**AT&T Comments on Proposed Final New gTLD Applicant Guidebook and**

**December 10, 2010**

AT&T appreciates the opportunity to comment on the proposed Final Version of the new gTLD Applicant Guidebook (“FVAG”). We recognize that the ICANN community and staff have invested a significant amount of time and effort in developing this fifth version of the Applicant Guidebook. However, the decision-making process is now at a critical juncture and it remains incomplete. ICANN should take the necessary time to issue a comprehensive decision that incorporates the relevant findings of the “Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies” prepared by Michael L. Katz, Gregory L. Rosston and Theresa Sullivan (“Phase II Report”) and that fully addresses all of the four overarching issues related to the introduction of new gTLDs in a holistic manner. The proposed FVAG is not a substitute for a reasoned fact-based decision that analyzes the extensive community input that has been submitted, which should be a prerequisite for moving forward with the implementation of new gTLDs.

As a preliminary matter, AT&T is concerned about the comment deadline for the proposed FVAG. In addition to providing a compressed time period for comments on the voluminous FVAG and the recently issued Phase II Report, the comment deadline is the same day as the Board’s scheduled vote on the new gTLD process. This rushed process does not allow sufficient time for the community to provide input, let alone time for the ICANN Board to analyze and consider this input. Accordingly, AT&T joins other commenters in requesting that additional time be provided for public comments and Board consideration of these comments.

**1. The Recently Issued Economic Study Contains New Information that Should Be Incorporated into the New gTLD Implementation Process**

AT&T and other stakeholders repeatedly have urged ICANN to undertake a fact-based economic analysis that is designed to thoroughly assess the potential costs and benefits of new gTLDs. ICANN initially released a high-level economic paper that was limited to examining the potential competitive benefits of new gTLDs on a theoretical basis. Earlier this year, ICANN released the Phase I Report, an economic study that surveyed existing studies and discusses a proposed analytical framework for analyzing the costs and benefits of new gTLDs. One of the primary conclusions of the Phase I Report was that more data and information was needed for ICANN to understand fully the costs and benefits of new gTLDs. On December 3, ICANN released the Phase II Report, which is the first of the economic studies to include at least some research and analysis of industry data about past experiences with new gTLDs.

The Phase II Report presents new factual information that should be considered by the Board and incorporated into the new gTLD implementation process. The Economic Study Phase II validates many of the concerns that AT&T and others have raised about the relative costs and benefits of the proposed program for introducing large numbers of new gTLDs. It also provides factual support for the analysis and conclusions that were included in the first phase of the Economic Study, which are directly relevant to the structure of ICANN’s implementation plan for new gTLDs. Accordingly, there is no basis for ICANN to simply conclude that the costs and benefits of new gTLDs are too speculative to assess or consider in its decision-making. Rather, ICANN should take the opportunity to learn from the past and incorporate these learnings into the new gTLD program.

The following are some specific examples of issues that should be informed by the Phase II Report:

*First*, the Phase II Report finds concludes that there appears to be a high percentage of defensive registrations and sites without unique content associated with new gTLDs. The Phase II Report also concludes that some rights protection mechanisms implemented during a sunrise period can be effective, but poorly implemented procedures can result in “large numbers of improper registrations”. Moreover, the Phase II Report notes the importance of different rights protection mechanisms after the launch of a new gTLD.

These findings confirm AT&T’s concerns about the current implementation plan for new gTLDs. The FVAG does not establish any rights protection mechanisms at the top level and the Trademark Clearinghouse provides only limited one-time protections for second level registrations. In order to be effective, the Trademark Clearinghouse must be more than just a list – it must be linked to effective rights protection mechanisms. Otherwise, it will merely be a mechanism for gaming and abuse. We also remained concerned that the Uniform Rapid Suspension (“URS”) process, as currently structured, does not provide a rapid or effective mechanism for protecting rights or deterring malicious conduct.

*Second*, the Phase II Report concludes that there is a higher rate of defensive registrations among the most valuable global brands. This demonstrates the need for a Global Protected Marks List (“GPML”) as a proactive rights protection mechanism. Not only is a GPML an important defense for AT&T and other global brand holders, but it is an important safeguard against malicious conduct. As AT&T has previously discussed, abuse of the most valuable global brands is often tied to malicious conduct that is intended to confuse consumers. We note that the .co registry has implemented a GPML as a way to attract customers and establish industry leadership with respect to rights protection mechanisms. This should be viewed as best practice that is incorporated into all new gTLDs.

*Third*, the Phase II Report provides a realistic assessment of the likely benefits of new gTLDs. The Phase II Report concludes that new gTLDs are unlikely to provide significant competition to .com and other existing gTLDs, and it finds little evidence of name scarcity in .com. While the Phase II Report hypothesizes that differentiated new gTLD offerings might provide more competition and consumer benefits than unrestricted, generic TLDs, it finds that the size of such benefits in practice depend on whether there are other ways to achieve the objectives of new gTLDs. The Phase II Report supports the position of AT&T and other commenters that ICANN should introduce new gTLDs in discrete, limited rounds and continue to prioritize the introduction of Internationalized Domain Names. It also reiterates the need for rights protection mechanisms as a way to ensure that new gTLDs offer some differentiation and deliver benefits to end users.

AT&T repeatedly has urged ICANN to conduct a thorough, fact-based economic study much earlier in the process, so that the relevant information could be incorporated into the decision-making process on the new gTLD program. It is unfortunate that the most recent economic studies were completed *after* the working group reports were completed on the overarching issues of rights protection mechanisms and prevention of malicious conduct. Nevertheless, ICANN’s delay in completing a fact-based economic study does not provide a justification for moving forward with the implementation of new gTLDs.

**2. ICANN Should Issue a Comprehensive and Reasoned Decision that Addresses All Overarching Issues Related to the Introduction of New gTLDs**

AT&T filed comments on earlier draft versions of the new gTLD applicant guidebook and in the separate comment proceedings involving the economic analysis, the root scaling study and trademark rights protection mechanisms. We have repeatedly highlighted the need for ICANN to incorporate all of these issues into a holistic implementation plan for new gTLDs and to develop a comprehensive set of safeguards to address them. Unfortunately, the segmented process that has been utilized to address the overarching issues has not produced such a decision.

The lack of an integrated policy development process is detrimental to the development of the implementation plan for new gTLDs. As AT&T repeatedly has pointed out, there is a direct linkage between trademark infringement involving well-known corporate brands and malicious conduct that harms consumers. Likewise, there is a clear inter-relationship between safeguards that protect against trademark abuse and mechanisms that protect consumers from malicious conduct. Once again, we are very concerned that additional proactive measures are needed to keep deceptive gTLDs out of the system in the first place. Therefore, it is essential that ICANN address these inter-relationships and issue a unified decision that addresses all of the overarching issues.

**3. ICANN’s Process for Concluding the New gTLD Process Should Be Consistent with its Transparency and Accountability Responsibilities**

ICANN’s program to introduce new gTLDs is a major undertaking which has significant implications for community stakeholders within ICANN and for global Internet users. The process that ICANN utilizes to conclude the decision-making process for its new gTLD program is a reflection of its commitment to transparency and accountability. Thus, ICANN’s process for concluding the new gTLD decision-making process should meet the highest standard of transparency and accountability.

The Accountability and Transparency Review Team (“ATRT”) Proposed Recommendations provides guidance on the type of decision-making process that should be used for such an important proceeding. In particular, paragraph 20 of the ATRT Proposed Recommendations addresses ICANN Board decisions. The ATRT recommends that the Board adopt the practice of articulating the basis for its decisions and identifying the public comments that were persuasive in reaching its decision. Importantly, the ATRT also recommends that the Board identify the relevant basis and public comments that were *not* accepted in making its decision and articulate the rationale for rejecting relevant public comment in reaching its decision. AT&T urges the ICANN Board to complete this type of reasoned decision and demonstrate its commitment to accountability and transparency. Such action also will go a long way toward ensuring that ICANN’s decision is “embraced, supported and accepted” by the public and the Internet community.