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VIA E-MAIL & FACSIMILE

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Dear Kurt and John

This letter is in response to VeriSign's letter dated September 24, 2004 ("VeriSign Letter") regarding NeuLevel's request for information ("NeuLevel RFI") with respect to the current .net procurement.

I.   SUMMARY

It is inconsistent for VeriSign to claim that on the one hand it is "committed to providing ICANN with cooperation and assistance in ensuring that the .net selection process is fair [and] objective," yet refuse to do its part to make the process open, transparent and fair. Although it argues that each potential .net applicant must meet or exceed VeriSign's current performance levels, it declares that all relevant information regarding such performance levels is "competitively sensitive confidential information" that cannot be disclosed. NeuLevel does not believe limited disclosure of this information in the procurement process would competitively disadvantage VeriSign, particularly because: 1) VeriSign is currently required by contract to provide some of this information for .net, yet it has consistently failed to separate all of the .com data from its .net data; and 2) to the extent ICANN intends to compare an applicant's proposal to the incumbent's actual performance, an open, transparent and fair process demands that VeriSign provide all relevant performance data. If such data is not disclosed to each of the applicants, it would be unfair to require the evaluators to use VeriSign's current performance as a benchmark in its evaluations.

II.   DISCLOSURE OF DATA WOULD NOT COMPETITIVELY DISADVANTAGE INCUMBENT

As an initial matter, the limited disclosure of VeriSign's performance data to allow applicants to address comparative performance criteria would not competitively disadvantage VeriSign. Much of the

information NeuLevel requests in its RFI is necessary to address the comparative criteria is information that VeriSign is required to provide to the public in its .net reports as required by Appendix T to the .net agreement http://www.icann.org/tlds/agreements/verisign/registry-agmt-appt-net-org-16apr01.htm or has voluntarily released to third parties. The current .net Agreement requires the disclosure of certain information to ICANN (and after 3 months to the public) with respect to the .net TLD. Unfortunately, VeriSign has failed to comply with its own agreement by not providing the data separate and apart from the data for .com. Such data includes, but is not limited to, the number of adds, deletes, modifies, check commands, whois queries, etc. for the .net TLD. Questions 1, 3, 8, 9, 10 and 11 in the NeuLevel RFI all relate to VeriSign's provision of this type of data. Moreover, although VeriSign argues that the requested information about .net is "competitively sensitive," it has voluntarily provided some of such data in its own marketing programs, in lobbying and in public testimony to the United States Government. For example, VeriSign provided selected data about .net in several of its Domain Name Industry Briefs (See http://www.verisign.com/static/015909.pdf as one example). Moreover, VeriSign provided testimony to the United States Government about selected .net statistics. See http://commerce.senate.gov/hearings/testimony.cfm?id=1324&wit_id=3872.[1] As recently as today, VeriSign has released selected data to the press to serve its interests. See http://www.washingtonpost.com/wp-dyn/articles/A60758-2004Oct25.html. Clearly, these voluntary disclosures by VeriSign suggest that some of the requested information is not sensitive.

Nevertheless, to the extent that any of this information is deserving of protection, steps could be taken in the procurement process to adequately protect this information. For example, NeuLevel, and we believe other .net bidders, would be willing to sign an appropriate nondisclosure agreement that would protect the data while at the same time allowing use of the data in proposals. Similar nondisclosures have been used in other contexts to allow competitors access to information for certain limited purposes while protecting the incumbent from competitive disadvantage.

III.   DISCLOSURE OF DATA REQUIRED IF EVALUATION COMPARES VERISIGN'S CURRENT PERFORMACE WITH THAT PROPOSED BY APPLICANTS

To ensure an open, transparent and fair .net procurement process it is absolutely essential that all applicants have access to the information needed to address a particular criterion. The GNSO consensus criteria ("Criteria") require that each applicant compare its proposed system to the current service provided by the incumbent. Yet, there is little or no data available from the incumbent that would enable any applicant to make such comparisons. As noted above, the only data that is available -- in VeriSign's monthly reports -- is aggregated with data from .com so no applicant can discern what is applicable solely to .net. More specifically, The GNSO Absolute Criteria adopted by a consensus of the Internet community, states that:

> Applicants should indicate how their proposed solution compares against the current service (defined as .net operator's monthly reports over the past 12 months) and indicate how they could enhance the service. For example an applicant could provide the mean

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[1] On September 30, 2004 Ari Balough, Senior Vice President of VeriSign told the US Senate Committee on Commerce, Science and Transportation that "Overall, 30 percent of all e-commerce runs over .NET. In addition, more than 155 billion emails run over the .NET infrastructure every day. That means, every minute, .NET enables over $1.4m in e-commerce and the routing of over 650 thousand e-mails!"

time to resolution for additions or changes to the .net zone file. Preference should be given to proposals offering enhanced performance.

NeuLevel's RFI specifically seeks information from VeriSign on the details of this service so that it, and all bidders, can adequately respond to the above criteria. See Questions 1, 2, 3, 4, 8, 9, 10, and 11 of the NeuLevel RFI). In addition, Criteria 3 states:

> Dot net currently offers registry services such as the Redemption Grace Period, support of internationalized domain names in accordance with the IDN Guidelines www.icann.org/general/idn-guidelines-20jun03.htm, (and the pending Wait List Service WLS). Applicants should be asked "Does the applicant wish to maintain all registry services existing at the time the Request For Proposals is released?" If yes, please provide specifics and demonstrate the technical and legal ability of the registry to maintain existing services. If no, please expand on any issues relating to the withdrawal of such services.

Questions 7, 13, 14 and 16 of NeuLevel's RFI refer to data regarding VeriSign's current implementation of IDNs, the redemption grace period, Consolidate, EPP and IPv6, all of which are services applicants must compare to VeriSign's current operations. Lastly, NeuLevel requests information that is essential in demonstrating a sound business and financial model (See Questions 5, 6, 12 and 15).

Not only does the GNSO criteria require applicants to compare their proposed services to the incumbent's actual operation of such services, but on May 13, 2004 VeriSign itself advocated the adoption of 17 specific criteria for the upcoming .net procurement, many of which would require each applicant to compare its proposed services to VeriSign's actual performance of these services. The current VeriSign letter reiterates its proposed criteria be used by the evaluators to assess each proposal. It is hypocritical for VeriSign to argue that the successful .net applicant must meet or exceed the criteria it sets out, but then refuse to provide the data by which a competing applicant could measure and demonstrate its performance. For example, criteria 3 of VeriSign's May Letter states:

> The operational system must be scalable to support ongoing performance of .net at all times. Applicants should be required to provide specific volumes and performance measures that they will be capable of supporting, such as:
>
> - Scale sufficient to handle the existing number of names and projected growth
> - Scale to handle existing DNS query loads including normal peaks and projected growth
> - Scale to handle events such as DDoS attacks and traffic generated by viruses . . . Attacks and malicious activity are on the increase and can generate as much as 10x-20x peak load. . . The operator should have the scale to handle increase traffic caused by these attacks. Excess capacity of at least ten times sustained average query rate is required.

See http://www.icann.org/correspondence/golden-to-jeffrey-13may04.pdf, Exhibit A.[2] An applicant simply cannot demonstrate that it has sufficient scale to handle "existing number of names, existing DNS query loads including normal peaks and projected growth, or ten times sustained average query rate" without the incumbent providing such vital baseline information to potential bidders.

VeriSign argues that they are "concerned that NeuLevel's request is an attempt to gain insight about VeriSign's technology and to gain an unfair competitive advantage in the upcoming bid process for the follow-on .net registry contract." Quite the opposite is true. If, as the GNSO has recommended, the .net RFP criteria maps to the levels of current performance (and not to the service and performance levels set forth in the current .net agreement) -- a position VeriSign has strongly recommended -- the creation of a level playing field requires that all applicants are informed of VeriSign's current performance levels. Again, NeuLevel is not seeking this information just for its own bid, but rather for all applicants. Of course, if the RFP criteria were based on the performance and service levels set forth in the current .net Agreement rather than VeriSign's actual performance levels, then much of the data requested in NeuLevel's RFI would not be needed.

IV.   CONCLUSION

To the extent that ICANN adopts criteria for the .net procurement that require a comparison of an applicant's proposal with the incumbent's current performance levels, a level playing field and a fair and open procurement process demand that all applicants receive information about such performance levels. Failure to do so will significantly disadvantage all applicants except the incumbent. To the extent any such information is competitively sensitive, there are adequate and well-established means to protect it and to ensure VeriSign is not competitively disadvantaged.

NeuLevel is willing to expand on any aspect of this letter, including but not limited to providing the line-by-line reasoning behind each data point requested.

Sincerely,

Richard Tindal
Vice President, Registry Services.

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[2]   Similarly, in the May Letter, VeriSign also states that to promote stability in the .net space: "Applicants should be required to demonstrate their capability to support a scalable registration system, including demonstrating such capabilities as: - Scale to handle current volumes and projected growth; 2X name base capacity to withstand a 'registration add attack' from a compromised registrar system; and Scale to handle through-put rates currently achieved by .net registry." Again, the incumbent argues on the one hand argue that the RFP criteria must state that the successful .net applicant have the scale to handle (a) current volumes (and growth), (b) 2x base capacity to withstand add attacks, and (c) through-put rates currently achieved by the .net registry. Because VeriSign is demanding that such information be sought through the procurement, it is essential that VeriSign be willing to give such information to each of the Applicants. Only the provision of such data from the incumbent will create the level playing field for all bidders to apply and enable the evaluators to make objective determinations.