



AMERICANS FOR LIMITED GOVERNMENT FOUNDATION

10332 MAIN STREET · NO. 326 · FAIRFAX, VA 22030 · PHONE: 703.383.0880 · FAX: 703.383.5288 · WWW.GETLIBERTY.ORG

February 1, 2016

David Smith
Acting Inspector General
U.S. Department of Commerce
Office of Inspector General
1401 Constitution Avenue N.W.
Washington, DC 20230

Via online submission

**Re: Request for Investigation – Antideficiency Act Violations by National
Telecommunications and Information Administration**

Dear General Smith:

I write today to bring to your attention a matter meriting investigation by your office pursuant to the power granted to you by Congress in the Inspector General Act of 1978, 5 U.S.C. App. § 1 *et seq.* This matter involves the unauthorized expenditure of appropriated funds.

Congress in the appropriations for the Department of Commerce for Fiscal Years 2015 and 2016 included a rider which prohibits the National Telecommunications and Information Administration (NTIA) from relinquishing certain responsibilities as detailed below. Despite the explicit prohibition from Congress, the activities of officials at NTIA clearly indicate that they are working hard to ensure that the relinquishment occurs.

Legal Standards

The U.S. Constitution in Article I, Section 9, Clause 7 states, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”

Title V, Sec. 539 of the Consolidated Appropriations Act of 2016, Public Law 114-113 prohibits the relinquishment of “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 fine and the Internet Assigned Numbers Authority functions.” The same prohibition was present in the appropriations for 2015.¹

The Antideficiency Act at 31 U.S.C. § 1341(a)(1)(A) states that the federal government cannot, “make or authorize an expenditure or obligation exceeding an amount available in an appropriation fund for the expenditure or obligation.”

An agency official violates the Antideficiency Act when they expend appropriated funds in violation of prohibitions in the appropriations act, “as the agency’s appropriations were not available for these prohibited purposes.”²

Federal officials who “knowingly and willfully” violate this prohibition commit a criminal offense and are subject to punishment of a fine of not more than \$5,000 and a maximum jail term of two years.³

Facts

Despite the explicit prohibition, the NTIA is clearly engaged in activities that are designed to lead to the relinquishment of its responsibilities regarding Internet domain name system functions, including responsibility with respect to the authoritative root zone fine and the Internet Assigned Numbers Authority functions. The NTIA personnel have traveled to numerous conferences on internet governance and speeches from NTIA personnel clearly indicate that they are moving ahead as if Congress had not acted to prohibit their very actions.

Just a few days ago Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information stated in a speech: “Will we complete the IANA stewardship transition this year? There is a lot riding on this question.”⁴

Nowhere in the speech does he acknowledge that it is unlawful for NTIA to do the transition. Instead, he recites what he views as progress in how the administration is closer to the transition than it previously was.

¹ Public Law 113-235, Title V, Sec. 540.

² Letter from General Accountability Office to Sen. Inhofe regarding Environmental Protection Agency, Application of Publicity or Propaganda and Anti-Lobbying Provisions, December 14, 2015, at p.2.

³ 31 U.S.C. § 1350.

⁴ Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, State of the Net Conference, January 25, 2016. Available online at: <https://www.ntia.doc.gov/speechtestimony/2016/remarks-assistant-secretary-strickling-state-net-2016-conference> (accessed February 1, 2016).

This is not the first time that Strickling has spoken recently regarding NTIA relinquishing its responsibilities, in violation of law. On November 10, 2015 Strickling gave a speech to the Internet Governance Forum in João Pessoa, Brazil.⁵

In that speech Strickling stated,

In the United States, we are committed to multistakeholder Internet governance, as convincingly demonstrated by our announcement in March 2014 that the U.S. government would transition its historical stewardship role over the Internet Domain Name System to the multistakeholder community⁶

He failed to acknowledge that the transition is unlawful and that any actions he and NTIA take to achieve the transition are unlawful. Strickling further stated, “Most importantly, the process is working and I am confident it will be successful.”⁷

On July 16, 2015 Strickling spoke to the Internet Governance Forum USA in Washington, D.C. In his speech Strickling displayed a clear disdain for Congress when he stated, “Where does this discussion leave us? We have to ask ourselves whether we are better off playing the legislative and regulatory waiting game where progress perhaps never occurs.”⁸ Thus, Strickling indicates that he doesn’t view the law passed by Congress prohibiting his actions in furtherance of relinquishing the NTIA responsibilities as something to be followed.

Indeed, in a previous speech on January 27, 2015, Strickling indicated his belief that in passing the prohibition on NTIA relinquishing its responsibility, “Congress did not expect us to sit on the sidelines this year.”⁹ While Strickling has claimed in the past that “the assurance I got from most of the staff on the Hill was they didn’t see any

⁵ Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, Internet Governance Forum, November 10, 2015. Available online at: <https://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-internet-governance-forum-jo-o-pessoa-br> (accessed February 1, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, The Internet Governance Forum USA, July 16, 2015. Available online at: <https://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-internet-governance-forum-usa-07162015> (accessed February 1).

⁹ Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, State of the Net Conference, January 27, 2015. Available online at: <https://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-state-net-conference-1272015> (accessed February 1, 2016).

problem,”¹⁰ it is not Hill staff that decide whether there is a problem, but rather the actual language passed by Congress should be examined.

The amount of appropriated funds that are being expended by NTIA to continue its efforts to relinquish its responsibilities are unknown at this point, but the agency is clearly expending appropriated funds for this purpose.

Conclusion

In conclusion, the actions of officials in the National Telecommunications and Information Administration (NTIA) in many instances have been directly in conflict with the appropriations language that was enacted into law by Congress. Congress prohibited relinquishing the NTIA responsibilities detailed above, yet NTIA continues to act as if that prohibition does not apply to them.

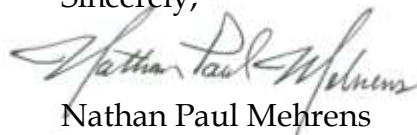
These actions constitute an expenditure of appropriated funds, to cover employee and other costs, for a prohibited purpose. Spending appropriated funds for a prohibited purpose violates the Antideficiency Act.

Therefore, NTIA officials have violated the Antideficiency Act by the expenditure of funds in the instances detailed above.

Based on the foregoing I request that you open an investigation into the information discussed above, investigate what other actions NTIA is taking to relinquish its responsibilities as discussed above, and take further appropriate action to ensure that taxpayer funds are protected and not spent in violation of the law.

Thank you in advance for your assistance in this matter.

Sincerely,



Nathan Paul Mehrens
President and General Counsel

¹⁰ Transcription ICANN Singapore, February 10, 2015, at p. 55. Available online at: <http://singapore52.icann.org/en/schedule/tue-ncuc/transcript-ncuc-10feb15-en.pdf> (accessed February 1, 2016).