June 8th, 2009

Miss. Fiona M. Alexander, Associate Administrator,
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
1401 Constitution Avenue
N.W., Room 4701
Washington, DC 20230

[Docket No. 090420688–9689–01]
Assessment of the Transition of the
Technical Coordination and
Management of the Internet's Domain
Name and Addressing System:

(MS word Via Email to DNSTransition@ntia.doc.gov)

Dear Ms. Alexander,

This letter contains our comments regarding the upcoming expiration of the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN). This agreement has been in existence since November 25, 1998, and is scheduled to expire on September 30, 2009. I speak in the capacity as Chairman and CEO of The Multilingual Internet Names Consortium (MINC) www.minc.org , as Member of the ICANN President Advisory Committee on IDNs, (IPAC IDNs) http://www.icann.org/en/committees/idnpac/, as well as Chairman and CEO, of Live Multilingual Translator, www.LMTranslator.com.

Before I start addressing the merits of what The NTIA ought to consider and do with ICANN after the JPA expires, I wish to point out some crucial unavoidable and compelling strategic facts neither The Department of Commerce nor the NTIA of an Obama administration can afford to overlook.

CAN PRESIDENT OBAMA'S SPEECH FROM CAIRO TO MUSLIMS ALL OVER THE WORLD BE IGNORED IN THESE CONSULTATIONS?

Last week President Obama delivered from Cairo a speech to the entire Muslim world that will reverberate for generations. His aim was to align the Muslim and Arab world with the interests of the United States of America in its fight against Islamic terrorism and extremism. To show his sincerity and respect to his global audience, our president travelled half way across the globe to a Muslim capital to deliver this message. He could have delivered it from the oval office or the White House gardens. But he knew it would never have received the same international acclaim, support or positive reaction by those he aimed to reach out to. He sought the support of 1.5 billion Muslims and offered his genuineness and commitment to champion them and their needs and aspirations.

At the heart of President Obama's speech were terms like Mutual Respect, Peace, Decency, Humanity, Tolerance, and Democracy. However, and in a true departure from the usual rhetoric of previous US administrations he acknowledged previous US Government's mistakes. He specifically spoke of the role the US played in the overthrow of a democratically elected Iranian government during the cold war, and proudly defended his decision to close Guantanamo because it is the right and moral thing to do.

What our President Obama displayed was the philosophical and moral leadership befitting of a modern world leader. He laid out a new vision for US Obama Administration that is committed to show it is truly in touch with the rest of the world. He reached out to forge new alliances for a better, safer more, prosperous future for Americans, his primary responsibility, but also a better tomorrow with dignity, opportunity and freedom for all citizens of the world - for mankind.

Central to his message was his emphasis that this cannot be achieved unless ***"we all worked together based on mutual respect and mutual interests".***

I can confirm that people in the Muslim and Arab world stopped and listened with great attention and were very impressed with our President's speech.

Now the real questions are:
Has ICANN been listening?
Has Congress been listening?
Have the leaders in the Obama administration been listening?
And last but not least,
Has the Department of Commerce and the NTIA been listening?

Finally on this point, our President quoted the Holly Quran when he told Muslims and Arabs he will speak the truth and that he will speak it from the heart. He was hoping his message to be well received. I, as a Muslim, and as an Arab American will also speak the truth and from the heart and hope for all our combined sakes it will be equally well received.

BACK TO THE NTIA'S TASK AT HAND.

The NTIA's and the Department of Commerce of the Obama administration is contemplating its options of what to do with ICANN and the expiring JPA. In doing so the NTIA will need to satisfy the following fundamental conditions:

1- Ensure safety and security of the Net.
2- Ensure that the Internet serves all stakeholders, even those not yet on it from the IDN communities, as opposed to only serving those with the loudest voices or deepest pockets.
3- Fulfill President Obama's words, commitments and vision of **"*Mutual Respect and Mutual Interests"*** and **"*All Working Together*"** as well as **"*Democracy and Democratic Representation"*,** which our President travelled half way across the world to deliver so that he can be believed and seen as genuine. Anything less will

make him and his US government and administration appear fake and disingenuous to the detriment of US interests.

4- Prove that the NTIA and the Department of Commerce have moved away from the old rhetoric of the Bush administration and of the old tired excuses and positions of the past.

SO WHAT ARE THE NTIA'S CHOICES? AND WILL THE POSITION OF THE INTERNATIONAL COMMUNITY COUNT FOR MUCH?

In recent years ICANN has been lobbying to be set free and be released of the US oversight once this agreement expires. For long before that, I have made repeated calls that a monopolistic control by the USG over the Internet did not serve US interests because it did not also share many of the responsibilities of managing and enforcing many of its vital functions, namely security and integrity. The security I spoke of was not only of the system but that of all stakeholders, service providers and end users as well. The explosion in child abuse and pornography on the Internet in recent years as Interpol would confirm is a symptom of this lack of shared oversight, in my expert and humble opinion.

Additionally, the ICANN model has never been democratic. Nor is it truly bottom up as ICANN always claims. However, being under a Bush Administration's control made much of ICANN's job more difficult with the international community due to the severe unpopularity of the Bush administration overseas. However, and in fairness, the failures of ICANN to address the needs of the international community in prioritizing and deploying IDNs was not a failure of the US government, it was purely an ICANN failure.

I took these positions during the World Summit on Information Society (WSIS) and continued to do so until the end of the Bush administration, but most crucially for as long as only these two options existed.

Option 1

- US singular control and management of the Internet,

Vs

Option 2

- An international community control and management of the Internet with the US as a major player.

In past two years however, a third choice started emerging. This was to release ICANN on its own accord without any further oversight, neither by the US nor to anybody else. In his letter on Jan 9th, 2008 to the NTIA (http://www.icann.org/correspondence/dengate-thrush-to-sene-09jan08.pdf) in the mid-term review, ICANN's Chairman Mr. Peter Dengate Thrush requested, and I quote: "*As this submission points out, the JPA was a necessary instrument in ICANN's formative years. But now, the JPA contributes to a misperception that the DNS is managed and overseen on a daily basis by the U.S.*

government. Ending the JPA will provide long-term stability and security for a model that Works".

Our reply to ICANN Chairman's letter was on Sep 15th, 2008, which can be read in English and Arabic at the MINC website at http://www.minc.org/news.aspx?id=393&lang=en and at the NTIA http://www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment_089.pdf

 I said and I quote:" *If the above referenced letter had been dated, January 9, 2002, 2003 or 2004, my response to the letter would have been one of unequivocal support. I always believed that to be the case and my position on the US Government's oversight of ICANN is well known and is of public record in my other capacity over the years as Chairman and CEO of MINC, the Multilingual Internet Names Consortium.*

However, at this late stage in 2008, a release of ICANN from U.S. Government oversight has nothing to do with providing long-term stability and security in the eyes of the international community that would singularly fix these misperceptions. Furthermore, if the intent of the chairman's letter is to make ICANN palatable and more accepted in the eyes of the international community it would be imperative for ICANN to address the real issues that are at the heart of these perceptions and misperceptions. And ICANN would be expected to make its case directly to the International community.

The delays and lack of ICANN's prioritizing of Internationalized Domain Names "IDNs" to empower local non English speaking communities as a top priority have seriously damaged potential good faith, trust, and belief in ICANN's competence in the eyes of the very people ICANN is seeking to appeal to today. ICANN had not responded to the needs or aspirations of the international community for many years." End of quote.

VP AL GORE AND DR VINT CERF TESTIMONIES.

Today ICANN and its supporters claim that ICANN is now ready to move forward on its own accord and that ICANN's model of management of the internet works and works well. Already many highly respected and high powered names with voices that echo domestically and internationally have added their support to ICANN's call to be set free. One would think that testimonies by Vice President Al Gore and Google's Internet Evangelist and Former ICANN Chairman Vint Cerf, "the father of the Internet" would be almost so "godly" they would be un-challengeable.

I have had the opportunity to work directly with Vint for many years before and during my role as Chairman and CEO of MINC and while he was ICANN's chairman. And I have enjoyed working with him and have great respect for him. But I would have to respectfully disagree with him as I have disagreed with him on this issue on many occasions in past during ICANN meetings and during many United Nations events and consultations on Internet Governance in the last few years. I will respectfully disagree with VP Gore as well.

When Dr Cerf and VP Gore say the ICANN model works and works well, to whom are they referring that it works well for? They cannot be referring to the International Community? Or are they referring to the IDN and the non-Latin script based language communities and regions of the world that represent more than 4 billion people, some of whom are not yet properly served by this ICANN model, if at all. Many of them have actually been further disenfranchised after being left out of this Internet phenomenon by this same ICANN model. ICANN's foot-dragging on IDNs may have contributed to the widening of the digital divide, I and many others would argue.

In fact the International Community's real pain has been not having IDNs. I called for the testing of IDNs in the root as far back as 2003. We at MINC wanted to validate if adding IDNs to the root can be done in a safe way and if it was discovered that it was not safe, we were ready to work with ICANN on how to involve local community technical and policy making effort to make it safe. We were called Internet breakers and anti ICANN for this visionary call.

In 2007 when ICANN tested IDNs in the root and it was concluded that it can be done safely without any compromise to the safety and integrity of the system, everyone hailed ICANN's vision and achievement. In fact there was no genuine reason to delay this test for 4 years. What it proved is that while IDNs were the real aspiration for the international community, to ICANN they were merely a "To Do Task".

So when VP Gore and Vint Cerf refer to ICANN as *"a model that works", "a model that works well"*, are they then referring to the English or ASCII Internet that is currently in deployment where this ICANN model supposedly works and works well? In Fact, many in the West would disagree with them on how well this model works. The ICANN Intellectual Property Community (IPC) and the Business Community (BC), which are both traditional ICANN supporters, were crying foul when ICANN came out with its guidelines on New Gtlds.

In fact, both of VP Al Gore and Dr Cerf's opinions do not reflect accurately either on the ICANN model. Clearly If the ICANN model could not serve and please its traditional supporters in the English Internet, and it has failed miserably to serve the needs and aspirations of those who needed to have this Internet turned Multilingual by deploying IDNs for the international community, then without a shadow of a doubt it cannot be accepted as model that works by any stretch of the imagination. In fact the NTIA would be ill advised to even contemplate setting ICANN free on its own accord without any oversight what so ever.

FAILURES TO OBSERVE. FAILURES TO ACT.

Such intentional failures to acknowledge these facts are insulting to billions around the world. It also goes against the great effort and lengths our President went in order to appear genuine in front of 1.5 billion Muslims and Arabs around the world. The international community and the non-English speaking world have been awaiting ICANN to enable International Domain Names (IDNs) since 2002. They continued waiting again

after the end of the WSIS in 2005. Today, in 2009 they are still waiting and are still without IDNs to bring them in by the billions out of the darkness and into this powerful tool of empowerment called the Internet.

Additionally, the current model for the proposed IDN gtlds is littered with grave pitfalls elephants could fall thru them. Pitfalls ICANN has been warned about for years but which it continues ignore. If this ICANN model of New Gtlds proceeds in its present course at making Marina Del Rey, California, USA (ICANN HQ) the defacto Internet Mecca for the world, and at ramming down the worlds' throats a one size fits all guidelines that includes IDN Gtlds, I can predict that the Internet will pass thru many US and international court rooms en route to unfixable catastrophes that will incubate exponential increases in Cyber Crime, Cyber wars, Cyber terrorism, and Cyber child abuse and pornography at monumental proportions.

Today the USG has committed $125 billion dollars to fighting these cyber threats. If the right ICANN model existed and new corresponding treaties that respect other sovereign nations were forged ahead, this could be achieved with greater chances of success and at a small fraction of that amount. It also will protect not only US interests but shared International interests as well. Wasn't this part of our President's desire and vision in his Cairo speech last week?

ONE LAST THOUGHT ON THIS MODEL THAT SUPPOSEDLY WORKS.

ICANN boasts that it has been working on IDNs for more than a decade. Yet as late as June 2007 ICANN had been proceeding on IDNs without having a board resolution that clearly defined its vision and mandate as to whom are these IDNs meant to serve first and foremost.

I recall being so outraged to see the same IDN questions and topics being discussed and re-discussed over and over again at GNSO and CCNSO meetings that prompted me to step up to the microphone and issue a challenge to ICANN Chairman Vint Cerf and its board to clarify what their vision is on IDNs . I also challenged them to adopt IDN resolutions that reflect their vision so that the world can learn what they stand for at long last.

I did this action during the Public Forum portion of ICANN's June 2007 meeting in San Juan, Puerto Rico to clarify its position on IDNs. I demanded that the ICANN board clarify its position on this fundamental consideration for the expansion of Internet use among the entire world's people. I offered the board my vision and my version of what I believed it to be, namely a tool of empowerment to the IDN community of the world first and foremost and not a product to be sold to maximize its profitability. However. I left it to them to use or ignore my vision on IDNs in their deliberations.

My public intervention resulted in ICANN's Board's adoption of two IDN resolutions the following day, in a speed of action unprecedented at ICANN. Steve Goldstein, the ICANN board members who recited the Board resolution prior to its vote and adoption,

stated: *"I would like also to point out that this set of resolutions and the recitations, just as the previous one, does our best to incorporate the wishes expressed yesterday by Khaled Fattal"*. http://sanjuan2007.icann.org/files/sanjuan/SanJuan-ICANNBoardMtg-29June07.txt.

The point behind reciting this event is that if IDNs were truly at the core of ICANN's structure and heart, would the ICANN Chairman Vint Cerf and the Board have neglected it the way they did and needed to be challenged or prompted in 2007 to adopt appropriate IDN Board resolutions on what IDNs ought to stand for?

WHERE IS THE GOVERNANCE (OR THE BEEF)?

Furthermore, the ICANN model is not a model of a Governance of the Internet by any stretch of the imagination. So if ICANN is released on its own accord, where will the Governance of the Internet be? Where will democracy in governing it come from? Where is the real representation of all stakeholders? Isn't this the democracy that our President talked about to Muslims or does insisting on democracy only apply to sovereign nations? Why can't we aspire for an Internet where its governance, accountability, and transparency are representative of and democratic for all its stake holders, from all corners of the world and not the ICANN model where board members are handpicked by another few called ICANN nominating committee members, who in turn are also handpicked by the proxies of another handpicked few?

This ICANN model remains with serious shortcoming in transparencies, accountabilities, representations etc as well as in the manner it selects its board of directors. Its Nominating Committee is heavily biased to promote and pick (handpick) only Board members who would tow safe general directions while satisfying token geographical representations.

The time has come for token community representation on the ICANN board and its nominating committee to end if this model is to be respected and taken seriously in the future. (No disrespect to any individual ICANN board member)

Proper and effective good internet Governance is what the Internet needs now. And that requires proper representation of all stakeholders not the hand picking of those favored by ICANN power brokers. ICANN claims it has made some effort on improving transparency and institutional confidence. This must be the operational tweaking that I still cannot see and that has done little to the end result.

ICANN'S FAILURE TO LISTEN.

ICANN failure to listen, learn and adapt are legendary. There are so many examples, but below are some of the points I raised in my same letter to the NTIA on Feb 15 2008. The

NTIA should ask itself if ICANN has moved forward enough to overcome these concerns in the last year and a half. I believe they hardly scratched the service. Below are some of the key points I made that ICANN had failed to address in the last year and a half and I quote:

1. ICANN needs to become significantly more transparent in all its Processes to instill renewed trust, confidence and good faith in the International community; this will eventually serve all without Exception. And it will help dispel many perceptions and misperceptions that exist in this space.

2. Clearer policies over conflicts of interest must be created regarding participants and volunteers who contribute to ICANN processes and policy formations to dispel the perception of favoritism towards the ICANN's traditional players, supporters and benefactors. This will help dispel many perceptions and misperceptions that exist in this space.

3. The ICANN Nominating Committee which is given the huge responsibility of selecting and appointing ICANN Board members should be revamped or replaced by a system that is significantly more transparent, more equitable, less subjective and more representative of all the communities ICANN aspires to serve. Functions and process such as how members are added, appointed or elected to the Nominating Committee should be of the highest transparency. This will help dispel many perceptions and misperceptions that also exist in this space.

4. The number of ICANN board members should be expanded allowing for representations from other communities or jurisdictions and include new members from beyond the scope of the standard ICANN supporting organizations. This will help dispel many other perceptions and misperceptions that exist in this space.

5. The ICANN Board needs to prioritize the issues important to the International Community as diligently as they have to those pertaining to the ASCII (English) Internet. This will help dispel many perceptions.

6. ICANN needs to come to terms with and address that it will fail to deliver IDNs in a manner that would satisfy the people of the international community unless it recognizes that languages and cultures are fundamental to IDNs as fundamental as code is to technologist for future IDN deployments. It must not, like it has in the past, avoid these debates and discussion just because they are controversial. This will help dispel current perceptions and future misperceptions that will come up in this space.

> *7. ICANN needs to come to terms with and address that there can be no single universal policy solution like a one size fits all for IDNs for the whole world that can be controlled. And that the only remaining solution is to empower local communities to be part of the decision making process of authorizing and deploying IDNs, thru a new decentralized system and mechanism. This will help dispel current perceptions and future misperceptions that will come up in this space.*
>
> *8. ICANN needs to also realize and look for alternatives to the processes of authorizing future IDN gTLDs. The "applicant-respondent" style of management that is used in ASCII would not work on cultures and communities. It would be seen in the eyes of the international community as autocratic and Top-down. This will help dispel current perceptions and future misperceptions that will come up in this space. And finally,*
>
> *9. ICANN needs to start listening and not just hearing.*

Clearly, I did not think back in February of 2008 that the ICANN model worked, or that it worked well at all. And ICANN has not done enough, or much at all, to convince me that this has changed today.

Satisfying the need for security and stability of the Internet is paramount. But it cannot be the excuse used when no progress takes place.

The NTIA's final decision will have to show it has factored in the strategic direction of this Obama Administration in showing respect to the global community, its audience, and its internet users, the way our President did in Cairo when he talked about democracy and proper legitimate representation.

The NTIA will not be able to justify and can ill afford to contradict the direction and position to its president. Nor can it afford to extend the JPA "as is". The freedom and the democracies President Obama lectured the world on would appear hollow and disingenuous if the NTIA was to do that.

MY CONCLUSIONS AND RECOMMENDATIONS.

For a long time I did not believe that a singular, monopolistic control and management of the Internet by the US Government is justifiable under the Bush administration. However, the Obama administration and its more humble respectful tone to the rest of the world has made it plausible for it to continue in an interim fashion. This is paramount bearing in

mind that I do not believe ICANN is ready under any condition to be released on its own accord.

Therefore and faced with the available choices at hand, I recommend the following:

1- ICANN NOT be released on its own accord.
2- The US Obama Administration to remain in control of the Internet.
3- For the US to do so for an interim period of one or two years maximum.
4- For the US to do so as the custodian of the Internet on behalf of all people the world.
5- For the US to do so in preparation for transitioning this management and control from a singular country control and management to an International Community Control, Management, and Governance.
6- For the US to transition this to a new, yet to be formed international body called **"The International Control, Management and Governance Council of the Net –"ICMGCN"** where the US plays a leading role, but where the international community also has a place and role too. (I will provide more details on this proposed format at a later and when consultations start on this transition).
7- To expire the JPA and replace it with the "iPA" (The International Project Agreement). The iPA's term will be for one or two year period maximum while transition preparations as listed in item 2 above are underway.
8- The "iPA" to contain new mandates on ICANN to perform as listed below.

THE PROPOSED NEW INTERNATIONAL PROJECT AGREEMENT (iPA) AND ITS USG MANDATES ON ICANN.

The new International Project Agreement (iPA) would contain specific tasks and measures that will be mandated on ICANN to perform with immediate effect. It will contain measured milestones to be part of a real restructuring and reforming of the ICANN structure and function in order to render it a truly Global Public Service Provider of a Global Public Good . ICANN's role is not to be a business opportunity creator for selling new domain names that it is seen as today in the West and internationally.

One of the iPA's new mandates should be for ICANN to factor Internationalized Domain Names (IDNs) at the core of its function and structure and not at its periphery where it has always been. To do so ICANN must create a new supporting organization called the IDNSO (Internationalized Domain Name Supporting Organization)

ICANN"S NEW SUPPORTING ORGANIZATION CALLED THE "IDNSO" (INTERNATIONALIZED DOMAIN NAME SUPPORTING ORGANIZATION)

To do that, ICANN will be mandated to create a new supporting organization called the IDNSO (Internationalized Domain Name Supporting Organization) to be headed by someone of impeccable IDN credentials who carries great respect in the IDN field not only from within the ICANN Community as an IDN leader but also by the international community and the IDN regions of the world (*not me, I am not looking for a job. I have too many).*

The IDNSO will sit side by side with the GNSO (Generic Name Supporting Organization) and the CCNSO (Country Code Name Supporting Organization). All three SOs will operate separately but cooperatively to recommend on what ought and ought not to be done on the mandates placed upon them.

Similarly to the GNSO whose mandates are primarily on Generic Naming, and the CCNSO on the Country Code, the IDNSO's mandate will be on **all** IDN related matters. All IDN policies in the Gs or the CC's would have to be congruent with the mandates and the recommendations of the IDNSO on what should and should not be done with IDNs. This will also cover current NEW GTLD and NEW IDN GTLD plans.

CONCLUSION

First, I ask you all to accept my apologies for the length of this document. A lot needed to be said, validated, and supported for any serious recommendation to be put forth.

I believe I have validated my positions and those of my organizations as well as those of my international communities and constituencies why ICANN has not reached any maturity level for it to be freed on its own accord.

Also, that the JPA should be replaced with the iPA, (The International Project Agreement). That the Obama US administration should maintain control over the Internet once the JPA expires September 30th, 2009, but only for an interim period, and only as a custodian of it on behalf of all people of the world, and only in preparation for the transitioning of this management and control of the Internet to a new world body in one year but no later than two years which I called **"The International Control, Management and Governance Council of the Net** –"**ICMGCN**

Also, for consultation to begin in earnest on how and what The International Control, Management and Governance Council of the Net –"ICMGCN roles and responsibilities will be including how to oversee ICANN in later years and from where it will derive its authority from and whom should be represented on it, how and how many.

And finally, under no circumstances should the JPA be extended "as is" without these

new mandates. ICANN must be mandated to deliver real reform and restructuring of its structure and operation that would place IDNs at its core where it had always belonged.

Warmest regards,

(Via Email)

Khaled Fattal

Chairman of the Board of Directors, and CEO, MINC,
The Multilingual Internet Names Consortium, www.minc.org

Chairman and CEO, Live Multilingual Translator www.LMTranslator.com

ICANN President's Advisory Committee Member on IDNs (ICANN)
http://www.icann.org/en/committees/idnpac/