

SUMMARY OF THE SUCCESSOR .NET REGISTRY OPERATOR SELECTION PROCESS

The following memorandum provides a comprehensive summary of the process for the selection of the successor .NET Registry Operator as of 8 June 2005. The memorandum is divided into six sections: (1) Renewal Provisions For the 2001 .NET Registry Agreement; (2) Procedure and Criteria for Designating the Successor .NET Registry Operator; (3) Telcordia's Final Report; (4) Public Comments on Telcordia's Final Report; (5) Telcordia's Review of Findings; and (6) Public Statements Made Following Publication of Telcordia's Review of Findings. This memorandum has been prepared as a reference point and should not be considered a substitute for reviewing the underlying agreements, reports, documents, postings, and transcripts.

RENEWAL PROVISIONS FOR THE 2001 .NET REGISTRY AGREEMENT

1. The 2001 .NET Registry Agreement (.NET agreement) expires on 30 June 2005.

2. Subsection 5.2 of the .NET agreement establishes a set of guidelines that ICANN is to follow in designating the successor Registry Operator. These guidelines provide that ICANN shall "not later than one year prior to the end of the term of [the .NET agreement] ... adopt an open, transparent procedure for designating a successor Registry Operator." Furthermore, ICANN is to designate as the successor Registry Operator "the eligible party that [ICANN] reasonably determines is best qualified to perform the registry function under terms and conditions developed pursuant to Subsection 4.3." In making this determination, ICANN must consider "all factors relevant to the stability of the Internet, promotion of competition, and maximization of consumer choice, including without limitation: functional capabilities and performance specifications proposed by the eligible party for its operation of the registry, the price at which registry services are proposed to be provided by the party, the relevant experience of the party, and the demonstrated ability of the party to manage domain name or similar databases at the required scale."

3. Subsection 4.3 details the manner in which ICANN establishes new and revised specifications and policies applicable to the .NET agreement. The .NET agreement refers to these specifications and policies as "consensus policies." In order for a policy to be a consensus policy, three events must occur. First, there must be a "written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy." Second, there must be a "recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established." And three, there must be "action [by] the ICANN Board of Directors establishing the specification or policy."

PROCEDURE AND CRITERIA FOR DESIGNATING THE SUCCESSOR .NET REGISTRY OPERATOR

4. On 6 March 2004, ICANN's Board of Directors resolved that "in order to prepare for the designation of a transparent procedure by 30 June 2004, the Board authorizes the President to take steps to initiate the process as specified in Section 5.2 of the .NET Registry Agreement for designating a successor operator for the .NET registry...." In doing so, the ICANN Board also resolved that ICANN's President may initiate "referrals and requests for advice to the GNSO and other relevant committees and organizations as appropriate."

5. By way of the Board's resolution, on 31 March 2004, Paul Verhoef, ICANN's Vice President of Policy Development Support sent a letter to Bruce Tonkin, the GNSO Chair, formally requesting "guidance from the GNSO concerning the criteria for designating a successor operator for .NET. Specifically, §5.2.4 of the .NET Registry Agreement (below) identifies certain criteria to be taken into account in the selection of a successor. That paragraph also calls for the establishment of a consensus policy regarding the identification and definition of these criteria. Accordingly, the GNSO Council is requested to issue a consensus statement defining criteria and conditions to be applied to the selection of the successor registry operator."

6. The 31 March 2004 letter further stated that "[a]s an additional reference point, the GNSO may want to consider the work of the DNSO [the Domain Names Supporting Organization] with respect to the reassignment of the .ORG registry."¹ The DNSO was the predecessor of the GNSO.

7. On 1 April 2004, the GNSO Council heeded ICANN Staff's request and established a subcommittee (consisting of one representative per constituency of the Council) to develop, draft, and recommend to the GNSO Counsel – and ultimately the ICANN Board – criteria for independent evaluators to use in recommending to the ICANN Board a successor .NET Registry Operator. During this meeting, Tonkin noted that "the .ORG statement made by the DNSO Names Council on 17 January 2002 could be a useful starting point but the focus of dot org would be slightly different from that of .NET." Tonkin preliminarily requested that the subcommittee seek constituency input via the mailing lists and have a draft report for consideration by the Council at its 6 May 2004 meeting with the final report to be completed by 30 June 2004. Tonkin suggested that the first meeting of the subcommittee take place during the week of 12 April 2004.

8. On 15 April 2004, the .NET subcommittee met to discuss the criteria for the selection process and arrived at the following preliminary guidelines:

- "[T]he existing work on the reassignment of .ORG should be revisited," however the subcommittee is to keep in mind "two important

¹ On 4 June 2001, ICANN's Board issued a request to the former DNSO to provide similar policy recommendations to ICANN for development of criteria for selecting a successor .ORG Registry Operator. The .ORG TLD is the *only* other TLD that has undergone a successor Registry Operator selection process.

differences:” (1) “there would be no procedural errors”; and (2) in the case of the .ORG TLD, “a new operator was foreseen, while with .NET, there was no presumption of a new operator [i.e., VeriSign could also be an applicant.]”

- The subcommittee agreed that its recommendation would include criteria related to: policy compliance, UDRP, WHOIS, the ability of the applicant to grandfather existing registrants, general principles in the .ORG report that are “easily applicable to the .NET situation”, consensus policies, and all factors mentioned in the body of Subsection 5.2.4 of the .NET agreement.
- The subcommittee noted that any criteria on “competition” should be given particular attention because it “could be seen as biasing [against VeriSign] and should be weighted.”
- Marc Schneiders – the Non Commercial Users constituency representative – noted that whatever recommendation the subcommittee made was nothing more than a recommendation. “Eventually it would be a board decision and not a GNSO Council decision.”
- At the close of the meeting, the subcommittee members agreed to discuss this framework with their respective constituencies and e-mail exchange on the net-com list server was highly encouraged.

9. Following a number of teleconferences and mailing list exchanges with all subcommittee members, on 6 May 2004, Philip Sheppard – the .NET subcommittee chair – presented the GNSO Council with the subcommittee’s first draft report. The report divided its recommendations into six headings:

- Criteria related to the targeting of the domain (i.e., the .NET TLD should remain unsponsored and unchartered).
- Criteria related to stability, including: technical and financial competence; factors related to the current .NET agreement; efficiency and reliability; a baseline for the functional capabilities and performance specifications to handle potential migration issues; name service resolution time should not exceed the current time for existing .NET name service resolution; and minimal financial stability.
- Criteria related to promotion of competition (i.e., the maximization of consumer choice, pricing, innovation and new services).
- Criteria related to existing registry services such as the pending VeriSign Wait Listing Service, the redemption grace period and the migration of the test-bed internationalized domain names. Applicants should be asked “Does the applicant wish to maintain all existing registry

services?” If yes, please provide specifics and demonstrate the technical and legal ability of the applicant to maintain existing services. If no, please expand on any issues relating to the withdrawal of such services.

- Criteria relating to continuity. Existing registrants should not be penalized by changes in policy as a result of this process and should be entitled to maintain their registrations on terms materially consistent with their existing contracts under current policy, including the right to transfer a .NET domain to another party.
- Criteria relating to policy compliance. All consensus policies of ICANN, both existing and any which are developed via the ICANN process in the future should be complied with by the successor Registry Operator. Policy development for the .NET TLD should continue to take place in an open bottom-up process and all registrars that have qualified to operate as .NET registrars, must be treated equitably by the successor Registry Operator.

10. Bruce Tonkin – Chair of the GNSO Council – concluded the meeting by cautioning that “transparency was important.” As such, Tonkin requested an audio record for the next GNSO Council meeting and set a preliminary timeline for the presentation of the subcommittee’s final report.

11. The subcommittee’s report underwent a series of revisions on 14 May 2004, 26 May 2004, and 28 May 2004. Through these revisions the subcommittee – among other things – discussed additional outreach efforts it took to solicit input from its constituencies and provided links to all documents submitted to the subcommittee by the various constituency groups and third parties.

12. The most significant revision, however, involved weighting each criteria. The subcommittee divided the criteria into “absolute” and “relative” criteria. “Absolute criteria are thresholds which an applicant is expected to meet. Failure to do so [would] imply disqualification. Relative criteria become relevant once absolute criteria are met and are proposed as a basis for comparison and evaluation of competing applications. Absolute criteria are listed in no particular order. Relative criteria are listed [by] weighting with the highest weight at the top of the list.”

13. “Absolute” criteria consisted of the following criteria: Targeting; Continuity; Policy Compliance; and Stability, Security, Technical and Financial Competence. “Relative” criteria consisted of criteria relating to: Promotion of Competition; a small segment of Stability, Security, Technical and Financial Competence issues that went far above and beyond that necessary to perform the registry function; and criteria asking whether the applicant wishes to maintain all existing registry services.

14. On 28 May 2004, the GNSO subcommittee posted its revised report on ICANN’s web site for public comment. Multiple notifications to solicit input into the public comment period were sent to the following ICANN mail lists: the GNSO Council,

the GNSO constituency secretariat's list liaison-6c, the general assembly ga list and the open-to-all announce list. This was to be the first of two 20-day public comment periods.

15. In addition, on 2 June 2004, ICANN also sought public comment on the draft *procedure* proposed by ICANN for designating the successor Registry Operator.

16. On 23 June 2004, the subcommittee yet again revised its report following a comprehensive review of all public comments received. Indeed, the .NET subcommittee explicitly acknowledged this in its revised report:

[A]nnex 3 [of the report] contains a reference to documents submitted to the subcommittee including submissions from Neulevel and Verisign, Inc. Due account has been taken of the relevant parts of these while maintaining the characteristic broad approach of this report.

17. Following these revisions, on 25 June 2004, the subcommittee yet again initiated a 20-day public comment period to solicit public input on the revised report.

18. Coincident with this work – and within the time allotted by Subsection 5.2 of the .NET agreement – on 29 June 2004, ICANN posted the final procedure for determining the successor .NET Registry Operator. Also taking into account public comment received through its separate comment period, the procedure was redrafted where relevant and submitted to and approved by the ICANN Board.

19. On 14 July 2004, the second public comment period on the subcommittee's revised report was closed. On 17 July 2004, the subcommittee once again revised its report giving due account to all relevant parts of comments submitted while maintaining the characteristic broad approach of the report. Some of the most significant revisions to the report included:

- Correlating the subcommittee's recommendations to ICANN's mission and core values.
- Including recommendations relating to the form of the Request for Proposal (RFP): "ICANN should ensure the form(s), is (are), comprehensive of the required criteria but also proportional to the need. In other words the complexity of the form and the burden it places on applicants should not go beyond what is necessary to achieve its objective."
- Including recommendations relating to the evaluation process: "ICANN must ensure that the process is impartial. ICANN should publish criteria for application evaluators to ensure impartiality. ICANN should ensure meaningful transparency throughout the process."

- And, including links to view comments received from the public during the comment period.

20. On 20 July 2004, the GNSO Council met in Kuala Lumpur, Malaysia to discuss – among other things – the reassignment of the .NET TLD. During the meeting, Philip Sheppard – the .NET subcommittee chair – provided background on the report. Sheppard commented that the subcommittee was “able to look at every submission that was made either to the public comment list or sent directly to the members of the subcommittee via the Council.” This allowed the subcommittee to “incorporate where [it] felt there were comments that were useful and in scope of what [they] were trying to do, which was to produce some fairly top-level criteria.” Sheppard went on to describe the contents of the report:

We started with a preamble which links it to the ICANN mission, we demonstrate where there are points relevant to the mission. We have an appeal that the application form for ICANN should not be too burdensome, in other words, it should be proportional, ask enough questions to fulfill the objective, but not be anything more than that. We ask for impartial evaluation. And we determine, as we were asked to do, certain types of criteria. Those criteria we developed into two types ... [a]bsolute criteria, which are, essentially, qualifying thresholds, and also relative criteria, which are basically the way to choose between those who have qualified from those absolute criteria. What do we mean by absolute criteria. Things like targeting whether it should remain an open domain, criteria on continuity, grandfathering should be a part of any application, and also absolute criteria to do with policy compliance. That means policy development can be bottom up. Equal treatment for registrars.

And concerns in terms of stability, where we linked technical aspects there to what you see already in [the] existing dot net agreement. A little bit more on technical requirements. Things like disaster recovery, competence, migration plans and financial stability [were]...also included.

Under relative criteria, we also developed that into sections. And relative criteria in the report are also in a ranking order, the absolute criteria are not.

And under promotion of competition, we make reference to choice, very much a fundamental part of the ICANN mission, thinking more there about the end user. Talk about price and cost, typically cost referring to the relationship to the registry and the registrars there and looking at strategies of

minimizing costs and applications that will be incorporating and the benefits to better innovation, better value.

Under stability, security, and other technical requirements, we talk about stability also deriving from a plural supply base, implementation of GNSO policies, particularly things like transfers and deletes, and enhanced services and enhanced registry operations. And that is about it.

21. Following Sheppard's report, the GNSO Council requested that Dan Halloran – ICANN's Deputy General Counsel – clarify whether ICANN's request was for the Council to simply provide “advice” – pursuant to Subsection 4.3 of the .NET agreement – or whether the GNSO is “conducting a full policy development process” under the current Bylaws. To this Halloran stated that ICANN has asked the GNSO Council to follow the consensus policy format outlined in Subsection 4.3 of the .NET agreement. As Halloran noted, “Subsection 5.2.4...obligates ICANN to select as the successor registry operator the eligible part that it determines – that it reasonably determines is best qualified to perform the registry function under terms and conditions pursuant to subsection 4.3 of the .NET registry agreement. And that subsection 4.3 is the process for developing consensus recommendations, consensus policies that would be binding... So, flipping back to the 4.3, we're especially keen that you would follow this, the roadmap that's laid out in 4.3.1 of the .NET registry agreement.”

22. Halloran further commented that ICANN was “very comfortable” with the process the subcommittee had been following. There had been “two stages of public comment” and that the community and public has had a broad opportunity to be heard on this.” Tonkin agreed with Halloran's remarks and noted that the next step was to achieve a “two-thirds vote.”

23. Following Halloran's comments, Tonkin opened the meeting for public forum. Three individuals stepped forward: Amadeu Abril i Abril (affiliated with applicant Core++), Jeffrey Neuman (Chair of the gTLD Registries Constituency and Director of Policy and International Development for NeuLevel, Inc. – co-owner of applicant Sentan Registry Services, Inc.), and Chuck Gomes (Vice President for applicant VeriSign).

24. Abril i Abril sought clarification on the definition of “competition” in the subcommittee's report and its use as a relative criteria. To this, Tonkin and Marlyn Cade – a .NET subcommittee member – replied that the subcommittee meant competition in the context of “user choice.” “Perhaps there's some new service provided by the new operator that doesn't yet exist today [in the .NET TLD]. And so there's choice.” Tonkin contrasted this to other forms of “competition” like creating “a new TLD,” or designating “a new party” and thus creating competition in the “registry industry, but not competition for dot net.” Thus Tonkin specifically discounted any notion that “competition” in this regard could disadvantage VeriSign based on its status as the current .NET Registry Operator.

25. Neuman's comment was two-fold. First, Neuman stated that “Neulevel supports the entire process and thinks that [the subcommittee is] doing a good job.”

Second, Neuman asked whether those who commented during the public comment periods would be given “feedback from the subcommittee on what comments were considered....” And, “[i]f [the comments] weren’t adopted, why weren’t they placed in the report.” Sheppard responded that the subcommittee had considered providing feedback on public comments but then decided against it because this was a “bidding process, and the ethics of [] responding [] personally or in writing to comments received from potential applicants was one that [the subcommittee] felt a little uncomfortable with and though it might be more appropriate to be left to ICANN staff to respond in that way.”

26. Tonkin felt otherwise and stated that in his “point of view” the subcommittee should summarize what the public comments were and how the subcommittee has taken them into account. Though this was Tonkin’s view as Chair of the GNSO, this view was not shared by the subcommittee and such feedback was not required by Subsection 4.3 of the .NET agreement. Indeed, Halloran noted that Subsection 4.3 only requires the GNSO to provide a “copy” of “all substantive comments received.”

27. Finally, Chuck Gomes of VeriSign asked about the current ranking of two specific categories of relative criteria. Gomes commented that he found it “totally incomprehensible that under relative criteria, those criteria related to the promotion of competition are rated higher than criteria related to stability, security, technical and financial competence.” To this Sheppard commented that “[i]t’s very important to read the report as a whole. We have absolute criteria, and we have relative criteria. Under absolute criteria, you’ll find a very important threshold called absolute criteria related to stability, security, technical and financial competence. And there’s reference in that to the existing criteria under those categories within the existing agreement. That is a threshold that each and every one applicant we are proposing has to get over. After that, there may be criteria relating to those same aspects in which ... preference should be given to proposals offering improved implementation and support. Applicants should indicate how they would offer enhanced performance. Preference should be given to proposals offering improved reliability. So, there is improvement in those services above already a minimum that we know is working satisfactorily. And that is the basis in which we chose our ranking for [relative criteria].” Tonkin summarized by stating, “I think what [Sheppard] is implying [] is the criteria for stability have been divided into two criteria. One is a minimum that [every applicant] must meet ... and then there’s a second level which is better than the minimum. And it seems the committee has decided that the better than minimum is of lower priority to [promotion of competition].”

28. Following the GNSO Council meeting, on 21 July 2004, the subcommittee submitted its final report to the GNSO Council for approval. The subcommittee once again gave due account to all relevant parts of comments from the 20 July 2004 GNSO Council meeting. In particular, the report now included a summary and a copy of each public comment submitted to the subcommittee.

29. The final report was approved by the GNSO Council at their teleconference on 5 August 2004. The recommendation was carried by more than a two-thirds majority of those votes present. The breakdown of the vote was as follows:

- 21 votes in favor (seven of which were by proxy due to conflicts of interest)
- 2 votes against
- 2 votes abstention
- 2 votes absent

30. On 30 September 2004, ICANN announced that it was reviewing the GNSO consensus statement, report, and all public comments received – including comments from the potential .NET applicants – in preparation of ICANN’s Request for Proposals (RFP). ICANN stated that it was “seriously considering those comments with all due diligence and regard, and is obtaining professional and expert advice relating to how those comments might impact the final version of the RFP.” As such, ICANN announced that it would be extending the proposed deadline for issuance of the RFP to “insure that the most appropriate RFP be issued.” ICANN further announced that in an effort to “insure a fair and independent process and [to] avoid any perceptions of possible bias or impropriety on the part of ICANN, “ ICANN was “seeking an independent third-party professional firm ... to manage the .NET ‘Successor’ Registry Operator Process.”

31. On 12 November 2004, ICANN posted a draft RFP on its web site for public comment. ICANN stated that in developing the draft RFP it “took into consideration” all “previous public comment periods and correspondence from interested parties.” ICANN initially stated that all comments on the draft RFP should be submitted by 26 November 2004 in order to receive consideration for development of the final .NET RFP to be approved by the ICANN Board. ICANN later extended this deadline to 3 December 2004.

32. Following the public comment period, the .NET RFP was once again revised to incorporate public comments. These revisions included, among others, the following:

- Bruce Tonkin of Melbourne IT suggested that the probity and conflict of interest provision in the .NET RFP should include text prohibiting third-parties from contacting individual ICANN Board members or staff members outside the public comment process. The final .NET RFP reflected this comment.
- Jeff Neuman of NeuLevel and Ray Fassett suggested that ICANN allow applicants to include technical diagrams, charts, and/or flowcharts in reference to text responses in the content of the applications. The final .NET RFP reflected this comment.
- Bruce Tonkin of Melbourne IT and Jeff Neuman of NeuLevel made certain comments regarding particular sections of applicant’s responses that were proposed to be kept confidential. The final .NET RFP reflected this comment.

- Jean-Christophe Vignes of .TM Domain Registry requested that ICANN revise certain language in the RFP to explicitly contemplate an application from a company without a background in providing registry services, albeit with management personnel with significant backgrounds at other companies. The final .NET RFP reflected this comment.
- Jeff Neuman of NeuLevel commented that all applicants should consider the need to address migration issues in the context of moving from a thin to thick registry model; suggested a six year contract term for the new registry agreement; and, raised concerns about the lack of access for applicants to data held by VeriSign on the current performance levels for the .NET TLD. The final .NET RFP reflected these comments.
- Hakon Haugnes of Global Name Registry and Adrian Kinderis of AusRegistry Pty Ltd raised concerns regarding the condensed timeline for the transition of the registry. Kinderis was concerned that the timeline unfairly advantaged existing large registry operators. The final .NET RFP reflected this comment.
- Sabine Dolderer of DENIC requested that ICANN include information about how registration fees prepaid to VeriSign are to be handled and asked ICANN to clarify the desired format for the application. The final .NET RFP reflected these comments.
- Franck Langlumé requested clarification on whether there will be a segregation of registry fees paid to ICANN that are earmarked for certain uses. The final .NET RFP reflected this comment.
- Hakon Haugnes of Global Name Registry recommended that ICANN emphasize diversity and industry expertise in choosing evaluators. The final .NET RFP reflected this comment.
- VeriSign requested that ICANN set forth a clear evaluation process, including the identity of those who will evaluate the proposals and select the winning proposals. The final .NET RFP reflected this comment.
- VeriSign requested a process through which participants can challenge the selection of a .NET Registry Operator. The final .NET RFP reflected this comment.
- VeriSign commented that the draft RFP does not ensure that bidders are qualified to operate one of the Internet's largest domain name registries through objective responsibility standards. The final .NET RFP reflected this comment.

- VeriSign requested that ICANN ensure that evaluation criteria do not impermissibly disadvantage VeriSign either on their face or through their application. The final .NET RFP reflected this comment.

33. Indeed, some entities that submitted comments have acknowledged that ICANN's process has appropriately considered public comments. For example, at the 21 July 2004 GNSO Council meeting, NeuLevel stated that it was delighted to see that the GNSO subcommittee had – based on comments received – “added the concept of value [of services in its report], because [NeuLevel] think[s] that acknowledged the fact that it is not necessarily price, but it is value of the services that are [important].”

34. The .NET RFP was ultimately submitted to the ICANN Board for final approval and on 5 December 2004, the ICANN Board adopted the consensus statement of the GNSO Council and approved the final .NET RFP for posting. The vote was carried with ten votes in favor, none opposed, and one abstention.

35. The .NET RFP was then posted on ICANN's web site on 10 December 2004 <<http://www.icann.org/tlds/dotnet-reassignment/net-rfp-final-10dec04.pdf>>, and all applications were to be received by 18 January 2005.

36. To help provide all applicants with equitable access to information about the process, ICANN initiated an online question period on 15 December 2004. The online question period closed on 6 January 2005. ICANN posted all questions and answers on ICANN's web site <<http://www.icann.org/tlds/net-rfp/questions.htm>>. To ensure the fairness and integrity of the RFP process, the online question process was the only procedure used to answer questions; no telephone or written inquiries were accepted by ICANN.

37. On 19 January 2005, ICANN announced that it had received five responses to its RFP <<http://www.icann.org/announcements/announcement-19jan05.htm>>. These applicants included: Afiliis Limited; CORE++ Asociacion sin animo de lucro; DENIC Domain Verwaltungs – und Betreibsgesellschaft eG; Sentan Registry Services, Inc.; and the incumbent, VeriSign, Inc.² All non-confidential portions of the responses were then posted

² Coincidentally, only four days earlier VeriSign, Inc. filed a Request for Arbitration with the International Chamber of Commerce, International Court of Arbitration (ICC) against ICANN. In its arbitration, VeriSign asserted that ICANN had breached the .NET agreement because it had adopted procedures and criteria for the selection of the successor .NET registry operator that were: (1) not established pursuant to a Consensus Policy; (2) not open and transparent; (3) disadvantaged VeriSign as the incumbent registry operator; and (4) prevented ICANN from reasonably determining the best successor to perform registry functions.

VeriSign requested specific performance of what VeriSign believed were ICANN's requirements under the .net agreement. VeriSign further requested declaratory and injunction relief keeping ICANN “from designating any third-party as a successor .net registry operator” as a result of the procedures and criteria in place. VeriSign, however, did not object to ICANN designating VeriSign as the successor .net Registry Operator pursuant to these same procedures and criteria. The ICC has granted several requests by VeriSign to hold the arbitration in abeyance.

on ICANN's web site for public comment until 4 February 2005 <<http://www.icann.org/tlds/net-rfp/net-rfp-public-comments-20jan05.htm>>.

Telcordia Appointed As Third-Party Evaluator

38. On 7 February 2005, ICANN announced that it had engaged Telcordia Technologies, Inc. to review and assess the applications submitted in response to the .NET RFP <<http://www.icann.org/announcements/announcement-07feb05.htm>>. Telcordia is a leading global provider of telecommunications software and services for IP, wireline, wireless and cable. ICANN stated that it would compliment the Telcordia team's capabilities with an international panel of DNS experts to contribute to the assessment effort.

39. The first task that ICANN directed Telcordia to perform was the creation of a matrix assigning a weight to each relative criteria. Telcordia was further directed to evaluate the applicants in two stages. First, determine whether an applicant met the absolute criteria set forth in the .NET RFP. Thereafter, but only with respect to those applicants the evaluators determined had satisfied the absolute criteria, evaluate the applicants against the weighted relative criteria.

40. Telcordia was then directed to preliminarily rank the applicants from strongest to weakest based upon performance against the relative criteria. The evaluators were then to prepare a preliminary written report on each applicant, noting substantive comments and questions. This written report on a given applicant was to be provided privately to that applicant only, and each applicant was to be given a specified number of days to respond to the report in writing.

41. When the time period for responding to the evaluators' preliminary written report had expired, the evaluators were to review their initial evaluation and ranking, together with the responses from the applicants, and prepare their final rankings of the applicants.

42. A version of that report – with confidential information about any applicant redacted – was to be posted on ICANN's web site for public comment.

43. Following Telcordia's recommendation and receipt of public comments on that recommendation, a final report was to then be provided to the ICANN Board for review prior to its designation of the successor .NET Registry Operator.

44. The ICANN Board's designee would then be conditioned upon the applicant agreeing to specified contractual terms and ICANN would be allowed to designate an alternate choice in the event the designated applicant refuses to agree to the specified contractual terms.

45. Immediately following the ICANN Board's decision, ICANN would make an announcement of the designated successor .NET Registry Operator, and would seek the concurrence of the DOC pursuant to Amendment 3 to the MOU.

Telcordia's Independence

46. At the time of its appointment, ICANN posted an "Advisory Regarding Neutrality of Independent Evaluators", in which Telcordia made a number of public disclosures regarding its independence <<http://www.icann.org/announcements/telcordia-disclosure.htm>>. The following is a copy of the text of the advisory:

ICANN has engaged Telcordia Technologies, Inc. to review and evaluate the applications submitted in response to the .NET Request for Proposals. Substantial safeguards have been established to ensure that the members of the Telcordia evaluation team who review and analyze the applications do so in an objective manner independent of inappropriate influences. Neither Telcordia Technologies, Inc. nor individual member of the evaluation team has any financial interest in or similar dealings with any of the applicants. A comprehensive review was undertaken of Telcordia's links to and engagements with companies submitting applications. The nature of each link was determined to be highly unlikely to influence any aspect of the evaluation. This analysis was reviewed with ICANN's General Counsel, who concurred with this conclusion.

TELCORDIA DISCLOSURE STATEMENT

Telcordia Technologies, Inc. is a leading global provider of telecommunications software and services for IP, wireline, wireless and cable. Headquartered in Piscataway, N.J., Telcordia has routine business dealings with a broad variety of telecommunications entities throughout the world, including applicants for .net, and has offices throughout the United States, Canada, Europe, Asia, Central and Latin America.

Telcordia Technologies is a wholly-owned subsidiary of Science Applications International Corporation (SAIC). Previously known as Bellcore, on November 17, 1997 SAIC acquired Bellcore and renamed the company Telcordia Technologies.

SAIC announced in a November 18, 2004 press release the signing of a definitive agreement to sell its subsidiary Telcordia Technologies, Inc. to Providence Equity Partners (Providence) and Warburg Pincus (Warburg) for \$1.35 billion in cash. Providence and Warburg are equal equity investors in the transaction.

Warburg Pincus has also provided financing for NeuStar, Inc.

Prior to 2000, SAIC had an ownership interest in Network Solutions, Inc (NSI). In June 2000, NSI merged and became a wholly-owned subsidiary of VeriSign, Inc. During 2003, SAIC sold all of its shares of VeriSign and no longer holds equity collars or an investment in VeriSign as a result of these transactions.

Beginning in fourth quarter of 2000, Telcordia and VeriSign jointly conducted a six-month trial to explore deployment of ENUM-based services. The trial terminated with no further substantive ENUM business arrangements.

During 1998-1999 timeframe, at SAIC's request, Dr. Dave Sincoskie served on the Technical Advisory Board at NSI. Dr. Sincoskie has not had contact with NSI since it was purchased by VeriSign.

Mr. William A. Roper, Jr, Corporate Executive Vice President, SAIC is currently a director of VeriSign.

47. On or about 25 February 2005, each applicant was given the opportunity to voice any concerns it had regarding the appointment of Telcordia. These concerns were expressed both in writing and on a series of conference calls conducted by John Jeffrey – ICANN’s General Counsel – and Kurt Pritz – ICANN’s Vice President of Business Affairs. None of the applicants objected to going forward with Telcordia and each but Afilias gave its affirmative approval.

Telcordia's Scoring of Technical Criteria

48. Because the .NET RFP did not have scoring metrics associated with the RFP text, Telcordia’s first task was to develop scoring sheets with objective metrics defined for every requirement.

49. The evaluation contract required Telcordia’s evaluation to be based solely on the .NET RFP, the respondents’ formal responses to the RFP, and material explicitly transmitted to Telcordia by ICANN for consideration. In particular the Statement of Work (SOW) required that: “Telcordia will not evaluate or address policy considerations. Telcordia's review will be based solely on the information provided in the RFP response and other related information provided by ICANN to Telcordia. ICANN alone shall determine whether it wishes to solicit or consider input from non-applicants and how it wishes to utilize such input. Telcordia will review and address those public comments that are identified by ICANN as addressing the technical issues involved in Telcordia’s assessment under this Agreement.” As such, the RFP responses were scored strictly against the explicit RFP requirements.

50. A core group of senior Telcordia employees generated a scoring sheet by decomposing the .NET RFP into its subcomponents, with each request for information identified as a scoring element.

51. For each scoring element the core group developed metrics to be used to score the element as Red/Green for absolute criteria and Red/Yellow/Green/Blue for relative criteria. Criteria which were both absolute and relative were scored Red/Green/Blue.³ The metrics were derived from the RFP, the current .NET agreement, the newer agreements for other domains, and industry best practice. The team also identified a set of weightings to be applied to the findings. Following the generation of the scoring sheets, and prior to the start of scoring, ICANN reviewed and approved the sheets and the weightings.

52. For each section of the scoring sheets – except for the financial analysis as described below – two people independently read and scored all five of the proposals. Because the .NET RFP did not specify that material relevant to a section must be contained within the responses to that section, the scorers were instructed to consider relevant material appearing anywhere in a given RFP response. The dual independent scorers were to ensure both that the scoring was accurate and that relevant material was not missed. The two scores were then reviewed and reconciled into a single score.

53. At completion of the preliminary scoring process the lead for the section ensured consensus on the score. The section lead then provided a preliminary rollup of the scores for the section.

54. Following the initial scoring process the preliminary scores showing serious weaknesses – that is, red and yellow scores – were sent to ICANN for distribution to the RFP respondents at the beginning of business on 8 March 2005. The applicants were restricted to two pages of response per scoring element. ICANN returned the responses to Telcordia on the afternoon of 18 March 2005. The pertinent sections were rescored based on the responses.

55. In addition to the RFP proposals and responses to the preliminary scoring, site visits were also made to the primary operations site designated by each applicant. The applicants were given an agenda in advance and told that time would be restricted to six hours. The purpose of the site visits was to validate, where possible, information that was contained in the proposals.

56. Additionally, given the complexity of the DNS environment, ICANN formed a small, technical panel consisting of DNS experts in the Internet community to support the evaluation team by providing advice regarding DNS issues. The members of this panel included:

³ Although specific definitions of the scores were developed for each criteria in the RFP, the intuitive meaning of these scores is: Red = unacceptable, Yellow = has serious flaws or issues, Green = acceptable, Blue = exceeds requirements.

Randy Bush
Scientist, IIJ
Bainbridge Island, Washington, USA

Kenchi Cho
IIJ Lab (a division of Internet Initiatives Japan, Inc.)
Tokyo, Japan

Patrik Fältström
Cisco Systems, Consulting Engineer
Helsingborg, Sweden

Petur Petursson, CEO, and
Sigfus Magnusson
Men & Mice
Reykjavik, Iceland

57. The DNS Expert team consulted with the Telcordia .NET RFP Evaluation team as required, but did not participate in the scoring process. Only Telcordia employees were part of the evaluation process. No persons external to Telcordia were part of the process or had contact with team members about the process.

58. Telcordia's draft final report was prepared and transmitted to ICANN on the afternoon of 25 March 2005. ICANN reviewed the draft final report and posted the final report on 28 March 2005 <<http://www.icann.org/announcements/announcement-28mar05.htm>>.

Telcordia's Scoring of Financial Criteria

59. The RFP had the absolute requirement that each vendor "...must demonstrate sufficient *financial strength and stability*, based upon its existing financial condition and its proposed business model for operation of the registry, to provide reasonable certainty that it will be able to fulfill its obligations over the life of the .NET registry agreement."

60. Telcordia used the financial information provided by the applicants to project income statements and cash flow statements for the duration of the award. The rating awarded each applicant depended on the financial strength Telcordia found by modeling each applicant's cash resources and needs over the life of the contract, by applying a standard financial modeling approach.

61. The RFP required the provision of (a) financial statements for the applicant (or, if the applicant was a wholly owned subsidiary of another entity, for the applicant and such other entity on a consolidated basis): three years of financial statements (including balance sheet, income statement, cash flow statement and statement of stockholders' equity) and (b) the applicant's business plan for the operation of the registry, which is to include revenues, prices, products/services sold, staffing, expenses, property plant and equipment, cash

sources and uses. The applicants were to provide three demand scenarios: high, medium and low.

62. For the evaluation, Telcordia analyzed the information each applicant provided, the goal being to create a modeled cost function calibrated to each applicant, so that Telcordia could use common scenarios across all the applicants. This turned out to be more difficult and less clear-cut than anticipated because some applicants did not provide staffing, expense, or capital outlay information for their different scenarios. This meant that modeling their cost variations with names in service had to depend on the variation of these costs with the growth of the business over time. Telcordia used names in use as the common driving variable for all scenarios.

63. The scenarios provided by the applicants varied widely, from zero growth to very rapid growth. Telcordia regarded zero growth as too unlikely an outcome to be a standardized scenario, and so used a minimum growth of 4% in names used each year. This is about half the lowest growth rate experienced so far. For the midrange and high growth scenarios it used 10% and 18% respectively, which lie within the range of scenarios provided by the respondents. Telcordia also assumed a standard average length of contract of 15 months.

64. The primary test was whether overall cash resources available fell below the cash required to cover projected capital needs and operational costs. If this test was failed at any point, then the evaluator examined the balance sheet for equity reserves and tested accounting ratios used in insolvency prediction or credit-worthiness models.

Telcordia's Weighting of Criteria

65. Early in the process Telcordia realized that some elements of the RFP were more important than others. As part of the process of developing the scoring sheets, Telcordia produced a rough ranking (or ordering) of the various RFP criteria. These rankings of the relative criteria utilized ICANN's core principles and priorities as described in the ICANN Bylaws <<http://www.icann.org/general/bylaws.htm#I>>. Note that per the .NET RFP: "Relative criteria are those criteria that ICANN has determined will be most helpful in distinguishing the otherwise qualified vendors – those which satisfy all the absolute criteria – from each other on the basis of enhanced stability, security, competition, and services." Using these principles, the following priority for relative criteria was established:

High - those relative criteria which reflect the need to preserve the stability and security of the Internet systems, including:

- Technical Competence
- Registry Operations

Medium - those relative criteria which reflect core ICANN principles, such as promoting and sustaining competition, including:

- Equivalent Access for Registrars
- Support in additional languages
- Registry Code of Conduct and other commitments to ensure that all registrars receive equivalent access
- Revenue and Pricing Model; Financial Strength and Stability
- The per-name price charged to registrars with lower committed prices being preferable to higher prices.
- Additional Relative Criteria: The degree to which the vendor's proposal promotes competition in the registration of domain names

Low - those criteria which reflect other ICANN principles, including:

- The degree to which an applicant's business model relies on multiple, rather than sole source suppliers to reduce the impact of failure by any one supplier
- The degree to which an applicant's proposal results in improved implementation of, and support for, GNSO policies, such as transfers and deletes

Telcordia's Evaluation of Public Comment

66. ICANN forwarded to Telcordia public comments made about the applicants. Telcordia read these comments and gave appropriate consideration.

TELCORDIA'S FINAL REPORT

67. Telcordia's final report demonstrated that all of the applicants have the capability to run the .NET registry. The distinguishing characteristics were largely differences in experience, risk, and price. The evaluators found that while all five applicants could run the .NET registry, their scores on the RFP evaluation resulted in them stratifying into three groups: Sentan and VeriSign were the leaders, Afilias and DENIC were in the second group and CORE++ was third. Within the first group, VeriSign had a small numerical edge over Sentan that was not statistically significant given the methodology used to rate the RFP responses. The stratification between the lead group (Sentan, VeriSign) and the other vendors was statistically significant.

68. The results of the site visits were not used to arrive at this ranking. However, in Telcordia's professional judgment the results correspond to its impressions during the site visits. Telcordia stated that "Sentan and VeriSign are highly professional organizations with mature quality processes. The risk to the operation of .NET is minimal if either organization is awarded the contract."

69. The following table is a summary of Telcordia's rankings:

	Afilias Limited	CORE++	DENIC Domain	Sentan Registry	VeriSign, Inc.
Applicant Ranking (overall)	3	5	4	2	1
High priority criteria	3 Blue	3 Blue 1 Red	4 Blue 1 Yellow	12 Blue	14 Blue
Medium priority criteria	-	1 Blue	-	1 Blue	-
Pricing rank (medium priority)	1	4	5	2	2
Lower priority criteria	-	-	-	-	-

General Observations Noted in Telcordia's Final Report

70. The high priority criteria correspond to RFP sections 2.3, 2.5, 2.6 and 2.8. On these sections VeriSign received 14 blue marks and Sentan received 12 blue marks. Afilias received 3 blue marks. DENIC received 4 blues and one yellow. CORE++ received 3 blues and one red.

71. The medium priority criteria correspond to relative portions of RFP sections 2.2, 2.4, and portions of 2.7. For 2.2 CORE++ and Sentan had blue scores. 2.4 resulted in Afilias having the best price, Sentan and VeriSign tying for second, and CORE++ and DENIC being third and fourth in the ordering, respectively. VeriSign received all green scores on the medium priority criteria.

72. The lower priority criteria correspond to portions of RFP sections 2.2 and 2.7. Telcordia did not find significant differences among the vendors in these sections.

73. While the site visits were used to verify the applicants' responses and not used to rank the applicants, Telcordia found that the site visits were not in conflict with overall ranking. Sentan and VeriSign are both mature organizations with comprehensive quality processes. While there is the obvious benefit of no transition risk associated with awarding .NET to VeriSign, Telcordia noted that Sentan had produced very detailed planning documents for the .NET transition and had ordered or installed the network access and computing hardware needed to support the .NET registry. Thus, Telcordia believed that this validated the Sentan RFP score and that there would be low risk associated with awarding .NET to Sentan.

74. Under the criteria of the RFP, although VeriSign received a higher ranking Telcordia did not find the differences between Sentan (12 high priority blue and 1 medium priority blue) and VeriSign (14 high priority blue) to be statistically significant.

75. Telcordia concluded its final report by listing a series of "plusses" and "minuses" for each applicant:

Afilias. Afilias has transitioned the .ORG domain and has a strong understanding of the process of transitioning the .NET domain.

CORE++. The CORE++ business entity does not yet exist. As a result, the risk associated with CORE++ is much higher than with other applicants. However, CORE++ proposes to support thick or thin registry models on a per domain name basis, providing flexibility to the Registrars.

DENIC. At the time of the original RFP DENIC had not selected the site for the secondary SRS location. Although the feedback to the preliminary scoring indicated that they had selected Amsterdam, this may indicate a slightly lower level of maturity for their application

Sentan. None.

VeriSign. VeriSign has experience offering registry services at a scale much larger than .NET. VeriSign proposed the most stringent SRS availability numbers of any of the vendors as well as the best SRS processing times. However, it is unclear whether the differences are truly significant.

PUBLIC COMMENTS ON TELCORDIA'S FINAL REPORT

76. ICANN posted Telcordia's final report on 28 March 2005. ICANN further stated that it would "promptly enter negotiations with the top-ranked applicant [VeriSign] to reach a mutually acceptable registry agreement." A draft of the proposed .NET Registry Agreement was also posted at this time <<http://www.icann.org/tlds/dotnet-reassignment/draft-net-agreement-9mar05.pdf>>.

77. On 29 March 2005, ICANN opened a public forum to receive comments on the evaluator's final report and on the RFP generally <<http://www.icann.org/tlds/net-rfp/net-rfp-public-comments.htm>>. In addition to receiving specific comments from each of the five applicants, ICANN received substantive comments from Internet stakeholders.

78. On 20 April 2005, ICANN announced that it had reached agreement in principal on all substantive terms of the new .NET Registry Agreement with VeriSign <<http://www.icann.org/announcements/announcement-20apr05.htm>>. ICANN further stated that it had forwarded the applicants' public comments on the final report to Telcordia and anticipated a response from Telcordia on or before 25 April 2005. This date was ultimately pushed back.

TELCORDIA'S REVIEW OF FINDINGS

79. Telcordia's review of its findings was published on 3 May 2005 on ICANN's web site <<http://www.icann.org/tlds/dotnet-reassignment/review-of-findings-03may05.pdf>>.

80. In its review, Telcordia addressed concerns of each applicant as demonstrated in their respective public comments to ICANN. The following is a summary of the applicants' concerns and Telcordia's responses:

Sentan's Concerns.

Sentan expressed concern that VeriSign's secondary data center was located 10 miles from its primary center. Telcordia explained that it overlooked this fact because VeriSign had a secondary backup data center running hot standby in another region.

Sentan criticized Telcordia for not considering allegations raised by respondents with respect to other respondents. Telcordia stated that "[i]t was beyond the scope of Telcordia's activities under the SOW for Telcordia to conduct investigations into allegations regarding the other respondents."

Sentan stated that Telcordia inappropriately "limited their analysis of competition to the registrar market alone and ignored competition at the registry level and the domain market as a whole." Telcordia stated that "competition and specific GNSO policies were undefined in the RFP." Telcordia proposed a set of specific sub-criteria which were "reviewed and approved by ICANN prior to evaluation." "These criteria were applied alike to each .NET applicant."

Sentan made a series of comments regarding Telcordia's ranking for registry operations under section 2.3.a of the final report. Telcordia stated that Sentan's comments only addressed one sub-component (section 2.3.a.5). While Sentan did score higher than VeriSign in that sub-component, the "roll-up of the scoring for section 2.3 depended on all eight sub-criteria."

Core++'s Concerns.

Core++ was concerned with Telcordia's choice of scoring criteria. Telcordia stated that the "metrics used by the evaluators were based on ICANN documentation and

approved by ICANN prior to Telcordia commencing response scoring.” The methodology was “used uniformly” and “comparable across bidders.” Indeed, Telcordia noted that another bidder who raised similar concerns stated that “they would comply with the current ICANN methodology.”

Core++ stated that there is an “industry standard” for identifying measurement techniques that was not followed by Telcordia. Based on ICANN agreements for recent registries, and the responses of the other applicants, Telcordia disagreed.

Core++ took issue with the rankings involving Registry-Registrar Model and Protocol, SRS. Telcordia stated that the ranking reflected “quantifiable differences between respondents.” Telcordia further noted that the “practical differences” should be taken in light of the “general comment that small differences in the overall scores are not statistically significant.”

Core++ was concerned that VeriSign received inflated marks for certain capabilities that Core++ considered “useless” or whose effect favored “few companies.” Telcordia stated that as long as there is an economic value in those capabilities, they are significant. “Changes to policy, and possible resulting fairness implications, are beyond the scope of Telcordia’s technical evaluation.”

Core++ was concerned that its score did not accurately reflect its geographic network coverage. Telcordia stated that Core++’s response did not propose nameservers in South America or Africa and did not justify a blue score on this criteria because it “did not provide clear plans or actions to address emerging markets.”

Core++ was concerned that certain applicants received higher marks than Core++ on Billing and Collection even though “all applicants use the same system, whose essence is pre-payment.” Telcordia stated that Core++ received its score because it provided an “inadequate and unspecific description of the technical operation of [its] billing system.”

Core++ stated that all applicants – excluding VeriSign – should have received a blue score on “Whois”. To this Telcordia once again noted that “charges levied by one respondent against others, or of material not explicitly

supplied by ICANN, was outside the contractual scope of the .NET RFP evaluation.”

Core++ raised a series of technical issues with the IDN standard and VeriSign’s implementation of IDN. Telcordia stated that these issues were “outside of the contractual scope of the .NET RFP response evaluation.” Telcordia, however, noted that upon further review of the scoring for section 2.b.5.xvii, “CORE++ and DENIC were given blues rather than the greens reported.” And that “Sentan actually received a green rather than the reported blue.” As such, Telcordia revised its final report to reflect this error.

Core++ asked Telcordia to state which portion of Core++’s application concerned the evaluation team with respect to security criteria. Telcordia responded that the evaluation team had concerns with Core++’s help desk.

Core++ felt it was inappropriate to give VeriSign a blue rating on Migration Risk because VeriSign did not have to migrate. Telcordia responded that a blue mark was assigned to VeriSign based on feedback from ICANN. ICANN felt that not grading VeriSign on this topic would result in unfairness, since it would have one less opportunity to score a blue mark than the other respondents.

DENIC’s Concerns.

DENIC was concerned that Telcordia’s final report focused more on Telcordia’s own “best practices” of domain administration than on “recognized international policy.” To support its contention it noted that Telcordia criticized certain bidders for not offering an auction model for deleted names. To this Telcordia responded that the “scores for the respondents in the relevant sub-criteria [section 2.3 part 3 and 2.3.a.1] comply with the approved scoring metrics; in regard to DENIC’s specific question, we note that addition or removal of auction services by any respondent would not have changed their score for 2.3.”

DENIC was concerned that Telcordia introduced differentiation into the scoring of absolute criteria. Telcordia responded that “[i]dentification of such absolute/relative criteria was not always straightforward. Telcordia is unaware of instances where criteria were mis-categorized.”

DENIC stated that it was wrongfully given a yellow mark because Telcordia erroneously stated that DENIC used a database built in-house when it used a database built by Sybase, Inc. Telcordia corrected this error and revised DENIC's score on this criteria from yellow to green.

Afilias' Concerns.

Afilias requested that it be given a blue (instead of a green) mark on section 2.4.b because of its superior pricing over all other applicants. Telcordia stated that "[g]iven that [the] ICANN approved weighting of factors made the relative order of pricing a secondary factor, Telcordia believes that the report is correct."

Afilias questioned why all other applicants received a blue score on section 2.5.b.xiv (peak capacities) while Afilias received a green score. Telcordia responded that the "respondents receiving blue scores distinguished their responses by their analysis of the actual peak capacity required."

Afilias stated that it should receive a blue mark on section 2.5.b because it possessed superior SRS processing time and availability. Telcordia responded that Afilias did receive a blue on the sub-criteria of SRS processing time but the overall score for the section was based on multiple sub-criteria which accounted for Afilias' score of green.

Afilias believed that it provided a very robust approach to dealing with registry failures and that it should have been rated a blue rather than a green on this criteria. Telcordia agreed and revised its final report accordingly.

Afilias raised a similar concern to Sentan with regard to "Additional Relative Criteria" listed under section 2.7. Telcordia simply referred Afilias to its response to Sentan.

Afilias was concerned with Sentan's score of blue on section 2.8 (transition or migrating plan). Telcordia stated that based on "ICANN-approved scoring metrics, both Afilias and Sentan deserve blue scores for their transition planning."

VeriSign's Concerns.

VeriSign's concerns had nothing to do with the final report but instead focused on objecting to Sentan's letter of 4 April

2005 attacking VeriSign. Telcordia stated that VeriSign's concerns were "outside of the scope of the technical evaluation and cannot be addressed by Telcordia."

81. After reviewing its findings – and making all scoring adjustments – Telcordia concluded that "the relative position of the top respondents did not change." VeriSign remained the top-ranking applicant with Sentan positioned closely behind at a statistically insignificant range.

TELCORDIA'S REVISED FINAL REPORT

82. ICANN posted Telcordia's revised final report on 27 May 2005 <<http://www.icann.org/tlds/dotnet-reassignment/net-rfp-finalreport-issue4-27may05.pdf>>. The revised final report reflected in the Telcordia review of findings but did not change the first or second overall ranking.