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COMMENTS OF GENERAL ELECTRIC COMPANY REGARDING REVISED RPM REQUIREMENTS DOCUMENT AND PROPOSAL FOR FURTHER REVISIONS

General Electric Company (“GE”) appreciates the opportunity to comment on the revised RPM Requirements document and the proposal for further revisions to that document, posted for public comment by ICANN on August 5, 2013.

While GE did not find too many significant concerns in the revised RPM Requirements document, we do note the following issues:

- In Section 2.1.1, we believe that the “TLD Start-Up Information” should be publicized by the registry, on its website, at the same time as notices are posted by ICANN and the TMCH. However, the 30 day notice trigger should start when the TMCH and ICANN (and the registry) publicize the Sunrise, and not when the registry provides the information to TMCH and to ICANN.
- In Section 3.2.4, we are concerned by the statement that “the Sunrise Period and a Limited Registration Period MAY overlap”; for the reasons stated below, the Sunrise needs to come first and be completed before any other early registration periods commence. This is already enshrined in Section 2.2.4, which states that no domain name can be allocated to a non-Sunrise Eligible Right Holder before the conclusion of Sunrise. Section 3.2.4 therefore appears to be in conflict with Section 2.2.4, and should be amended to state “The Sunrise Period and a Limited Registration Period MAY NOT overlap.”

Apart from the revised RPM Requirements Document, GE is particularly concerned by and strongly objects to the additional revisions proposed by “a group of community stakeholders including a number of applicants” that was contained in their Memorandum of Proposed Revisions to RPM Requirements, dated August 6, 2013. Those proposals are discussed below.

Their first proposal would eliminate the 30 day advance notice period for Sunrise Periods recently adopted as part of the “Strawman Solution” process. While the proposal would retain part of the notice, the notice would be made at least 60 days prior to the end of the Sunrise Period, allowing the registry to start the Sunrise Period immediately upon notice, or even before

notice is given if the Sunrise Period is longer than 60 days. The proposal would also allow registries to begin allocating domain names 30 days after the start of the Sunrise Period (i.e., while the Sunrise Period is still going on).

We believe the advance notice period provides brandowners with vital and necessary opportunity to register marks in the Trademark Clearinghouse (TMCH) before the Sunrise Period commences. We and other brandowners should be provided with reasonable and adequate time to register relevant marks in the TMCH before a Sunrise Period commences, so that companies will receive Claims Notices for applications made throughout the entire Sunrise Period. If the Sunrise Period commences before marks are in the TMCH, brandowners will not receive Claims Notices for Sunrise applications made during this “gap period.” Commencing the Sunrise Period before notice is sent (as this proposal appears to allow) is just as problematic.

Further, the proposal to allow allocation of domain names during a Sunrise Period controverts a basic tenet of Sunrise Periods: Sunrise is not “first come, first served.” Under this proposal, an early applicant with the brand ACME could have that domain name allocated, while a later Sunrise applicant also with the brand ACME would find that same domain name unavailable. This is fundamentally unworkable, and would represent a material change to Sunrise.

The second proposal would allow pre-Sunrise allocation of domain names to third parties. By definition, these names would be unavailable to brandowners in the Sunrise.

This proposal, if adopted, would undermine the requirement that Sunrise be the first opportunity for any third-parties to register domains. Section 3.2 of Specification 5 allows “activation” of up to 100 names by the registry to be used in the “operation or promotion” of the TLD. This section was intended to allow registries to use a few domains for their own use (e.g. billing.TLD or sunrise.TLD); it was not intended to establish a “Founders Program.” Such a program could be used to allow a registry to arbitrarily choose one brandowner over another and award domain names to the most lucrative bidder. We believe the Sunrise Period must be a level playing field, and names activated by the registries through Section 3.2 of Specification 5 should be used only by the registries in their business.

The third proposal allows for a broad “exemption” procedure to offer “geographic, community or other programs” to register domains pre-Sunrise or during Sunrise. This proposal would also allow a registry to set up an alternative Clearinghouse for their TLD, in addition to the TMCH.

This proposal would go even further than the second proposal to allow registration of names prior to Sunrise, and would do further damage to the Sunrise concept. We have an early view of what this would look like in the “Reserved Names” program just announced by dotAfrica. In this program, governments and IGOs would be able to register names with Geographic, Religious, Cultural, Linguistic, Economic and Public Interest significance before Sunrise.

We have no objection to Founders Programs per se and under the proper conditions consistent with the rules. However, these types of programs will be equally effective if they take place after the Trademark Sunrise and we see no reason to place them prior to it. The second part of the third proposal would undermine the TMCH’s role as a “one stop shop.” There is no need for this alternative clearinghouse, except as an additional source of revenue for registries. It would

introduce inconsistencies in approach, requirements, and results and create confusion and uncertainty. We also oppose this proposal to the extent it would also be used to register marks ineligible for the TMCH (e.g., unregistered marks).

Thank you for your consideration of these comments. If you have any questions or wish to discuss any of the points raised herein, please feel free to contact me at kathryn.park@ge.com.

Sincerely yours,

A handwritten signature in cursive script that reads "Kathryn B. Park". The signature is written in black ink and is positioned to the right of the typed name "Kathryn B. Park".