Achieving Consensus: 2014 May Be A Pivotal Year In International Telecommunications

The Editor interviews Ambassador David A. Gross, Wiley Rein LLP.

Editor: Please tell us about your impressive professional background.

Gross: I joined Wiley Rein in April 2009 and chair the International Telecommunications practice. Wiley Rein has far and away the largest telecommunications and media practice in the United States—which was one of the many reasons I joined the firm when I left government service. Just this past year, we substantially expanded our international capabilities with two significant additions—first, the former deputy head of the Department of Commerce’s National Telecommunications and Information Administration (NTIA), Anna M. Gomez. She brings tremendous capabilities to our international telecoms practice as well as to other practices within the firm. Second, my former State Department colleague Dick Beard joined us after 25 years at the State Department and a number of years before that at Commerce; he is one of the great global experts on international telecom-related issues. Nobody knows more about these issues than Dick. Our already-strong group is now even more robust.

Besides having been the U.S. Ambassador for international telecoms and related issues for about eight years, I have also been in the telecoms industry working as an executive with AirTouch Communications, one of the largest global wireless telecoms companies, before we were acquired by Vodafone in 1999. I started working on telecoms issues in about 1982.

Finally, I am president-elect of the very active Federal Communications Bar Association and will become president on July 1, 2014.

Editor: Would you share with our readers your work at the International Telecommunication Union (ITU)?

Gross: Like many at our firm, I’ve done a lot of work before the ITU, the UN’s specialized agency governing spectrum, satellite and other international telecom-related issues, as well as a host of other important related matters for many years. As a U.S. Ambassador and Coordinator for International Communications and Information Policy, I was responsible for overseeing the United States’ international telecom- and Internet-related policy activities for eight years, the longest tenure of anyone serving in that position. A primary part of my portfolio was working with the ITU, particularly leading U.S. negotiations at various treaty conferences and being Head of the U.S. Delegations to the largest number of international meetings of anyone in modern U.S. history. That work included the World Summit on the Information Society, which was at the time the UN’s largest heads-of-state summit, in 2003 and 2005.

At Wiley, I’ve been actively involved in ITU issues, both in terms of representing various clients—including corporations, carriers and even governments—before the ITU on satellite- and cybersecurity-related issues, and, importantly, on the very controversial question of what role, if any, the ITU should be playing with regard to Internet governance policies.

Editor: Please tell us about your impressions of the World Conference on International Telecommunications (WCIT) held in Dubai in early 2012: in one of your articles, you called it a “wake-up call” for American policy makers.

Gross: Clearly a very difficult treaty negotiation for everyone on all sides, this very important conference was in fact an important wake-up call, not only for the United States, but for the world, for a variety of reasons. WCIT’s outcome was generally viewed as less than satisfactory for all parties involved, but the fact that the world seemed so divided was especially disappointing, particularly for those close to the ITU.

Personally, I prefer to look forward rather than backward, and I believe that everyone—governments, industry, NGOs and others—learned and took to heart some very valuable lessons from WCIT. Early in 2013, the ITU held the World Telecommunication Policy Forum. While not a treaty forum, this important meeting was highly successful in that the world came to an agreement: participating nations were able to adopt unanimously a series of opinions dealing with Internet-related issues that has since been well received globally. I would add that a very positive spirit pervaded the conference, which is critical in international negotiations when various parties are seeking common ground. This mood is especially welcome this year, as we have a series of important international meetings, including treaty conferences, where we will likely touch on many of the same issues.

The ITU’s annual World Telecommunication Development Conference, a major non-treaty conference to be held in Dubai in March and April, will focus on how technology is used in the developing world and the opportunities it can provide to its people. In April, the government of Brazil is hosting an important two-day, non-treaty conference in São Paulo that will address Internet governance-related issues. Also, the UN’s annual Internet Governance Forum will be held in Istanbul in September, and we will have various ICANN-
related meetings in Singapore, London and elsewhere during the course of the year.

Very significantly, in October, the ITU’s Plenipotentiary Conference – a treaty conference held every four years – will take place in Busan, Korea. That conference is organized around two major components. First, five senior ITU officials will be elected. Because of term limits, we know we will have a new secretary general (the senior-most position), a new deputy secretary general (the number two spot) and a new head of the ITU’s Telecommunications Standardization Bureau. Second, the constitution and convention of the ITU will be reviewed and amended. This will help determine the scope and jurisdiction on a treaty basis of that important UN organization.

I’ve touched on only a few of the relevant conferences, but suffice it to say that front and center at all of them will be finding ways for the world to come together to grapple with crucial issues like Internet governance and cybersecurity.

Editor: I recently read that the U.S. Trade Representative (USTR) 1377 Annual Review identified several types of trade restrictions imposed by BRIC and other countries. How significant is the Office of the USTR vis-à-vis the telecom sector?

Gross: The Section 1377 Annual Review is statutorily required of the USTR. It’s an important process for gauging in a coordinated fashion among industry, NGOs, USTR and other agencies whether various countries are in compliance with their trade agreements and treaties. Every year, this process helps us identify where some countries may not be meeting their obligations.

But what is more powerful is the combination of that process with the ongoing trade negotiations that USTR is conducting on behalf of the United States, particularly the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) negotiations. Already being addressed are matters that will directly affect not only the high-tech industry, but also all companies that use technology to conduct their own business – i.e., virtually all multinational companies. The ability of companies to efficiently store and transmit their own data where they want and to roll out new technologies – along with the rules of the game associated with their transport, trade and services – are all pivotal issues that must be resolved in the USTR’s trade negotiations. In fact, it’s not an overstatement to say that the future course, direction and success of the international aspects of these crucial services and technologies will be largely influenced by the nature and scope of those trade agreements.

Editor: You sound somewhat optimistic.

Gross: I am. I am a strong believer that, despite the controversial nature of these agreements, technology and its associated benefits are so critical to addressing and solving the world’s fundamental problems – economic, social and cultural – that consensus on the various issues ultimately will be reached. In the short term, the decisions might affect the speed with which this occurs, but technology has had extraordinarily positive impacts not only in the developed but especially on the developing world, and this cannot be stopped over the long term. Over the past few decades, we’ve witnessed an unprecedented movement of people out of extreme poverty into a better economic environment. The significance of that from a historic and economic perspective cannot be overstated.

Editor: Would you say there is a trend toward greater openness in the international telecommunications space?

Gross: I think the historic trend will be towards openness, but let me be very clear that there are potent forces always at work that, for political and economic reasons, would seek to slow progress. It is critical that all who seek to ensure the benefits associated with the Internet and new technology are active in international debates and discussions about that future. We must not think that it will happen automatically.

Editor: It seems that there are challenges on a number of fronts with regard to protectionist Internet policies in other countries. Does each of those battles need to be fought independently, or is a more holistic approach called for?

Gross: Both. The Internet is not in any significant way different in this part of the debate from other goods and services. There are governments that seek to restrict for economic, political, or social reasons, the advances that would otherwise accrue. We recognize that, as with all things, these actions are not one-dimensional; they are neither all good nor all bad. Some governments raise legitimate issues that must be dealt with on a country-by-country basis in order to better understand and address those concerns. Other issues are more global and need to be reviewed and addressed in a more holistic or global approach because the Internet is, after all, fundamentally at its most powerful when it is universal.

Editor: How does cybersecurity fit into the equation in terms of communications that are more or less open? How can we find the right balance between openness and security?

Gross: As I noted a moment ago, often good things and bad things come in the same package, and this is one of those challenges that we will need to deal with creatively and thoughtfully. We do have arguably competing interests around privacy, cybersecurity, free flow of information, freedom of expression, responsibility and anonymity, and it is the job of thoughtful advocates and decision makers to come up with satisfactory balances among them. Sometimes those balances can be created within a country, and sometimes across borders on a bilateral or multilateral basis. Clearly, one size usually does not fit all in this space, so we need to work on both understanding the challenges and the opportunities more fully and finding some flexibility so that a more optimal result can be determined for each of the relevant groups globally, regionally, nationally and bilaterally. These are real challenges, and I love challenges.

Meanwhile, I do think that Internet governance is gaining increasing awareness. The report by the President’s NSA panel of experts dedicated a substantial amount of discussion to the importance of Internet governance, which indicated to me the broad recognition that this issue is not just of academic or industry-specific interest, but that it is relevant to a very large population.

Editor: Do you believe the United States is setting a strong example in this regard?

Gross: Absolutely. Despite what the press says, I would say that by and large we can be proud of the United States’ record, in that the government, industry, NGOs and academics have all played an important and positive role in the advancement of telecommunications and the Internet. While the Internet may not exclusively be our creation, I think it is fair to say that but for the United States – including the government, academics, corporations and others – we would not have the Internet that we know today, nor would we all be enjoying the extraordinary benefits that have followed. I think the United States has contributed tremendously to the overall growth and the improvement of people’s lives around the world.