

**Before the  
DEPARTMENT OF COMMERCE  
National Telecommunications and Information Administration  
Washington, D.C. 20230**

*In the Matter of* )  
Assessment of the Transition of the )  
Technical Coordination and Management ) Docket No. 090420688-9689-01  
of the Internet's Domain Name and )  
Addressing System )  
 )  
Notice of Inquiry )

**COMMENTS OF NETWORK SOLUTIONS, LLC**

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## I. Introduction

Network Solutions submits these comments in response to the National Telecommunications and Information Administration’s (“NTIA”) Notice of Inquiry<sup>1</sup> related to the September 30, 2009 expiration of the Joint Project Agreement (“JPA”)<sup>2</sup> with the Internet Corporation for Assigned Names and Numbers (“ICANN”).

Network Solutions commends the U.S. Department of Commerce (“Department”) and the NTIA for its leadership over the years in this complex arrangement. We also applaud ICANN for the progress it has made in addressing its various commitments under the JPA. Ultimately, Network Solutions remains committed to preserving and enhancing the unique ICANN model. We share the goal of privatizing the Internet’s domain name and addressing system in a manner that increases competition, promotes industry-led bottom-up consensus policy development, and facilitates community – including international – participation in its management.

We still believe, however, that it is premature for ICANN to state that it has adequately met the responsibilities it committed to in Annex A of the JPA.<sup>3</sup> During the mid-term review of the JPA 16 months ago, Network Solutions called on ICANN to implement certain accountability, transparency, and competition measures in order to achieve our support for terminating the JPA.<sup>4</sup> These goals included adopting mechanisms that promote the validity of the ICANN Board of Directors’ (“Board”) decisions; providing meaningful ways to review and challenge important Board actions; developing regular financial reporting standards and more inclusive budget-setting processes; and improving competition by introducing new top-level domains (“TLDs”) and internationalized domain names (“IDNs”). Unfortunately, ICANN has not yet met these goals.

We therefore recommend an extension of the JPA for ICANN to address the Industry’s concerns about its governance mechanisms and demonstrate that it has the appropriate framework to effectively fulfill its mandate. ICANN must address the following as a precondition for termination of the JPA:

- Formalize its decision-making processes;
- Require publication of material contracts for public review and comment;
- Develop financial reporting standards and processes;
- Codify transparency improvements in the Bylaws;
- Change Board voting requirements;
- Establish an independent, binding review mechanism for Board decisions; and
- Bring competition to the market with new TLDs and IDNs.

A post-JPA environment should not become a reality until ICANN has met its governance responsibilities to the general satisfaction of its stakeholders. We look forward to working with ICANN and the NTIA to help address these issues.

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<sup>1</sup> See [Assessment of the Transition of the Technical Coordination and Management of the Internet’s Domain Name and Addressing System](#), April 24, 2009.

<sup>2</sup> See [Joint Project Agreement Between The U.S Department of Commerce and the Internet Corporation for Assigned Names and Numbers](#) (“JPA”), September 29, 2006.

<sup>3</sup> See [JPA Annex A: Affirmation of Responsibilities for ICANN’s Private Sector Management](#) (“Annex A”).

<sup>4</sup> See [Comments of Network Solutions](#), February 15, 2008.

## II. Transparency Improvements Are Needed to Ensure Community Confidence

In our February 2008 comments on the mid-term JPA review, we noted that ICANN had made some improvements in the transparency of its operations, including more timely reporting of its Board meeting Minutes and more frequent analyses of public comments on policy work.<sup>5</sup> The following outstanding concerns still need to be addressed before termination of the JPA:

### A. Formalize Methodical Decision-Making Processes

ICANN must adopt procedures that promote the validity of its decisions, in particular those of its Board. Specifically, the Board should be required to employ methodical decision-making processes subject to meaningful community review. We long have advocated that ICANN be required to provide an analytical component of decisions that explains how stakeholders', staff's, and experts' comments were taken into consideration and how and why such inputs were or were not followed in a final decision. ICANN's proposed Improving Institutional Confidence Plan ("Plan") also makes such a recommendation and should be implemented.<sup>6</sup> By utilizing decision making mechanisms that are more transparent, a predictable system could be realized that generates consistent results and improves community confidence in ICANN's decisions. This also would promote a sense of due process and fairness in Board actions.

### B. Require Publishing of Material Contracts for Review and Comment

ICANN must develop consistent review mechanisms for its contract approval process. ICANN appropriately was criticized for never publishing for public comment important changes to the .net Registry Agreement prior to ICANN's execution of that agreement. Although ICANN since then has published most important contracts for review, it has never amended its Bylaws to make it clear that all material contracts **must** be published for public review and comment.

### C. Develop Financial Reporting Standards and Processes

ICANN's budget has grown tremendously over the organization's relatively short lifetime. While ICANN revenues were \$5.5 million in FY00, ICANN projects revenues of \$63.9 million in its FY10 budget.<sup>7</sup> Indeed, this sum will exceed NTIA's own FY10 budget of \$59.1 million.<sup>8</sup> ICANN's vastly expanded resources require significant changes in its financial planning and oversight mechanisms, as its existing processes are insufficient to the task.

ICANN must develop regular financial reporting standards and processes as proscribed in its own Plan.<sup>9</sup> As noted in the Plan, these improvements should include results-based and transparent planning and expense reporting processes that are disclosed to the community in a timely way and with sufficient explanation to permit full comprehension. Furthermore, relevant stakeholders should have much more visibility into ICANN fiscal processes, including its revenue and expense results. By providing more information and including stakeholders on an expanded Board Finance Committee or a reconstituted Budget Advisory Group, ICANN would promote

<sup>5</sup> See [Comments of Network Solutions](#), February 15, 2008.

<sup>6</sup> See Recommendation 2.4 of the [DRAFT Implementation Plan for Improving Institutional Confidence](#) ("Plan") at 24.

<sup>7</sup> See [ICANN Financial Information](#), which includes all proposed and approved Fiscal Year plans.

<sup>8</sup> As reported in the [NTIA Fiscal Year 2010 Budget Executive Summary](#).

<sup>9</sup> For example, see Recommendation 4.3 of the Plan, at 31.

community input and instill confidence that available resources are being used in a manner that promotes the organization's core mission consistent with the community's needs and desires.

#### **D. Codify Transparency Improvements in the Bylaws**

While ICANN has made progress to date improving the transparency of its operations, none of these improvements have been codified in ICANN's Bylaws. Absent such Bylaw changes, the transparency improvements may be reversed as easily as they were made. We do not know where ICANN's next CEO will take the organization. While the hope is that ICANN does not revert to an era of opaque decision-making, the community would be best served with Bylaws requirements protecting against any backsliding on transparency gains. The Bylaws should be amended to codify the relevant transparency improvements made to date, as well as any new ones that come out of the current review.

### **III. Additional Measures Are Needed to Ensure Accountability**

There must be sufficient oversight mechanisms to ensure that ICANN and its Board remains accountable to the ICANN community. Boards of corporations answer to its shareholders, and boards of non-profits typically answer to its members. The ICANN Board answers only to itself.

The current lack of sufficient oversight and checks on the Board has been well documented over the past two years. The possibility remains that a simple majority, eight out of fifteen, of Board members could vote in a way that is inconsistent with ICANN's mission, ideals, goals, and the will of the community. Furthermore, the available mechanisms to challenge Board decisions – Reconsideration Request, Independent Review Panel, and complaints to the Ombudsman – are all merely advisory to the same Board that made the decision in the first place. This is a most untenable situation that undermines ICANN's institutional confidence. Thus, we recommend that ICANN adopt two new accountability measures before the termination of the JPA:

#### **A. Change the Voting Requirements for Significant Board Actions**

We continue to support proposals requiring a super-majority Board vote on key decisions. Issues of paramount importance that could have a material effect on the ICANN community should not be decided by a mere simple majority of only eight Board members. Besides instilling greater community confidence in the Board's decision making, a two-thirds requirement also would protect ICANN from capture of a slim majority of the Board.

#### **B. Implement an Effective Mechanism to Challenge Board Decisions**

We support proposals calling for the formation of an independent panel with the authority to review Board decisions.<sup>10</sup> It should have appellate-like review authority that includes the binding authority to overturn a Board decision on the basis of procedural and substantive criteria. It would be staffed with industry and legal representatives with regulatory, business, and technical expertise. We look forward to working with ICANN and the community in developing the implementation details for this key accountability mechanism.

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<sup>10</sup> See [Improving Institutional Confidence: The Way Forward](#), June 1, 2009.

#### **IV. ICANN Must Deliver on Its Mandate to Promote Competition.**

Finally, ICANN needs to continue its progress toward developing competition in the domain name marketplace. One of ICANN's core values is to succeed in "introducing and promoting competition in the registration of domain names..."<sup>11</sup> Through the JPA, ICANN made a commitment to "maintain and build on processes to ensure that competition ... issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs and the introduction of IDNs."<sup>12</sup> While ICANN has introduced competition in the registrar market, the registry space has not yet been equally addressed.

By finally introducing new TLDs and IDNs, ICANN will encourage competition in the registry space, which in turn should drive innovation and enhance user choice and satisfaction. Furthermore, introducing competition in the domain name marketplace is integral to the Internet's future. Failure to do so fails an important market demand and increases the likelihood of a "split root" and undermining the premise of a universal Internet.

We appreciate that the introduction of new TLDs and IDNs is a complex issue, and remain committed to assisting ICANN in this process, which should be completed prior to the termination of the JPA.

#### **V. Conclusion**

Network Solutions is committed to a full transition of the technical coordination and management of DNS, and looks forward to working with ICANN as it addresses these issues. We believe, however, that the Department should continue to monitor these efforts under the auspices of an extended JPA to ensure that ICANN fulfills its obligations prior to any transition. We will support the termination of the JPA or a substitute agreement when ICANN has implemented solutions to address the transparency, accountability, and competition issues noted above.

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<sup>11</sup> Bylaws, Article I, Section 2(6).

<sup>12</sup> Annex A, no. 5.