflect a new strategic direction for the ITU.[3] And in the preparatory process for WTSA, we once again face the spectre of increased ITU activities regarding Internet governance issues. Many ITU-T study groups refocused on Internet governance-related topics after the Plenipotentiary, including on Internet platforms, services, and applications (specifically, under the term "over-the-top" ("OTT") applications);[4] Internet Protocol (IP)-based networks; the Internet of Things ("IoT"); and cybercrime, among others. Early proposals for WTSA seek to further orient the ITU-T in this dangerous direction. Not only do these activities threaten to supplant multistakeholder work, they represent a strategic shift on the part of some Member States that changes at the ITU can be made through the ITU's four-year work program, rather than the more traditional and transparent process of amending the ITU's Constitution or Convention.

Calls to use the ITU-T's work program as a "back door" to expand the ITU's activities in Internet governance-related issues should be firmly rejected. The ITU-T plays an important role as a longtime convener of global experts to develop technical telecommunication Recommendations. Its continued significance in this role will depend crucially on a properly focused work program that avoids stretching limited resources into too many areas. As NTIA appropriately recognizes in its Request, there are numerous standards development organizations ("SDOs") and fora that are better positioned to focus on the other aspects of

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[3] *See, e.g.*, Plenipotentiary Resolution 71 (Rev. Busan, 2014) (Strategic Plan); Plenipotentiary Resolution 197, *recognizing* and *bearing in mind* (Busan, 2014) (Internet of Things).

[4] For example, as discussed further in Section II, ITU-T Study Group 3 developed a Draft Recommendation on "over-the-top" applications, defined in TD 372 as "applications and services delivered over telecommunications networks through the Internet and directly to end-users by entities that are not necessarily operators of those networks." ITU-T Study Group 3 TD 372.

telecommunications/ICT systems. As telecommunications/ICTs continue to evolve, so too must the standards ecosystem.

In these comments, the Internet Governance Coalition outlines principles that will ensure the continuation of the Busan Consensus and a successful WTSA. In developing proposals and positions, the U.S. government should seek to ensure that (i) ITU-T activities are properly focused on technical telecommunications standards and do not expand into Internet governance-related issues, including those discussed above; (ii) the ITU-T's work program effectively and efficiently avoids duplication of work and minimizes costs to ITU Members and Sector Members; (iii) the ITU-T's study group structure encourages broad participation; and (iv) where appropriate, the ITU-T establishes mechanisms to enhance cooperation with other SDOs with a view toward minimizing conflicts. These principles will ensure that ITU-T maintains its leadership in its core telecommunications domain without interference to other, fruitful standards activities.

II. RECENT ITU-T ACTIVITIES REGARDING INTERNET-RELATED ISSUES ARE OUTSIDE THE SCOPE OF THE ITU'S MANDATE AND INTERFERE WITH ONGOING WORK OF MULTISTAKEHOLDER SDOS

The ITU's mission, as set out in the Preamble and Article 1 of the ITU Constitution,[5] is limited to "telecommunication," a term which is defined narrowly.[6] The U.S. delegation and others advocated successfully at the 2014 Plenipotentiary Conference to prevent changes to the ITU Constitution, including widening the scope of Article 1 or expanding the definition of "telecommunication." It is axiomatic that the ITU's technical standard-setting activities should

[5] ITU Constitution (CS) Preamble & Art. 1.

[6] CS 1012 (defining "telecommunication" as "[a]ny transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems").

not expand beyond this established scope, and that the WTSA should not be a means to subvert the ITU Constitution through a "back door."

In recent years, however, ITU-T study groups have been undertaking activities in a number of Internet governance-related areas, including Internet platforms, services, and applications, IP-based networks, Internet connectivity charging and accounting (*i.e.*, peering and transit), cybercrime, cloud computing, IoT, and privacy. All of these activities represent an inappropriate expansion of the ITU's work program as well as a duplicative and inefficient use of the ITU's limited resources, to the detriment of Member States and Sector Members, particularly developing countries.[7]

The recent activities of ITU-T Study Group 3 provide a telling example. Although established to address issues such as international telecommunication tariffing and resale, SG3 recently has focused on topics related to Internet governance. This includes developing a "Base Text for a Draft Recommendation on OTTs" (*i.e.*, applications and services delivered over telecommunications networks through the Internet and directly to end-users by entities that are not necessarily operators of those networks) as well as activities relating to charging and accounting and settlement mechanisms and aspects of IP peering. These activities are moving further into what is more properly the arena of multistakeholder public policy-making, as opposed to multilateral technical standards setting.

For example, an ad hoc group within SG3 recently developed base text for a Draft Recommendation on "OTTs." The text compiles contributions received by ITU-T Members and encourages governments to develop measures to strike an "effective balance" between "OTTs" and traditional communications services. Specifically, the Draft Recommendation purports to

[7] Even were it deemed "Telecommunication," economic arrangements related to the Internet are outside the Constitution and Convention because they are "Special Arrangements" under Article 42 of the ITU Constitution. *See* CS Art. 42.

seek a "level playing field" between legacy telecommunication systems and a wide range of Internet platforms, applications, and services regarding licensing, pricing and charging, universal quality of service, security and data protection, interconnection and interoperability, legal interception, taxation, and consumer protection. If adopted, the Draft Recommendation could be interpreted to expand the ITU's reach beyond its existing mandate into the consumer experience of software, applications, and content, which could chill the vibrant and growing ICT ecosystem and harm consumers. Moreover, because the ITU is a membership organization, discussion and development of the Draft Recommendation is open only to ITU-T Member States and Sector Members—and only the former can "vote." Consistent with the longstanding multistakeholder approach to Internet governance, however, such discussions are most appropriately and effectively undertaken when all interested stakeholders, including governments, the private sector, civil society, and the Internet technical community, are afforded the opportunity to contribute to the process.

Other SG3 proposals seek consideration of new interconnection charging models for IP-based networks, which potentially could deprive the developing world of the free content users enjoy today and interfere with commercially negotiated peering arrangements. Further, SG3 has forwarded its proposed future Study Questions to WTSA for approval, which include proposals for continued work related to the "economic and regulatory impact of the Internet, convergence (services or infrastructure) and new services, such as OTT services and their impact on the development of telecommunications networks and services"[8] as well as a new proposal to study the economic and policy aspects of big data and digital identity in international telecommunications services and networks. These Study Questions, among others, fall far

[8] ITU-T Study Group 3 TD 349 Rev.2, at 17.

outside the expertise and current remit of the ITU-T and could significantly undermine innovation, economic growth, and the development of the Internet in all sectors.

The recent work of SG17, established to coordinate security-related work, similarly has refocused to include important foreign policy and national security issues outside the ITU's remit, such as cybercrime. In addition, SG17 increasingly is focusing on application and services security for IoT, smart grid, cloud computing, and privacy, some of which duplicates work in other study groups or SDOs to the detriment of capacity building in the ITU Development Sector;[9] other portions are beyond the ITU's mandate.

In some instances ITU-T activities are expanding without consensus and in a manner that could curtail—not aid—industry-led standardization efforts for rapidly changing, nascent technologies. Last year the Telecommunication Standardization Advisory Group ("TSAG") established SG20 to address IoT technologies and smart cities, despite the objection of several Member States, including the United States. Objections to the formation of SG20 were based on notions that smart cities were purely national in scope and that IoT standards are best left to the multistakeholder community and SDOs. Technical standards need to be voluntary, "bottom-up," and carefully designed so they do not constrain innovation, particularly for nascent technologies like IoT. In addition, rapid innovation can moot early approaches. Thereafter, developing countries may mistake ITU-T standards for *de facto* global standards and spend precious procurement on standards already surpassed by evolving technology.

These recent ITU-T activities run parallel to, and significantly impede the effectiveness of, multistakeholder standardization efforts already underway, while adding significant costs. The most effective processes for developing technical and interoperability standards in these

[9] Plenipotentiary Resolution 130 *resolves* 3 (Rev. Busan, 2014).

areas are being driven by the private sector through multistakeholder, globally recognized, voluntary, and consensus-based SDOs and processes. Examples include (i) 3GPP, which develops technical standards related to wireless telecommunications network technologies, including radio access, the core transport network, and service capabilities; and (ii) the Internet Engineering Task Force ("IETF"), the body primarily responsible for developing and maintaining Internet Protocol and related standards. New ITU-T working parties and study questions can impose duplicative and significant costs on ITU Members and Sector Members, particularly developing countries and industry stakeholders seeking to participate in the standardization process.

To the extent some countries see the Member State-driven ITU study groups as a more favorable venue for their interests, the expanding scope of these groups could undermine existing multistakeholder processes without producing meaningful results. In contrast to multistakeholder institutions, the ITU-T is a more government-focused body. And although the private sector may participate in study group efforts, control of the sector and its outputs ultimately is exercised by the ITU's Member States in a one-country, one-vote system. The multistakeholder process, endorsed by the U.N. General Assembly,[10] is better suited to the task.

III. FOR WTSA-16, THE U.S. GOVERNMENT SHOULD SUPPORT AN ITU-T STRUCTURE AND WORK PROGRAM THAT FOCUSES STUDY GROUP ACTIVITIES ON CORE TELECOMMUNICATIONS AREAS, AVOIDS DUPLICATION, PRIORITIZES EFFICIENCY AND TRANSPARENCY, AND IMPROVES COORDINATION WITH OTHER SDOS

At WTSA, the U.S. government should gain consensus for a structure for ITU-T that is concise, consistent with the ITU's mandate, and gives meaningful guidance to Members and

[10] General Assembly Resolution 70/125, *Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society*, ¶ 57 (Feb. 1, 2016).

other participants on the ITU-T's priorities and goals for the next four years. Specifically, the U.S. government should prioritize the following critical imperatives.

Focus on Core Competencies. First and foremost, the ITU-T work program should concentrate on the ITU's core competencies in technical telecommunications standards and avoid replicating work being addressed in other SDOs and fora. ITU-T holds a unique position in telecommunications standardization efforts as a convener of experts from around the world to discuss and develop technical telecommunications Recommendations. ITU-T's continued significance in this role will depend on its ability to build study groups as effective platforms for technical standards development. This ambition will be challenged by limited resources and expertise of ITU membership. No single organization can be the leading platform on every telecommunication/ICT topic, nor should one try or claim to do so. The multistakeholder technical community, in globally-recognized, voluntary, and consensus-based organizations, is better placed to address each issue as it arises. An effective strategy, therefore, should focus on the ITU's core priorities in technical telecommunications standardization and seek to suppress expansion of study group activities into issues related to Internet governance such as Internet platforms, applications, and services; IP-based networks; IoT; cybercrime; and others.

Prioritize Efficiency and Avoid Duplication. The ITU's limited financial resources necessitate a cost-effective and efficient study group structure that avoids duplication of work. Accordingly, ITU-T structure should seek to harmonize activities and minimize overlap of work items. One way to achieve this would be to revise WTSA Resolution 1 to require a "Gap Analysis" prior to the creation of a new study group, working party, or question for study.[11] In addition, ITU-T should conduct a Gap Analysis of existing activities to determine ways to reduce

[11] *See* WTSA Resolution 1, Section 2.

the number of study group working parties and study questions in order to enhance transparency and efficiency, minimize costs to ITU Members and Sector Members, particularly developing countries, and concentrate on the ITU's established base principles and core areas of work. The United States government appropriately objected to the creation of SG20 and should continue to seek opportunities to circumscribe its scope and prevent creation of other new groups that could touch on Internet governance. Predictably, there still is no agreement as to the boundaries between SG17 and SG20. The resources saved by eliminating work that is duplicative or unnecessary can be used to promote capacity building in developing countries.

Encourage Multistakeholder Participation. The ITU-T structure should encourage meaningful participation by all stakeholders and an appropriate balance of rights so that ITU-T remains an attractive place to develop technical telecommunications Recommendations within the WTSA mandate.

Promote SDO Coordination Mechanisms. As NTIA's Request for Comment recognizes, there has been a dramatic increase in the past few years of new SDOs and standardization activities in other fora.[12] New, globally recognized players have emerged with lighter processes, open participation, enhanced agility, and consensus-based outcomes. Some ITU Resolutions, including Resolutions 101, 102, and 180, resolve to explore ways and means for greater collaboration and coordination between ITU and these other relevant organizations, "including, but not limited to, [ICANN], the regional Internet registries, [IETF], the Internet Society, and the World Wide Web Consortium."[13] To meet this objective effectively and efficiently, ITU-T should streamline its existing mechanisms, as there are numerous groups within ITU-T that

[12] *Input on Proposals and Positions for 2016 World Telecommunication Standardization Assembly*, 81 Fed. Reg. at 30519.

[13] *See* Plenipotentiary Resolutions 101, 102, and 180, (Rev. Busan, 2014).

coordinate activities across study groups and with other entities.[14] In addition, ITU-T should ensure that these mechanisms require ITU-T study groups to consult, prior to beginning new work, with the appropriate SDOs and multistakeholders to determine whether another SDO would be a more effective venue for that question of study.

The foregoing principles will ensure ITU-T maintains its importance in its core domain of developing technical telecommunications Recommendations while allowing healthy competition in the standards ecosystem to cultivate appropriate, industry-led standards for new technologies and services.

IV. CONCLUSION

The Internet Governance Coalition is committed to working with the U.S. government and other stakeholders to promote an appropriate and effective structure for ITU-T for the next study period. The principles set forth above will facilitate a continuing, meaningful role for ITU-T in its core competencies, promote the multistakeholder process, and avoid any clashes about Internet governance-related issues.

Respectfully Submitted,

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[14] Such groups include Joint Coordination Activity groups, Collaborative Teams, Joint Teams, the Global Standards Collaboration, the World Standards Cooperation, and the Joint Task Force, among others.