

July 12, 2001

Secretary Donald L. Evans
Office of the Secretary
Room 5854
U.S. Department of Commerce
14th & Constitution Ave. NW
Washington, DC 20230

Dear Secretary Evans:

We write to you to ask you to suspend the recent Request for Quotes (RFQ) issued by the National Institute of Standards and Technology (NIST) on behalf of the National Telecommunications Information Administration (NTIA) regarding management of the .us country code top level domain (ccTLD). The RFQ proposes terms that impinge on the sovereignty of the states and proposes to divest the American people of a unique national resource for no substantial return, while enriching the single private contractor lucky enough to receive the award.

The “.us” ccTLD is a unique national resource, a piece of cyberspace administered exclusively by and for the benefit of the United States, developed as part of a cooperative agreement funded by the United States and maintained by the American taxpayer. At present, the .us domain consists primarily of state and municipal entities, libraries, and k-12 schools.

In August 2000, NTIA commenced a proceeding to dispose of the .us domain. Over 20 non-profit organizations and academics submitted comments urging NTIA to explicitly require that management of .us benefit the American people. On February 1, 2001, a coalition of non-profits, stakeholders and academics from across the political spectrum submitted a letter requesting NTIA conduct a separate proceeding on the public interest implications of management of .us. On May 30, 2001, NTIA rejected the request for any further deliberation on the public interest aspect of managing .us. Copies of the letter and NTIA’s response are attached.

On June 13, 2001, the Department of Commerce released its RFQ. The RFQ raises the following very troubling concerns.

- ***The RFQ infringes state rights by subjecting states to the jurisdiction of a federal vendor.*** The RFQ will assign control of the existing registered names to the contractor winning the award, and requires the winning contractor to implement centralized controls. The vast majority of registered names in .us belong to states and municipalities (or municipal entities such as public schools and public libraries). The RFQ currently lacks any direct accountability mechanism, leaving the states and other registrants at the mercy of the winning contractor and the Commerce contracting officer.

- ***The RFQ Assigns a Unique Public Resource to a Private Contractor With No Return To The American People.*** The .us ccTLD was created and maintained with taxpayer dollars. It represents a unique public resource which, once assigned and altered, is gone forever. Although the RFQ permits the contractor to charge fees for a variety of services, subject only to review by the contracting officer, it contains no requirement to serve the general public or provide a return on America's initial investment.

A coalition of more than 25 non-profit groups and academics from across the political spectrum, including Consumer Federation of America, Goodwill International, and OMB Watch, and including representatives of stakeholders such as the American Library Association, the National Association of Independent Schools, and the National League of Cities, have urged NTIA to conduct a separate proceeding on how management of .us can best serve the American people as a whole while protecting the interests of existing stakeholders. NTIA refused. We ask you to reconsider this request.

- ***The RFQ places the United States' top level domain under the authority of an International body in a fashion rejected by all other ccTLD administrators.*** The RFQ further requires that the winning vendor administer .us in accordance with the directives and policies of the Internet Corporation for Assigning Names and Numbers (ICANN) – a private corporation controlled by an international Board of Directors and widely criticized as unaccountable. The RFQ requires the new .us administrator to assess any fees leveled by ICANN and to abide by an as yet unformulated ICANN “Policy on Open ccTLDs.” No other ccTLD has agreed to such conditions, and many have rejected them explicitly as infringements on national sovereignty or unwarranted extensions of ICANN's authority. NTIA should not subject the .us ccTLD to conditions other ccTLDs have rejected. To do so shortchanges the interests of the American people. In addition, this condition raises further serious concerns regarding state sovereignty.
- ***The RFQ contains provisions of questionable legality, and the Process Surrounding the RFQ Raises Concerns.*** The requirement to impose mandatory arbitration modeled on ICANN's UDRP violates the Administrative Dispute Resolution Act (ADRA), which prohibits any Federal agency from conditioning receipt of a federal benefit on agreeing to mandatory arbitration. The process of issuing what amounts to an NTIA regulatory proceeding as a procurement contract from NIST, an entirely separate agency that did not take part in these proceedings, violates the Administrative Procedure Act (APA) and NTIA's statutory authority.

In light of the fact that the Administration has just nominated Nancy Victory as Administrator of NTIA, we ask you to delay the RFQ until Ms. Victory is confirmed and has time to review NTIA's .us policy. We hope that, after consideration of NTIA's policy to date, Ms. Victory will require further proceedings to explore the important issues raised by awarding management of .us.

Sincerely,

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