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BLOOMBERG BNA

House Passes DOTCOM Act as Part of Defense Bill

May 22, 2014 04:02PM ET

May 22 (BNA) - Development: The DOTCOM Act, which would delay the transfer of U.S. government oversight over key DNS functions, passed the House as an amendment to the defense appropriations bill for FY 2015.

Efforts by House Republicans to halt the transfer of U.S. oversight of certain Internet governance functions proceeded May 22 as the text of the "Domain Openness Through Continued Oversight Matters Act" (DOTCOM Act) was added to the National Defense Authorization Act for Fiscal Year 2015 (H.R. 4435) and passed by the House.

The amendment, offered by DOTCOM Act author Rep. John Shimkus (R-III), passed by a vote of 245-177, with 17 Democrats joining the Republicans, who voted unanimously in favor.

The DOTCOM Act, which was introduced as H.R. 4342 March 27 (19 ECLR 418, 4/2/14), would give the comptroller general a year following enactment to analyze the advantages and disadvantages of letting the National Telecommunications and Information Administration, an agency of the Department of Commerce, turn over key DNS functions to the global "multistakeholder community."

The key functions targeted by the bill include management of the DNS, the Internet Assigned Numbers Authority, and the authoritative root zone file. The Internet Corporation for Assigned Names and Numbers has managed these functions under a contract with the Commerce Department since 1998.

"The Internet has become the beacon of the free exchange of ideas, social engagement, and economic growth throughout the world and we must work to ensure those ideals are protected" Shimkus said. "There is far too much at stake to rush this process or agree to a transition without a full understanding of the consequences. If the Internet's core freedoms are lost, there is no going back."

The May 13 Armed Services Committee report on the defense bill expressed concern over the transfer, citing doubts about Internet Corporation for Assigned Names and Numbers accountability and the future of the .mil top-level domain (19 ECLR 656, 5/21/14).

The bill passed 325-98, with 13 Republicans and 85 Democrats voting against.

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CONGRESS TRACKER

Leahy Throws In the Towel on Patent-Troll Legislation

By James Rowley | May 21, 2014 02:08PM ET

(Bloomberg) -- Legislation to curb abusive lawsuits by so-called patent trolls is off the Senate Judiciary Committee's agenda until stakeholders can reach agreement, the panel's chairman said.

Vermont Democrat Patrick Leahy said in a statement that he has been unable to reach agreement on regulating patent infringement lawsuits filed by companies that exist solely to collect royalties on patents that they own.

"Unfortunately, there has been no agreement on how to combat the scourge of patent trolls on our economy without burdening the companies and universities who rely on the patent system every day to protect their inventions," Leahy said in today's statement. "Because there is not sufficient support behind any comprehensive deal, I am taking the patent bill off the Senate Judiciary Committee agenda."

After saying the committee was close to an agreement, Leahy last month postponed a markup on the measure, S. 1720, amid opposition from such companies as 3M Co., AstraZeneca Plc, Monsanto Co. and Procter & Gamble Co. On May 1, Leahy delayed another meeting on the issue.

"We needed broad bipartisan support to get a bill through the Senate" and "competing companies on both sides of this issue refused to come to an agreement," Leahy said today.

The House passed legislation, H.R. 3309, by a 325-91 vote on Dec. 5. It would require more disclosure of patent ownership and require losers of patent-infringement suits to pay court costs to discourage abusive litigation.

Leahy said he has "heard repeated concerns that the House-passed bill went beyond the scope of addressing patent trolls, and would have severe unintended consequences on legitimate patent holders who employ thousands of Americans."

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Congress Tracker

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NEWS ARTICLE

Musk's One-Man Show in Washington Roils Rivals as Fans Cheer

By Jonathan D. Salant and Brian Wingfield | May 22, 2014 03:47PM ET
(Updates with lawmaker's comment beginning in first paragraph under 'Credible Company' subhead.)
(Bloomberg) -- It's been quite a show since Elon Musk arrived in Washington, picking fights with competitors, suing the world's most expensive military and jumping into a U.S.-Russia dispute that may risk international space cooperation.

The chief executive officer of Space Exploration Technologies Corp., which is seeking to break into a roughly \$70 billion Pentagon satellite launch market, operates outside the traditional ways of seeking influence and building relationships in the nation's capital.

While Musk might be in danger of alienating federal contractors and agencies, the 42-year-old billionaire's efforts to spur competition and cut government costs have won support among lawmakers and an advocacy group.

"A lot of people would look at that and say, 'You're biting the hand that feeds you,'" said Scott Amey, general counsel at the Project on Government Oversight, a Washington-based nonprofit group. "But he's been shut out of the launch business. I applaud them for thinking out of the box and taking any advantage possible to break into the government's launch business."

John Taylor, a spokesman for Musk's company, known as SpaceX, declined to comment on the CEO's approach.

SpaceX, based in Hawthorne, California, became the first to dock a private, unmanned supply ship at the International Space Station in 2012. It is one of several companies developing vehicles capable of transporting astronauts, which is designed to end the U.S.'s reliance on Russia for those rides.

'Wrong Time'

Musk's push into the military launch market helped ignite one of the biggest public feuds between contractors in years.

In March, Musk, who's also the CEO of Tesla Motors Inc., told members of Congress that military satellite launches may be at risk because a joint venture of Lockheed Martin Corp. and Boeing Co., the top two federal contractors, relies on Russian rocket engines.

Musk criticized both the venture, United Launch Alliance LLC, and the Air Force. "In light of international events, this seems like the wrong time to send hundreds of millions of dollars to the Kremlin," he told reporters April 25 at the National Press Club.

At the same time, he announced that SpaceX would sue the Air Force. The lawsuit, filed three days later, accused the service of creating an illegal monopoly.

Rocket Engines

The Air Force's top uniformed acquisition official said the service is spending about \$60 million and using as many as 100 people to certify SpaceX for the launches. "We've got folks busting their butt to get SpaceX certified despite what everything in the media seems to say," Lieutenant General Charles Davis said in a May 8 interview.

Matthew Stines, an Air Force spokesman, declined to comment on Musk, citing the lawsuit.

Russia said last week it will no longer export rocket engines to the U.S. for military launches. Russian Deputy Prime Minister Dmitry Rogozin also said the country will withdraw cooperation from the space station after 2020.

Rogozin was among the Russian officials singled out for U.S. economic sanctions over his country's takeover of Crimea from Ukraine.

United Launch Alliance, which has spent the past several months defending itself, went on the offensive after Rogozin's comments were reported May 13.

'Big Boys'

Contracts E-Brief: Sign

by
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Contracts News,

Gov. Bill Summary: H.R. 4435, FY 2015 Defense Authorization

U.S. Navy Officer Pleads Guilty to Taking \$10,000 in Bribes

U.S. Navy Officer Pleads Guilty to Taking Bribes From Contractor

Implications of Defense Authorization Bill: BGOV

BGOV Bill Summary: H.R. 4435, Fiscal 2015 Defense Authorization

Transcript

March 5, 2014: Senate Appropriations Subcommittee Hearing on National Security Space Launch Programs

"If recent news reports are accurate, it affirms that SpaceX's irresponsible actions have created unnecessary distractions, threatened U.S. military satellite operations, and undermined our future relationship with the International Space Station," its spokeswoman, Jessica Rye, said in an e-mail last week.

Musk's actions may hurt SpaceX's relationships with big contractors, the Defense Department and the National Aeronautics and Space Administration, said James Thurber, director of the Center for Congressional and Presidential Studies at American University in Washington.

"When you start pushing big boys around, people may not get mad, but they'll get even," Thurber said. "Doors will close, and it will make it much more difficult for him in the advocacy world."

Business Relations

In federal contracting, though, SpaceX may be able to afford to make a few enemies. It builds its own rockets, engines and spacecraft -- and doesn't need to partner with big contractors, said Jeff Foust, a senior analyst at Futron Corp., a Bethesda, Maryland-based consulting firm specializing in aerospace and technology.

"Among the big aerospace companies, the company you're competing against today you might be partnering with tomorrow," he said. "SpaceX isn't like that. They're not jeopardizing any conceivable business relationship that they might have."

Musk has a history of needling those who stand in his way.

In a blog post, Musk criticized New Jersey Governor Chris Christie after the state said in March it wouldn't allow Tesla to sell electric cars directly to the public.

"The rationale given for the regulation change that requires auto companies to sell through dealers is that it ensures 'consumer protection,'" Musk wrote. "If you believe this, Gov. Christie has a bridge closure he wants to sell you!"

Cargo Supplies

Musk has suggested that Orbital Sciences Corp. deserves fewer missions to supply the space station. Unlike SpaceX, Dulles, Virginia-based Orbital delivers cargo to the station using a one-way spacecraft that burns up on its return.

"They take up less than we do and they take nothing down, and they get paid twice as much per mission as we do," Musk said in an April presentation at the U.S. Export-Import Bank's annual conference in Washington.

As for Blue Origin LLC, founded by Amazon.com Inc. CEO Jeff Bezos, Musk said last year he didn't believe the company would develop a spacecraft capable of carrying astronauts within five years. "Frankly, I think we are more likely to discover unicorns dancing in the flame duct," he told the Space News website in a September 2013 e-mail.

When asked about Musk's comments, Orbital CEO David Thompson said in an April interview that his company would be competitive with SpaceX, especially after its pending merger with Alliant Techsystems Inc.

Brooke Crawford, an account director for Griffin Communications Group, which coordinates Blue Origin's media relations, declined to comment. A NASA spokesman also declined to comment for this article.

'Certainly Entertaining'

Most big contractors aren't accustomed to fighting battles publicly, said Jim Maser, a former SpaceX president and former vice president of Rancho Cordova, California-based GenCorp Inc., which owns Aerojet Rocketdyne, a maker of rocket engines.

"The traditional organizations are trying to learn quickly and trying to adapt," Maser said. "I don't know how it's going to play out, but it's certainly entertaining."

SpaceX is spending more for Washington influence, with its lobbying almost doubling to \$1.1 million last year from 2010, according to the Center for Responsive Politics, a Washington-based research group.

In his fight for the military launches, Musk has found allies among U.S. lawmakers who want to open the military launch market.

'Credible Company'

"He built a company that's now a credible company," said Senate Majority Whip Richard Durbin, an Illinois Democrat and chairman of the Appropriations defense subcommittee. "There ought to be more competition."

Arizona Senator John McCain said in an interview that it's clear the Air Force made a commitment to increase competition and then "reversed itself."

"It just doesn't seem right to me," said McCain, the top Republican on the Homeland Security and Governmental Affairs investigations subcommittee.

Asked whether Air Force officials might retaliate against Musk following SpaceX's lawsuit, McCain said that one of his jobs is "to make sure they don't."

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NEWS ARTICLE

Neustar Rises as It Meets With FCC on Numbers-Switching Contract

By Todd Shields | May 22, 2014 04:31PM ET

(Updates with companies in 10th, 11th paragraphs.)

(Bloomberg) -- Neustar Inc., a telephone-directory services provider, had its biggest two-day stock gain since 2008 as the company lobbied U.S. regulators to retain a contract responsible for more than half its revenue.

The contest with Ericsson AB's Telcordia unit over a five-year numbers-switching contract is in a "new phase" as both companies meet with Federal Communications Commission officials, Sterling, Virginia-based Neustar said in a blog post today.

Neustar has said a haphazard process let Telcordia make a late offer for the contract, and had been demanding that bidding be reopened. An advisory body on April 24 issued a sealed recommendation to the FCC for which vendor should be selected for the contract, which helps consumers retain telephone numbers when switching carriers.

Neustar rose 4.5 percent to \$28.77 at 4 p.m. New York time after gaining 6.4 percent yesterday for its biggest-two day advance since Oct. 31, 2008, according to data compiled by Bloomberg. The shares had lost 48 percent of their value this year through May 20.

Neustar asked the FCC to take comments on the contract, according to a company filing posted yesterday on the FCC's website. It said Ericsson's Telcordia depends on revenue from wireless providers and has an incentive to favor its customers. Ericsson, based in Stockholm, is the largest maker of wireless networks.

Telcordia in a filing told the FCC that gear makers aren't barred from competing for the contract, and said Neustar is attempting to "derail and delay the process."

Sprint Partnership

Ericsson is listed as a strategic partner by Sprint Corp. and provides network services, according to Sprint's annual securities filing.

Neustar has taken in more than \$3 billion in revenue from numbers-switching, which it has carried out exclusively since the service began for local numbers in 1997. The contract expires next year.

The FCC has final say. Shannon Gilson, a spokeswoman, in an e-mail declined to comment.

Telcordia's business relations make it "much harder for them to provide service in a neutral fashion," said John Buckley, a managing director for public-communications firm Harbour Group who is serving as a spokesman for Neustar.

Neustar "is just continuing its fear-mongering to preserve its annual \$500 million cash cow," John Nakahata, a Washington-based lawyer with Harris, Wiltshire & Grannis serving as a spokesman for Telcordia which does business in the U.S. under the name Icnectiv, said in an e-mail.

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NEWS ARTICLE

Nortel Patent Licensing Had Google Seeking Guarantees in Sale

By Steven Church and Michael Bathon | May 22, 2014 12:01AM ET

(Bloomberg) -- Nortel Networks Corp., the defunct telecom company, considered forming a patent-licensing firm before it auctioned off a trove of intellectual property for \$4.5 billion in 2011, a company official said in court.

Google Inc., the initial bidder at the auction, was so worried Nortel would back out it demanded protection in case the sale was canceled, Nortel's chief restructuring officer, John Ray, said yesterday in federal court in Wilmington, Delaware, where U.S., Canadian and European creditor groups are fighting over billions of dollars raised in the asset sales.

Ray countered claims by the Canadian creditors that the patents were of no value to the U.S. unit. That unit, which is fighting for the cash on behalf of its bondholders, held valuable licensing rights to the patents, he said.

His testimony could be used to show that the U.S. creditors deserve the lion's share of the money from the patent sale. Google might not have been so worried about losing access to the patents if it didn't think the U.S. licenses weren't valuable. The U.S. creditors have argued that most patent revenue would come from Nortel's U.S. unit.

Google "had a massive concern about pulling the bid off the table," Ray said.

Nortel's U.S., Canadian and European units are in a six-week trial over the division of \$7.3 billion in cash, including the patent money, that was raised in a series of auctions after the company filed for bankruptcy in 2009.

Canadian Pensioners

Canadian creditors, including about 20,000 Nortel workers and pensioners, say they deserve almost all the money from the \$4.5 billion sale of patents because Nortel was based in Ontario and its main holding company owned the intellectual property. In 2011, Google lost the patent auction to a group that included Microsoft Corp., Apple Inc. and Sony Corp.

The proposed licensing company, known as IP Co., might not have been able to collect fees related to the patents, Sharon Hamilton, who is overseeing the bankruptcy of the Canadian units, said in court last week. The Canadian units were concerned about the "viability" of any IP Co., she said.

Canada deserves \$5.8 billion of the \$7.3 billion, Canadian creditors said in court papers. The U.S. unit claims it should get \$5.3 billion. Sheila Block, a lawyer for the U.S. creditors said the U.S. unit made up on average 70 percent of Nortel's total revenue from 2001 to 2009.

Should the U.S. win, Canadian creditors would collect 10 percent to 11 percent of what they are owed, they said in court papers.

The case is Nortel Networks Inc., 09-bk-10138, U.S. Bankruptcy Court, District of Delaware (Wilmington).

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NEWS ARTICLE

What AT&T-DirecTV Could Mean for 26 Million U.S. Subscribers

By Scott Moritz | May 22, 2014 12:00AM ET

(Bloomberg) -- AT&T Inc.'s takeover of DirecTV would bring a quarter of the pay-television households in the U.S. under the control of a single company, leaving about 26 million subscribers with the same question: What's it mean for me?

While it may be more than a year before the \$48.5 billion deal closes, it's already clear the impact of the union of the country's largest telephone service provider and largest satellite-TV provider would be big. The consolidation would be sweeping: DirecTV is in every state and AT&T sells U-Verse, its bundled broadband and television product, in parts of 21 states.

Here are six ways consumers would be affected by the deal:

PRICES SEEN RISING

AT&T promised the new company wouldn't raise rates for at least three years, and after that, all bets would be off. With programming costs rising and the deal reducing the number of competitors in dozens of markets, there's a slim chance the promise would hold beyond the window.

After all, cable bills have been swelling for years. In 2012, the average monthly cost grew 5.1 percent, more than triple the 1.6 percent rise in the Consumer Price Index, according to a Federal Communications Commission report citing the most recent numbers available.

WIDER BROADBAND ACCESS

Responding to policy makers who want to bridge the divide between Internet haves and have-nots, AT&T pledged to use some of the deal's anticipated cost savings to roll out more high-speed broadband connections. AT&T Chief Executive Officer Randall Stephenson said that "merger synergies" would make it possible to wire 15 million additional households, mostly in rural areas. While expanding beyond the suburbs into the countryside will cost more money, AT&T could make up for that by getting customers to buy bigger service packages with wireless, TV and home-security systems.

NO 'NET TOLL ROADS-FOR NOW

To appease regulators, AT&T offered to abide for three years by net neutrality, the principle that holds that Internet providers should treat all traffic equally. That means the new company wouldn't block or slow your access to videos from YouTube videos or shows on Netflix, pay-TV rivals that are delivered over the Web. Stephenson called the pledge consumer-friendly and "very much in public interest."

In the longer-run, though, the AT&T-DirecTV amalgam might choose to give preferential treatment. Stephenson has said the market should guide how network operators prioritize the delivery of videos and other data based on how many shows people are streaming and the network's capacity to handle the load. While Netflix has been a supporter of net neutrality, it's also agreed to pay Verizon Communications Inc. and Comcast Corp. for faster service.

BETTER PROGRAMMING

The combined company would have more bargaining power for negotiating with content providers, such as sports leagues or TV studios for original shows. That could mean viewers get a broader range of shows that would compete with Netflix.

NOTHING A LA CARTE

A combined AT&T and DirecTV would have little incentive to let people buy just the channels they want. The media companies that sell them programming will only do so in packages that bundle popular channels with less popular ones in order to reach more viewers and sell more advertising. This is one of the cornerstones of the traditional TV business. Channels will probably still be packaged together in some way when they're eventually sold directly over the Internet.

ULTRA-HD MORE LIKELY

AT&T's deep pockets could advance DirecTV's lead in developing video resolutions that are four times more crisp and detailed than the picture on today's flat-screen TVs. AT&T and DirecTV would be trying to offer a top-notch video broadcast at a time when consumers are increasingly upgrading to fancier TVs. Stephenson said the deal is "a really clear and elegant path to ultra-HD," given that satellite is a more efficient way to delivery video of that quality.

Some people think they already know how it's going to play out: An online survey conducted May 19 by Pittsburgh-based pollster CivicScience Inc. found 54 percent of respondents believe the deal is bad news for consumers, and only 15 percent see it as a positive.

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