

## **Comment on Proposed Bylaws Amendment to Add a Voting Director from the At-Large Community to the ICANN Board of Directors**

The following comments are submitted on my own behalf and do not necessarily represent the views of the ALAC.

### **ARTICLE VI, Section 4(2)**

There are several problems or possible problems with this section.

- The first sentence refers to people who serve on an SO Council but makes no reference to the ALAC or the At-Large Community. The second sentence starts with “If SUCH person...” and lists prohibitions. Since the backward reference does not include ALAC or At-Large, a person occupying one of those roles would be subject to no such prohibition. Also note that the selection rules adopted by the ALAC include people as voters who are not sitting on the ALAC (specifically the chairs of the RALOs) and as such would also not be subject to any prohibitions if they were “nominated”.
- The term “nominated” is not strictly correct, since the process identified by the ALAC is for the person interested in the position to submit a Statement of Interest. The wording is relevant because it is important to differentiate the At-Large process from the Nominating Committee process where a person who is “nominated” fills the seat instead of standing for a further selection/election.
- The section makes two references to “the committee designated by the At-Large Community relating to the selection of ...”. It is unclear if this is referring to the Board Candidate Evaluation Committee (BCEC) which creates a slate of candidates for later voting, the At-Large Board Selection Design Team (ABSdt) that has designed and will oversee the process, the ALAC plus the five RALO Chairs who do the actual voting or some combination of these.
- I note that the replacement provisions for both SO and ALAC have no effective meaning for Nominating Committee appointed people, since the Nominating Committee does not traditionally operate to replace people in such temporary and partial circumstances. Although this has a potential impact of selection processes for both the ccNSO and the GNSO, the possible impact on the ALAC is larger since 1/3 of the ALAC members are appointed by the Nominating Committee. Arguably far more important from an At-Large perspective, this disenfranchisement impacts the regional balance that is carefully safeguarded in At-Large processes.

To address all of these issues, I would suggest that all of the new text in ARTICLE VI, Section 4(2) be eliminated and a new section be added following ARTICLE VI, Section 4(2) and preceding the current ARTICLE VI, Section 4(3).

No person who serves in any capacity (including as a liaison) on the At-Large Advisory Committee, or who holds the position of chair of a RALO, shall simultaneously serve as a Director or liaison to the Board. If such a person submits a

Statement of Interest to be considered as a candidate for Board Seat 15, the person shall not, following such submission, participate in any discussion of, or vote by the At-Large Advisory Committee, RALO chairs or any of the constituent At-Large Advisory Committee sub-committees relating to the selection of the person to hold Board Seat 15 until the selection process has been completed. In the event that a person serving on the At-Large Advisory Committee, or who holds the position of chair of a RALO, submits a Statement of Interest to be considered as a candidate for Board Seat 15, the RALO for the region that the person represents may select a replacement for purposes of the Committee's selection process. In the event that a person is serving as a Liaison to the At-Large Advisory Committee, the group or entity that selected the person may select a replacement for purposes of the Committee's selection process.

#### **ARTICLE VI, Section 8(1.g)**

Unlike the other subsections in this section, the proposed addition includes both steady-state provisions and transition details.

The word "first" is not appropriate or needed since based on the sentence structure, it would apply to all successive terms as well. I would suggest that this subsection follow the wording of the subsections for the other seats, adjusting for one seat instead of two:

The regular term of Seat 15 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2010 and each ICANN annual meeting every third year after 2010" and move the rest to Article XX Section 7(5).

That being said, the transition terms presently in this section are problematic.

- It says that "the At-Large Community shall, through a process coordinated by the At Large Advisory Council, make the selection of a Director to fill Seat 15..." I presume that "At Large Advisory Council" should be "At-Large Advisory Committee". Regardless, I would propose that the process for making the selection belongs not here or in the Transition Articles, but rather in the Bylaw section on the ALAC as is the case with the SO positions (see Article X, Section 3(6) for the GNSO).
- The "At the conclusion..." wording implies that the process to select the Director to fill Seat 15 should take place after the conclusion of the annual meeting. That could significantly delay the seating of the selected Director. It would be far preferable if the requirement was that the selection take place following the approval of these Bylaws to allow the new Director to be seated at the conclusion of the Annual meeting as is the norm for other Directors who are seated at this time.

I propose a new transition subsection: **Article XX, Section 7(5.e)**:

After adoption of these Bylaws prior to the ICANN 2010 annual meeting, the At-Large Advisory Committee shall, according to its procedures referenced in Article XI, Section 2(4.j.1), ensure that a selection is made to fill Seat 15 on the Board with a term to conclude upon the commencement of the first regular term specified for Seat 15 in

accordance with ARTICLE VI, Section 8(1.g) of the Bylaws, and shall give the ICANN Secretary written notice of such Selection.

**Article XI, Section 2(4.j.1)**

“by the At-Large Community” in this section is largely redundant and potentially conflicting with “working in conjunction with the RALOs” in Section 2(4.j). Also, there is no mention of the process which is to be used, and I would suggest wording to address this be consistent with Article X, Section 3(6) on the GNSO.

I specifically suggest that the proposed:

Making a selection by the At-Large Community to fill Seat 15 on the Board.  
Notification of the At-Large Community’s selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

Be replaced with:

Making a selection to fill Seat 15 on the Board. Selection procedures are defined in the ALAC Rules of Procedure. Notification of the At-Large Community’s selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

**Length of the first Term**

There has been significant discussion within At-Large regarding the very short length of the first term, specifically the 6-month term proceeding the first regular term. I do not believe that this requires any explicit action of the Board or modification of these Bylaws, as I believe that it is within the power of the ALAC to decide that the first selection process will identify the person who will serve both the first (6-month) term as well as the following first regular term. There is a precedent to this in how the ccNSO filled their first Board seat.