

United States Senate

WASHINGTON, DC 20510

June 21, 2016

The Honorable Lawrence Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration (NTIA)
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Strickling:

We write regarding your agency's apparent violation of federal law in using federal funds to relinquish its responsibility with respect to Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet Assigned Numbers Authority functions.

As you know, Section 539 of the Fiscal Year 2016 Omnibus (Public Law No. 114-113) states, "None of the funds made available by this Act may be used to relinquish the responsibility of the National Telecommunications and Information Administration, during fiscal year 2016, with respect to Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet Assigned Numbers Authority functions."

We believe that NTIA has violated that prohibition by funding projects whose only conceivable purpose is to facilitate the proposed transition of responsibility to the Internet Corporation for Assigned Names and Numbers (ICANN). For example, in March 2016, NTIA awarded a sole source contract to the Berkman Center at Harvard University in the amount of \$18,690.00 to provide NTIA with an independent review and assessment of the transition. Specifically the presolicitation notice lists the "President and Fellows of Harvard College (Berkman Center), as the only capable source that can provide an independent review and assessment of a non-profit corporate governance structure designed for a multistakeholder setting in support of NTIA's broader evaluation and assessment of the proposal to enhance the Internet Corporation for Assigned Names and Numbers' (ICANN's) accountability related to the Internet Assigned Numbers Authority (IANA) Stewardship Transition."¹ This contract was awarded based on the false premise that Congress had "mandated the review prior to NTIA transitioning its stewardship of certain Internet technical functions to the global multistakeholder community, which is to

¹ U.S. Department of Commerce. IANA Transition. Contract Award No. SB1335-16-SE-0091. Available at: https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=0f5669edb5105610cd99f011edc643fd&_cview=0. Accessed: 3/16/2016.

be completed by June 30, 2016.”² However, Congress never mandated such action. To the contrary, Congress expressly mandated that no funds be used to relinquish the NTIA’s supervisory functions. That would logically include any preparatory actions necessary to relinquish those functions.

This is not the only example. NTIA has also used agency resources in preparing a June 2016 report entitled *IANA Stewardship Transition Proposal Assessment Report*. In fact, NTIA admitted in this report that it “utilized a number of resources and tools” in “reviewing and assessing the IANA Stewardship Transition Proposal.” As you know, in March 2014, NTIA asked ICANN to convene global stakeholders to develop a proposal for the transition of the Internet oversight functions currently performed by NTIA to the global stakeholder community. NTIA listed specific requirements that the transition proposal must include and further specified that it would not accept a proposal that replaces its role with a government-led or intergovernmental organization solution. Given NTIA’s own statements, it can only relinquish its responsibility if the transition proposal meets the agency’s established criteria. However, reviewing the transition proposal is prohibited by law because it would only be undertaken for the specific purpose of facilitating the proposed transition of responsibility to ICANN. For the same reason, federal law also prohibits NTIA from certifying the relinquishment of its responsibility, a step that, as you stated during a recent Senate briefing, NTIA intends to take on August 15, 2016.

In order to assist us in understanding your agency’s handling of this important issue, please provide the following information for the time period from October 1, 2015, to the present:

1. A list of all travel taken and meetings held involving NTIA employees, including the date and cost of each trip and meeting, for the purpose of reviewing, evaluating, planning, or coordinating the transition. Please include a list of NTIA employees involved in each trip and meeting.
2. An itemized accounting of federal funds and resources used in preparing the June 2016 report entitled *IANA Stewardship Transition Proposal Assessment Report*. The itemized accounting should also include a list of NTIA employees, the number of hours spent per employee, and all documents involved in preparing the report.
3. All contracts awarded during Fiscal Year 2016, including the cost of each contract, for the purpose of reviewing, evaluating, planning, or coordinating the transition.
4. Any other expenditures made during Fiscal Year 2016 for the purpose of reviewing, evaluating, planning, or coordinating the transition.

²U.S. Department of Commerce. IANA Transition. Contract Award No. SB1335-16-SE-0091. Available at: <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=0f5669edb5105610cd99f011edc643fd&cvview=0> . Accessed: 3/16/2016.

Please provide the requested information as soon as possible, but **no later than 9:00 a.m.** on **Tuesday, June 28, 2016.**

We appreciate your cooperation in this very important matter and look forward to your response at the stated date and time. Please contact Sean McLean (Senator Cruz), Brittany Sadler (Senator Lankford), Andy Reuss (Senator Lee), and Ryan McCormack (Congressman Duffy) of our staffs if there are any questions regarding this request.

Sincerely,



Ted Cruz
United States Senator



James Lankford
United States Senator



Michael S. Lee
United States Senator



Sean P. Duffy
Member of Congress

cc: Mr. David Smith, Acting Inspector General, U.S. Department of Commerce