



AMERICANS FOR LIMITED GOVERNMENT FOUNDATION

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February 23, 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 - Improper Premium Travel by National
Telecommunications and Information Administration; Antideficiency
Act Violations**

Dear General Smith:

I write today to bring to your attention a matter requiring 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.

Federal employees are generally prohibited from purchasing “premium” airfare, except in tightly limited circumstances. As will be shown below, an official of the National Telecommunications and Information Administration (NTIA) recently violated this prohibition by purchasing business class airfare to fly to a conference, incurring substantial expense to the taxpayers in the process. Additionally, the conference to which this official was traveling was organized, for among other reasons, to discuss NTIA relinquishing certain responsibilities. Congress in the appropriations for the Department of Commerce for Fiscal Years 2015 and 2016 included a rider which specifically prohibited NTIA from relinquishing these responsibilities. 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. As such, an investigation by your office into these issues is necessary to determine whether these actions also violate the Antideficiency Act.

Legal Standards

Federal Travel Regulations

The Federal Travel Regulations are found at 41 C.F.R. subtitle F. In general, the regulations prohibit the purchasing of “other than coach” airfare, except in tightly limited circumstances. “For official business travel, both domestic and international, you must use coach-class accommodations, except as provided under §§ 301-10.123 and 301-10.124.” 41 C.F.R. § 301-10.122.

The situations in which other than coach airfare may be purchased include those such as where there are no coach airfare accommodations reasonably available, there is a medical issue or disability, “exception security circumstances” so require, and certain long-distance situations where the flight time will be longer than fourteen hours. 41 C.F.R. §§ 301-10.123, 301-10.124.

In order to avail oneself to the “14-hour rule” (1) either the origin or destination must be outside of the continental United States; (2) the flights must be in excess of fourteen hours; and (3) the employee must be required to work the following day or sooner. 41 C.F.R. § 301-10.125.

These regulations are incorporated into the Department of Commerce’s *Department Travel Handbook*, at Sec. C301-10-120 *et seq.*¹

A rule of thumb is “travelers are told to exercise the same standard of care in incurring expenses that a prudent person would exercise if traveling on personal business.”²

Employees who improperly purchase other than coach airfare are liable for the added expense as detailed at 41 C.F.R. § 301-10.6, “any additional expenses you incur which exceed the cost of the authorized method of transportation **will be borne by you.**” (Emphasis added.)

Appropriations Issues

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

¹ The *Department Travel Handbook* is available online at:

<http://www.osec.doc.gov/ofm/OAP/TMD/Documents/Travel%20Handbook%20June%2008.pdf> (accessed February 22, 2016).

² *Premium Class Travel, Internal Control Weaknesses Governmentwide Led to Improper and Abusive Use of Premium Class Travel*, U.S. Government Accountability Office, September 7, 2007, at p. 2. Available online at: <http://www.gao.gov/new.items/d071268.pdf> (accessed February 22, 2016).

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 file and the Internet Assigned Numbers Authority functions.” The same prohibition was present in the appropriations for 2015.³

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.”⁴

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.⁵

Facts

The following information comes from records that were provided to Americans for Limited Government Foundation by NTIA in response to a Freedom of Information Act request.⁶

On October 9, 2015 Suzanne Murray Radell, Senior Policy Advisor in NTIA/OIA, submitted a request on Department Form CD-334 for “approval of other than coach-class accommodations.”⁷ The request was for business class airfare for Radell to attend the ICANN 54 conference in Dublin, Ireland. The difference between business class and coach airfare, as noted in Sec. 15 of the Form CD-334, is substantial. Coach airfare to this destination was \$995, and business class airfare \$7,188.90, a difference of \$6,193.90. In Sec. 13 of the Form CD-334 where the agency is supposed to list the justification for the expenditure NTIA failed to list any justification at all. Instead, a conclusory statement that the request had been granted is the only “justification” provided. The request was approved the same day it was submitted. Also of note, the signature on the form does not appear to be that of Leonard Bechtel, the named authorizing official, but rather a different name.

³ Public Law 113-235, Title V, Sec. 540.

⁴ 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.

⁵ 31 U.S.C. § 1350.

⁶ NTIA FOIA 16-018.

⁷ See, Appendix 1.

Per Radell's OIA Travel Request Form, the dates of her travel were October 14, 2015, a Wednesday through October 25, 2015, a Sunday.⁸ The form also indicates that Radell took October 23, 2015, a Friday, as a personal day, presumably to vacation on Friday and Saturday before returning on Sunday.

Among other things, the ICANN conference Radell attended had a session on "IANA Stewardship Transition Implementation."⁹

The "IANA Stewardship Transition" refers to the plan of the Department of Commerce to relinquish its Internet Assigned Names and Numbers Authority to some yet to be determined international multi-stakeholder body:

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 community¹⁰

Additionally, the NTIA provided us with a spreadsheet totaling the costs associated with other NTIA personnel, including the Assistant Secretary, who attended the conference.¹¹

The total 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.

Analysis

Travel Regulation Violation

Given the conclusory nature of the statement on Sec. 13 of the Form CD-334, it is impossible to ascertain the exact justification supporting the decision of NTIA to allow premium travel in this instance.

⁸ See, Appendix 2.

⁹ ICANN Public Meetings, ICANN 54, Dublin, IANA Stewardship Transition Implementation October 21, 2015. Available online at: <https://meetings.icann.org/en/dublin54/schedule/wed-iana-stewardship-implementation> (accessed February 22, 2016).

¹⁰ 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 22, 2016).

¹¹ See, Appendix 3.

Assuming for the sake of argument that the justification was not security or medically related, it is possible that NTIA misapplied the “14-hour rule” in this instance. The OIA Travel Request Form filed by Radell indicates that the total time of the outbound leg of the trip was to take 13.9 hours and the return leg 15.7 hours. Of this travel time less than fourteen hours on both legs was to be expended in flight time and airport wait time, the portions of travel time that are applicable to determining whether the “14-hour rule” applies. Thus, this trip was not eligible for premium travel. Also worth noting, Radell apparently voluntarily altered her schedule to return home on a Sunday rather than on Friday, a day for which she took personal leave. Under the Federal Travel Regulations, if a traveler is not required to report to work the next day then the trip is not eligible for premium travel under the “14-hour rule.”¹² If Radell had returned on Friday rather than taking leave, she presumably would not have been required to report for work on the next day or even the day following that. If Radell was required to report to work on the Monday following her travel back and that requirement was part of the justification for allowing the use of premium travel to return, then that justification is faulty as it was Radell’s own choice that put her into the position of returning to work the next day.

Again, due to the lack of a stated justification, it is impossible to determine the intended justification. In any event, the lack of a clearly stated justification is evidence of an internal control weakness that should be immediately remedied.

Appropriations Issues

As Congress has directly prohibited the Commerce Department from relinquishing its responsibilities as described above, your office should take a look at whether the attendance at the ICANN 54 conference by NTIA personnel constitutes a violation of the Congressional command.

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 by participating in conferences such as the ICANN 54 conference.

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.

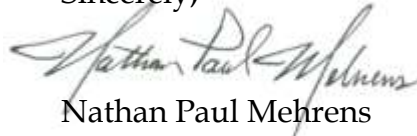
¹² 31 C.F.R. § 301-10.125(a)(3).

Conclusion

Based on the foregoing I request that you open an investigation into the information discussed above. I request that you investigate whether violations of the Federal Travel Regulations were committed by NTIA and that you investigate 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 with this matter.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Paul Mehrens".

Nathan Paul Mehrens
President and General Counsel

OIA Travel Request Form

Today's Date:	
Traveler's Name:	Suzanne M. Radell
Purpose and Justification:	To represent the U.S. Government at the ICANN/GAC meetings in Dublin, Ireland
Objectives (3-4 Statements)	Advance USG positions regarding the IANA transition and related ICANN accountability processes during GAC deliberations, including the retention of Stress Test 18 in the CCWG proposal; and Ensure that U.S. interests with regard to the protection of IGO names, new gTLD safeguards, geographic names and human rights are effectively represented in GAC deliberations

Travel Information

Period of Travel	Departure Date	Return Date	Personal Day(s) Please indicate weekend or leave scheduled
	10/14/2015	10/25/2015	
Outside meeting itinerary:			10/23/2015
Departure – Comp Time (if applicable)		Day of Return – Comp Time (if applicable)	
Travel time to airport		Travel time to airport	1 hour
Airport wait time	3.5 hours	Airport wait time	4.5 hours
Flight Time	9 hrs and 40 mins	Flight Time	9 hrs 20 mins
Travel time to hotel	1 hour	Travel time to hotel	1 hour
Total Hours	13.9	Total Hours	15.7

Are you flying the contract carrier Yes No

If no, please indicate the justification. The code explanation must appear on line 15A of travel order.

- C0: Contract fare used or NO contract fare exists for city-pair market
 C1: Space on a scheduled contract flight is not available in time to accomplish the purpose of your travel;
 C2: Use of contract service would require traveler to incur unnecessary overnight lodging costs which would increase the total cost of the trip.
 C3: The contract carrier's flight schedule is inconsistent with explicit policies of individual federal departments and agencies where applicable to schedule travel during normal working hours
 C4: A non-contract carrier offers a lower fare to the general public that, if used, will result in a lower total trip cost to the Government (the combined costs of transportation, lodging, meals, and related expenses considered);
 C5: Cost effective rail service is available and is consistent with mission requirements; or
 C6: Smoking is permitted on the contract air carrier and the nonsmoking section of the contract aircraft is not acceptable to you.

Lodging Information

Is lodging within per diem? (<http://www.osa.gov/portal/content/104877>) Yes No;

If no why?

Maximum Lodging Rate \$ 225.00	M&IE Rate \$ 126	Air/Train Fare	Other Expenses
MLR 225.00 x 8 nights = \$ 1800	M&IE75% 94.50 x 2 = \$ 189 M&IE100% 126.00 x 7 = \$ 882	\$	\$ 250.00 Taxi \$ 250.00 Misc.
Total: \$ 1800	Total: \$ 1071	Total: \$ 0	Total: \$ 500

Estimated Total Cost: \$ 3371

Name and Date

Signature

Travel Order Number	Traveler/Vendor Name	Destination	Begin Date	End Date	Undeliver.	Unpaid	Ac Paid	Accrua	Total
D00005189	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	1026	0	0	1026	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	2421	0	0	2421	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	0	0	2194.8	2194.8	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	-2421	0	0	-2421	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	600	0	0	600	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	-600	0	0	-600	
D00005189RT	ASHLEY HEINEMAN E	DUBLIN IRELAND	15-Oct-15	26-Oct-15	0	0	229.7	229.7	
	ASHLEY HEINEMAN E Total						3450.5		
D00005191	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	995	0	0	995	
D00005191	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	-995	0	0	-995	
D00005191	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	0	0	994.5	994.5	
D00005191	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	0	0	34.41	34.41	
D00005191	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	0	0	3.12	3.12	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	2997	0	0	2997	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	-2997	0	0	-2997	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	0	0	2659.8	2659.8	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	600	0	0	600	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	0	0	203.6	203.6	
D00005191RT	RYAN CARROLL L	DUBLIN IRELAND	14-Oct-15	23-Oct-15	-600	0	0	-600	
	RYAN CARROLL L Total						3895.43		
D00005193	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	997.2	0	0	997.2	
D00005193	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	0	0	994.5	994.5	
D00005193	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	-997.2	0	0	-997.2	
D00005193	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	0	0	34.41	34.41	
D00005193	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	0	0	3.12	3.12	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	2295	0	0	2295	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	-2295	0	0	-2295	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	0	0	1912.44	1912.44	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	600	0	0	600	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	-600	0	0	-600	
D00005193RT	FIONA ALEXANDER M	DUBLIN IRELAND	14-Oct-15	21-Oct-15	0	0	191.79	191.79	
	FIONA ALEXANDER M Total						3136.26		
D00005195	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	7188.9	0	0	7188.9	

D00005195	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	0	0	7178.8	7178.8
D00005195	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	-7188.9	0	0	-7188.9
D00005195	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	0	0	34.41	34.41
D00005195	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	0	0	21.89	21.89
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	2871	0	0	2871
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	0	0	2976.35	2976.35
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	-2871	0	0	-2871
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	500	0	0	500
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	0	0	370.63	370.63
D00005195RT	SUZANNE RADELL M	DUBLIN IRELAND	14-Oct-15	25-Oct-15	-500	0	0	-500
	SUZANNE RADELL M Total							10582.08
	Grand Total							21064.27

