



November 17, 2015

Via First Class Mail and E-Mail

Mr. Fadi Chehadé
President and Chief Executive Officer
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: .PHONE generic Top Level Domain (Application ID: 1-2011-80942)

Dear Mr. Chehadé:

The United States Telecom Association (USTelecom) submits this correspondence to the Internet Corporation for Assigned Names and Numbers (ICANN) regarding the proposed amendment and deployment of the .PHONE generic Top Level Domain (gTLD). Notwithstanding amendments recently sought by the applicant, ICANN should ensure that the applicant for the above referenced gTLD – Dish DBS Corporation (Dish) – complies with the ICANN Board’s resolution from earlier this year which adopted the Category 2 Safeguard Advice from the Government Advisory Committee (GAC) regarding exclusive generic TLDs.¹

On June 21, 2015, ICANN’s Board adopted a resolution (ICANN Board Resolution) that implemented recommendations contained in the GAC’s April 11, 2013, Beijing Communiqué (Beijing Communiqué).² Among other things, the ICANN Board’s resolution stipulates that so-called “Exclusive Generic Applicants” such as Dish must either: 1) submit a change request to no longer be an exclusive gTLD, and sign the current form of the New gTLD Registry Agreement; 2) maintain their plan to operate an exclusive generic TLD, with the understanding that their application will be deferred to the next round of the New gTLD Program; or 3) withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook.³

To date, Dish has yet to satisfy any of these requirements.

In separate negotiations with Dish in an attempt to settle an ongoing new gTLD community objection, USTelecom attempted in good faith to resolve significant anti-

¹ See, ICANN website, *Approved Resolutions / Meeting of the New gTLD Program Committee* (available at: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>) (visited November 16, 2015) (*Board Resolution*).

² See, ICANN Governmental Advisory Committee, *Beijing Communiqué* (April 11, 2013) (available at <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>) (visited November 16, 2015).

³ *Board Resolution*, Section 2(a)(2).

competition concerns stemming from Dish’s proposed deployment of the .PHONE registry. Despite substantial accommodations from USTelecom, the negotiations with Dish were ultimately unsuccessful. Indeed, whereas GAC Advice and the ICANN Board Resolution acknowledged that exclusive registry access should “serve a public interest goal,” the failure of these negotiations resulted from Dish’s steadfast refusal to agree to *any* Public Interest Commitments (PIC) under Specification 11 to the new gTLD Registry Agreement.

Amendments submitted by Dish on September 18, 2015 attempt to transition the .PHONE new gTLD away from “a restricted, exclusively-controlled gTLD for the purposes of expanding [Dish] and its affiliated entities’ ability to [*inter alia*] create a connected digital presence and personalized brand experience for customers and other business partners.”⁴ The amendments unconvincingly attempt to re-characterize .PHONE as “a controlled gTLD” “providing Members with open and non-discriminatory access” where “Members are defined as Dish, its Affiliates and Dish’s subject determination as to other “Qualified Applicants.”⁵ These amendments simply fail to satisfy the requirements of the ICANN Board Resolution.⁶ While Dish purports in its amended application that the .phone gTLD will be operated as a “controlled gTLD,” it is in reality an exclusive generic TLD, prone to discriminatory and subjective determinations on which entities are “Qualified Applicants,” and a discretionary reservation “to open this TLD to additional classes of registrants in the future,” who “will not be considered members.”⁷ Therefore the application remains in direct conflict with the ICANN Board Resolution. Any ‘controlled’ access within the .PHONE gTLD is justifiably called into question given Dish’s competitive role in the communications marketplace. Moreover, Dish’s intransigence towards any PICs within Specification 11 during negotiations with USTelecom, further calls into question its intention to operate .phone in anything other than a closed manner.

Given the conduct of these negotiations, the generic nature of the .PHONE TLD, and Dish’s substantial competitive position in the communications marketplace, increased scrutiny by ICANN more carefully drawn application language and corresponding PICs are warranted. Dish is a significant holder of federally licensed wireless spectrum, and the company is – by its

⁴ Dish DBS Corporation, *.Phone new gTLD Application* (Application ID: 1-2011-80942) (available at: <https://gtdresult.icann.org/applicationstatus/applicationchangehistory/downloadfromdocument/4755?t:ac=110>) (visited November 16, 2015).

⁵ Dish DBS Corporation, *.Phone new gTLD Application* (Application ID: 1-2011-80942) amended September 18, 2015. (available at <https://gtdresult.icann.org/applicationstatus/applicationchangehistory/downloadtodocument/4755?t:ac=110>) (visited November 16, 2015).

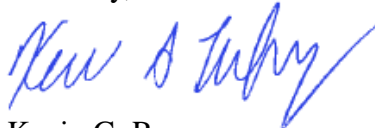
⁶ Dish DBS Corporation, *.Phone new gTLD Application* (Application ID: 1-2011-80942) (available at <https://gtdresult.icann.org/applicationstatus/applicationdetails/110>) (visited November 16, 2015).

⁷ *Id.*

own admission – poised to be a significant competitor in the voice marketplace.⁸ It should come as no surprise that that Dish’s proposal to deploy the .PHONE gTLD was subject to GAC Early Warnings.⁹ Failing such increased scrutiny and PICs, USTelecom respectfully requests that ICANN direct Dish’s consistently exclusive TLD application in accordance with GAC Advice and the corresponding ICANN Board Resolution, deferring it to the next round of the new gTLD program.

Should you have any questions regarding this matter, please feel free to contact the undersigned.

Sincerely,



Kevin G. Rupy
Vice President, Law & Policy

cc: Dr. Stephan D. Crocker, Chairman of the Board
Mr. Akram Atallah, President GDD
Ms. Christine A. Willett, Vice President gTLD Operations

⁸ See *id.* at Response to Question 18A.

⁹ ICANN Governmental Advisory Committee, *.Phone Early Warning* (November 20, 2012) (<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197840/Phone-AU-80942.pdf>) (visited November 16, 2015).