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## ICANN Transcription

### GNSO New gTLD Subsequent Procedures PDP Working Group

**Tuesday, 04 August 2020 at 03:00 UTC**

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call taking place on Tuesday, the 4<sup>th</sup> of August, 2020, at 03:00 UTC. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please identify yourself now?

Hearing no one, I would like to remind all to please state your name before speaking for transcription and recording purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior.

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With this, I'll turn it back over to our co-chair, Jeff Neuman. Please begin.

JEFFREY NEUMAN:

Thank you very much, Terri. Welcome, everyone, to this call. We have a lot to do today, so we should get started. Let me first ask if there are any updates to any statements of interest. Okay. Not seeing any, or hearing anyone, or seeing anything in the chat.

Then let's review the agenda. So, we're going to start with a discussion on the final report structure—I should say a draft final report structure—and the public comment survey. Also, then, spend a little bit of time on closed generics, and then review private resolutions, specifically model six. Model six is not drastically different than model five, it just has all the updates in it from the previous discussions.

So, with that, let me just see if there are any questions on the agenda. Okay. So, with the draft final report structure and public comment survey, we're going to go into, on Thursday, on the next call, a specific demonstration of what this is going to look like, but I just wanted to go over the concepts on this call so that we don't have to rehash all of that for the call on Thursday, and we can just look into the demo.

So, if you recall, the purpose of the draft comment period, because we've had so many comment periods before, at least four or five of them, the role of this public comment period is really to solicit information on proposals or the more detailed information that we

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have provided in this report, which was not up for comment or discussion for the last public comment period.

So the focus, really, is to get comments on that new information, and if there is any new information from the commenters that we either didn't have or couldn't consider before. So, that's going to be our main focus. We're going to state upfront that we do not intend, or we're really not intending—yeah, I guess that's the best way to say it—on having commenters just rehash the same arguments they made in previous public comment periods.

I believe we thoroughly, over this four-year period or more, have considered all of those arguments, and we're trying to avoid the, "But you didn't listen to us the last four times, and we're really serious this time."

Of course, we can't stop those comments from coming in, but we're not going to pay as much attention to those types of comments as we will on the new sections or new information that we get in.

So, we're going to use a Google Survey form, which has got its pros and has its cons. The pros are that it's a form that we can easily, or users can easily, put information in, save their work. We can ask specific questions.

And yeah, on Thursday, Jim, you'll see the form. That's when we'll go through all of that. So, you'll actually see some questions. But in general, the Google Forms are customizable so that we can ask for different types of things and have radio buttons on there, asking for specific choices.

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The downside of using Google Forms is that, when we ask certain questions, we can't really prevent people from putting whatever information they want in text boxes. If we ask, for example, "This is the proposal. Do you agree?" and if they say yes, they agree, we can't prevent them from then using the empty text box to explain why they agree with something or not. So we can't, necessarily, use the form to direct users that fill in one answer to other questions that are more specific on that answer.

But in general, I do think that there are more pros than cons of using this. Plus, it allows us, at the end of the day, to spit out the results—I guess I hate that word—to have those results easily categorized for us to review later on.

So, I'll get to this information. I see Justine asking a question. So, we are going to, yes, of course, allow the entire form to be downloaded in PDF and/or Word format, so those that want to think about the answers do not actually have to go in and wait to see every question. They will have a downloadable PDF or Word version.

And of course, there is really ... We're trying not to get commenters to submit Word Documents or PDF in return, but if for whatever reason, like in China, as Rubens points to, someone does need to respond in Word or PDF, then, of course, we will accept those comments. But we're really trying to get everything through the Google survey form.

The other thing with the Google survey form that we are able to do is that a commenter does not have to complete all the sections within the form, other than providing the initial, basic information of

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who they are and their e-mail address, things up-front. There is no obligation to complete any other part of the form, so commenters can comment on one thing, two things, or everything. It doesn't really matter.

The other thing is that we will have a question at the end that just allows them to put general comments in, if we didn't ask a specific question. There is a limit with Google Forms, unfortunately, of 2,000 characters in each comment box. So, that is a little bit of a drawback but it also, hopefully ... So, that's about 350/400 words, but that should also help, we hope, commenters focus their responses.

And so, I see Kathy's comment. Kathy, I know that there were a few complaints. I wouldn't say that there were a lot of complaints with the RPM form. We appreciate those, but most of the people that we talked to within RPM were satisfied. I do understand that you personally had some issues. Let's see what we can do. And of course, there is nothing preventing anyone from responding in a Word or PDF format. I'll get to the questions after I finish, if that's okay, because maybe I'll answer your questions up-front.

KATHY KLEIMAN: Jeff, can I comment, since you just responded to me?

JEFFREY NEUMAN: Let me finish this Kathy, please, and then I'll come—

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**KATHY KLEIMAN:** Jeff, the strident concerns about the form came from INTA in our last meeting, who said that they had talked to people who had a lot of problems with it, as well as Non-Commercial Stakeholders Group. There seems to be a secret character or word limit across the whole document that you cross without even knowing it. A lot of people spent a lot of time on these forms and had a lot of problems. I just wanted to let you know. I thought we weren't using these anymore. But thanks.

**JEFFREY NEUMAN:** Yeah. Kathy, we're going to use it this time because, again, I think the benefits outweigh the drawbacks at this point. Plus, it will help us focus the comments on specific things that we would like to ask about. I'll get to that in a minute.

Of course, you know they can save their work, but they need to actually, affirmatively ... In order to do that, they need to ... I think they have to actually hit the "save" button. I don't think it automatically saves.

And then, at the end of the day, when they're ready to submit, they actually do have to click on the "submit" button. They will get a copy of their submitted responses to the e-mail address that they put on the form.

When the commenter hits "submit," then all the comments will be displayed publicly via ... There is an automatically generated Google Spreadsheet. So, e-mail addresses there will not be ... The e-mail addresses provided by commenters will not be displayed, although their organization will.

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So, obviously, the other comments are that there is the standard form that we're providing. It's going to, hopefully, allow people to navigate back and forth within the form itself. Let me actually go, then, into some of the details on the questions.

So, what we're preparing right now, which we will show before Thursday, is rather than ... If we had to display the entire report in a Google Form, or all of the recommendations in the Google Form itself, it would basically be completely onerous.

So, the draft final report, obviously, will be available for everyone to download in the normal way. It will be in the normal public comment solicitation form. It will have all of the recommendations and affirmations, and all of that stuff in there.

But for the Google Form itself, when we're asking for responses, we're going to really ask about those areas where there is a substantive difference between what was in the draft final report and what was in the initial, or supplemental initial, report, depending on which reports those actually appeared in.

So, the Google Form will list the section. So, let's say it's on ... Let's see. Something that has changed. Let's say applications assessed in rounds. So, what we'll do above or in the form itself is we'll describe the difference. And we're going to show everyone what all the descriptions look like in the next couple of days, so you'll have plenty of time to review that.

So, we'll describe the difference. And in this case, for applications assessed in rounds, the description will have something like, "We added a recommendation that addresses those ..." I'm making this

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up, now. This is not the actual description. I'm just providing it for illustrative purposes. And again, you will see all of this information.

But it will say something like, "We added clarity on the circumstances when a new application may be submitted for a string that was not delegated in the previous round. We added recommendations on the need for a predictable cadence of future rounds."

So, we'll have a very general description of what the changes were. And then, it will ask commenters to choose between one of several options, which is to support the recommendation as written, can live with the recommendation as written, no opinion.

And then, if they don't choose one of those options, then there is another option for them to say, "We can't live with certain aspects of the recommendation," and then they'll be able to enter in a text box what they can and what they can't live with in that recommendation. So that is, essentially, the type of, from a conceptual standpoint, what the Google Form will enable us to do.

So, what we're trying to do there is that, if someone either supports it as written or can live with it as written, we're not asking them to comment on why they support the whole recommendation. We're only asking for comments if they either disagree with the recommendation or disagree with certain parts of the recommendation, so that we can get those types of comments.

So, in general—I'm not seeing any hands, so I'll go on—hopefully, that makes sense. And again, you'll see all of this on Thursday. You'll see a couple of examples before Thursday. You're going to



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see the descriptions of what we believe has changed from the initial to supplemental. And again, they're meant to be very general in nature.

Plus ... Sorry. I missed an important fact. If someone wants to directly navigate to that section, or to those recommendations from the Google Form, they are able to do that. So, where there is a general description in the Google Form, there is also a link to the very specific affirmations, recommendations, etc.

So, while we can't fit all the text into our Google Form, we can and will link to those areas so that the user can go open a new window with the recommendations and affirmations in it so they can look at it again at the computer if they wanted to. They don't have to have a separate, printed copy out next to them. Hopefully, that makes sense. Jim, go ahead, because your question will probably help guide me to other information.

JIM PRENDERGAST: Okay, Jeff. I hope it does. Thanks a lot. I don't want to cut you off. If you have more to say, please do, because maybe I'll benefit from what you have to say.

JEFFREY NEUMAN: Go ahead. I feel like I'm rambling, so go ahead.

JIM PRENDERGAST: Okay. All right. Thanks. So, having not been through a comment period process that used a Google Form, I'll reserve comment on

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that. Personally, I have an issue with how you framed this from the get-go, and that is ... And I don't think you did it intentionally, but I think this is very important.

This goes back to something we discussed back in Montréal, and that is discouraging comments on things that are "already decided." We have done a lot of work since the Montréal meeting to come together and develop draft final recommendations. In many cases, this is the first time the community is going to see that.

I am very reluctant that this group should be in a position saying we're discouraging comment on anything, simply because there is a lot of stuff that the committee will not have seen prior, and we can certainly benefit from the community's input on these draft recommendations. So, thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Jim. That's more of a problem of the way I explained it than what we're actually doing. So, I would say it kind of the opposite way, or should be saying it the opposite way, which is we're trying to encourage comment on the new areas and not looking for commenters to just repeat old arguments that we have already considered.

But if everything put together, obviously, as you're pointing out, when everyone sees this as one coherent—hopefully—document, there may be some items that, now that they see everything, jump out more than they did previously, because now they're seeing the whole picture.

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So, every section does contain general comment boxes where everyone can comment. At the end, there is a general free-for-all where they can comment. And of course, if they wanted to submit more information, they could submit a comment in the regular way, which is through the Word or through a PDF attachment.

So, I think we're just trying to make it easier for us to analyze, at the end of the day, and hopefully encourage those commenters to not be repetitive where we don't ... I'm trying to figure out the right way to say it. To just not be repetitive of ... We said in the past, "We don't like closed generics in any form, any way whatsoever, and you didn't listen to us."

Well, okay. The reality is, I think we have listened to everybody and we're trying to steer the comments toward the newer areas. So, hopefully that's a better way to explain it, and the preamble does a ... That will also be shared. I think a lot of the preamble has already been shared but the rest of it will be shared, as well, with the group in the next couple of days, where you'll see it worded in a much more positive way.

So, Justine is saying, "What would be useful in my opinion is for fresh public comment to be welcomed, especially for highly inter-related topics." Yeah. Justine, I think that's right. But again, I think we would want to encourage comments on the inter-relationships, rather than just comments on the individual areas.

In other words, if it's because, now, they are inter-related, or one new thing does something different to an older thing, then that's what we want to hear about. But again, we're just trying to

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encourage the newer comments on new information and the new proposal.

Remember, there is no requirement for a draft final report in the public comment PDP process, but we're doing this because we think it's the right thing to do. And yeah, on Thursday, you'll see a demo of ... So, there are a couple of things that you'll be getting.

So, you'll be getting a description of what we believe has changed between the initial and supplemental initial reports and the draft final report. We'll have a demo on the form on Thursday, but I don't believe by that ... In fact, I know by that point in time we're not going to have all of the questions put into the Google Form, because we're still reviewing the descriptions. But we'll have a few of them so you'll get a feeling for what is going to be in there and how a commenter could respond. So, you'll get all of that. Jim, go ahead.

JIM PRENDERGAST:

Yeah. Thanks, Jeff. Not to be answered tonight, but to put a marker down and hopefully have an answer for Thursday, we're coming back to another question which I think is important, and that is individual comments versus SO/AC comments. I'd be curious to get a read-out from leadership how those are going to be treated when they eventually do come in. And like I said, not for tonight, but definitely something I think we do need to all be on the same page on before this goes out for comment. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Jim. That's going to be a tougher question to answer, even later on, because we don't have the comments in

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front of us. I think the question is much more important when we're determining consensus or whether to make specific changes in the recommendations or affirmation. I think that's when it becomes more important.

But I'd like to think individuals can make just as helpful comments as SOs and ACs. Whether we accept those as a group or whether, ultimately, there is a consensus on it or not, that's the more important ... Oh, I shouldn't say that.

But in my personal opinion, I think that that's when we'll really need to take a look at SOs and ACs versus individual members that make certain comments. Okay. Any other questions or comments on that? So, just do some thinking about that, and when you get the draft description, keep in mind that we're trying to make it an objective description of the changes without advocating for one position or another.

So, what we're really hoping is that these descriptions are not leading commenters in one direction or the other, that it's balanced. Anyway, when you see these descriptions, keep that in mind, as well.

So Jim is saying, "Having the standard agreed to before comments and/or consensus designations is important." Jim, maybe I'll ask, and maybe you can go into e-mail. Certainly, having it before consensus designations is important.

But I don't want to discourage comments from individuals or discourage comments from SOs and ACs. A comment is valuable if it has got valuable information that this working group thinks it can

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use, whether it comes from one person or a group. And I think pre-determining whether a comment is going to add that value or not, or have greater value, that's a little bit more difficult.

But certainly, when we make decisions about whether to modify our recommendations or not based on the comments, I think that's a different story, and that's more in line with what I hope you're getting at. Okay. Thanks, Jim.

So, let me go to the ... Oh, let me see. Are there any other questions before we go on for the closed generics topic? I'm sure there will be many more questions once you see some of this in front of you. Okay.

Let's talk about closed generics for a little bit. So, a couple of things. If you recall, we gave a deadline to receive proposals by 23:59 UTC, and, other than what we've already discussed and what's in the text that we'll go through, on the mailing list, I have only seen George's comments or revised proposal. Of course, we still have the proposal from Kurt, or the paper from Kurt. And then, I submitted on the mailing list a synthesized, personal e-mail that has a different type of proposal in it.

Let me just ask ICANN staff. Did we get anything that may not have been on the mailing list by that deadline? Or asked in another way, is everything that we got on the mailing list? Okay. Fair enough.

So, it's those three proposals that we have received. So, what the proposals and the discussion on the lists, and over the years, have certainly shown us are that, at this point in time, we do not have

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agreement on any one solution or on any one proposal, but we have certainly gone through a lot of materials on this.

We have had many discussions. We have solicited comments at least twice on this topic, both in the initial report and prior to that in constituency comment two, I believe. And all of that combined leads us to, at this point, the fact that we do not have agreement within the working group on any one proposal.

And so, this text, which everyone has reviewed, is, I believe, still the text that we should go with in section A, the recommendations and/or implementation guidelines section.

However, the fact that we've gotten these three proposals in addition to what's already in section B and C of this document, which I don't know ... Steve, did you put a link to that document in the chat? I mean, it's the same production document we've been working on, but perhaps you can put that link in there. And George, I'll get to you in one minute.

GEORGE SADOWSKY: Sure.

JEFFREY NEUMAN: What we're going to do is have the three proposals as separate documents that are linked from within section B, and we will ask questions on—or I should say “a” question—in the Google Form on those proposals.

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But a very general, open-ended question where commenters can, if they want—remember, they don't have to comment on anything—comment on any of those proposals, whether they believe any of those proposals are going in the right direction, and other comments that they may have, just to add to those proposals.

So, we want to make sure that commenters are able to see the work that has gone into these. We are not giving them any kind of special status as working group recommendations or guidance, but rather providing those as proposals that have individual proposals that have been submitted for further consideration. Steve has put the link on. Okay. George, go ahead.

GEORGE SADOWSKY: Thanks, Jeff. Yeah, I agree with much of what you said, but I would like to suggest an augmentation to it. I've looked at what you wrote, including your reply to Kurt, which just came in, and I think you make a very good point when you say something like—I don't have it on the screen right now in front of me—"How are we going to agree on a proposal if we can't agree on the goals?"

I think that's a very good point. That's the way we eventually went, and we also put in implementation material because we thought that was a way of illustrating how the goals that, at least, our group chose mapped into how we would define processes to implement. We didn't want to make a complete implementation because that has no purpose at this point.

So, I'm wondering if you couldn't, in the text itself, point that issue out, that it's important to converge, or to discuss, or however you



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want to put it, the goals, the principles, under which the discussion might occur. And if we could agree on those, then it becomes easier to take the next step. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, George. So, how would you, then ... So, if we were to do something like that in a Google Form, or ask the question – forget the fact that it's in a Google Form for the moment ... Yeah. I think, when we were thinking about the types of questions that we wanted to ask on this, it was supposed to be, “Even if you don't agree with all of the details in some of the proposals, is one of these going down the right path?”

At this point, we don't want, necessarily, people to focus on every little detail in those proposals. We want to know, are any of these proposals going down a path that the community wants us to go further down? Which I think is what you're kind of saying, right? Because we need to figure out where the community is on the high-level goals.

GEORGE SADOWSKY:

I agree. I think I would phrase it in terms of goals, because if we can get a handle on those, they imply direction. They're synonymous, essentially, with the direction how we decide to proceed, and that may give us a better clue as to which way to go.

JEFFREY NEUMAN:

Yeah. Thanks, George. Marc, you're in the queue. Go ahead.

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MARC TRACHTENBERG: I don't think that we should [inaudible] proposals out there, and let's see what the community has to say about it. We don't need to lead them or point them in any direction. We want to hear what they have to say. We've discussed it enough in this working group, right? Let's just hear what the community says.

JEFFREY NEUMAN: Yeah. Thanks, Marc. So, ultimately, yes. But the point I guess we're trying to make is that, because these proposals are not necessarily fully fleshed-out, some of them have more details. Obviously, we want to hear what they want to say.

But then, maybe, it's also asking the question of, "Even if you don't agree with the details of these proposals, is one or more of these proposals going down a path that you could support further work being done?"

I'm phrasing that really awfully this late at night, but that's what I'm trying to get at. So yes, all the proposals should be out there for them to comment on in any way, but it would also be good to get an indication from commenters as to whether one or more of those proposals are going in the right direction that they could support further work being done. Marc, go ahead.

MARC TRACHTENBERG: I mean, if they can support it, they can support it now. They're not participating in the working group and they're not voting on anything. So, there's—

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JEFFREY NEUMAN: Hey, Marc. It's a little tough to hear you. Marc, can you get closer to the mic, or ...? It's a little tough hearing you.

MARC TRACHTENBERG: Sorry. Can you hear me now?

UNIDENTIFIED MALE: Better.

JEFFREY NEUMAN: Yeah.

MARC TRACHTENBERG: I was saying that, what does the support of the community mean, here? The community can't support anything after this working group. They're not participating in a working group, they're not voting on anything later. So, can you get behind this and support further work on this? I just don't think that means anything. I don't think we should guide them. Let's let them comment on the proposals that are out there, or other proposals that they have, and see what they have to say.

JEFFREY NEUMAN: Yeah, thanks. George, do you want to respond to that?

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GEORGE SADOWSKY: Well, I thought you were saying pretty much the same thing, but maybe I was confused. I think we do want to put the proposals out there. I was commenting on your adding a few words to the text of the actual report that's ultimately going to go out, that might give some guidance as to maybe look at these proposals from the point of view of goals.

In other words, first asking, what are the goals? If you want to get a closed generics public interest TLD, what are the goals that you would espouse in terms of starting to define what this thing should look like? As opposed to going into implementation detail. I agree with you on that. There is certain amount of [inaudible], but not a lot.

JEFFREY NEUMAN: Yeah. Thanks, George. So, to respond to ... Paul asked a question: "Will we get the chance to haggle over the text of the questions?" I prefer not to think of it as "haggling," but yes, you'll see the questions as written. That's one of the things that you'll see with the description of the changes and the ... Yeah. So, yes. Sorry. Short answer, yes. Christopher, go ahead.

CHRISTOPHER WILKINSON: Good morning, good evening. Jeff, I just have the impression that the leadership and the staff are kicking this issue into the long grass. There are a lot of people on the call who have not expressed an opinion. There is a lack of balance. George's proposal with his group is very detailed and concrete, and I don't see the similar degree of detail coming from the other proposals.

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Also, we asked some time ago to have a thorough discussion of George's proposal. Apart from the individuals who have expressed their interest in alternatives, I've heard very little opposition to George's proposal.

By the way, there is a semantic problem, here. Some of the proposals—I would include those made by Kurt's group—from my point of view, are describing a private TLD, not a closed TLD. A private TLD, but rather like a vanity registration number. You can look at it, and maybe you can pay for a ride, but you can't participate.

I much prefer George's group's approach, and I think we should discuss it very thoroughly, particular as, from considerable experience in one area, I think George's proposal, with a few adaptations, could be very extensively used for geographical names. I would like to keep it on the table, at least for that purpose.

But I come back to my main point. The leadership is kicking this into the long grass. So, a lot of people on the call who are not here to discuss a Google Form that we haven't seen; the agenda said we are going to discuss the issues. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, Christopher. So, let me try to be very clear that we will, as a working group, have ample time to discuss George's proposal, Kurt, Marc, and Mike's paper, and my very brief proposal. We will have plenty of time to discuss those while the rest of the community is commenting on the draft final report, including the three proposals that are out there.

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So, there will not be a lack of discussion on these topics, but we do need to get the draft final report out. And so, this was done as a kind of compromise to get proposals out for the public to comment on in the draft final report while we discussed those further during that public comment period. So, rest assured that we will have plenty of time to discuss. George, go ahead.

GEORGE SADOWSKY: Well, a couple of things. First of all, I think I agree with Christopher. But I want to point out Jim's comment, about ten minutes back, saying, effectively, we need to get more eyeballs on this thing because there are very few of us who are commenting on it. I would agree with that.

That argues that whatever we put out for the community to respond to should be, where would we like the community to focus? How would we like the community to focus? And then, leave a lot of room for text, because multiple-choice isn't going to work here.

But the second thing I'd like to talk about is a comment from Paul, who just came in. There is a comment here I don't particularly like. He says, "I think George's proposal got sufficient airtime for those of us who were not permitted to participate in his drafting group for us to understand it."

The pushback comes from the following, that at the point we started talking about this we had phrases, not even complete sentences, really, on paper that we were working with.

And so, to participate in the drafting group ... There were four of us. We had all thought about this before, we had all discussed it before,

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and we all had the same direction of ideas to extend it. We were like-minded. And I thought it was a mistake, and a counter-productive mistake, to bring anyone else in at that point, when we had nothing definite to discuss. We were still defining how we wanted to go, and I don't think that it's appropriate ...

At that point, I didn't think it was appropriate to bring in people who have all kinds of questions and would, essentially, slow this down. We had to work very quickly. Now that the proposal is out—you had to wait about ten days—it's open for comments of any kind and open for drafting of changes. So, I don't think it's appropriate to say that this was a closed proposal in which people were not permitted to participate. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, George. At the end of the day, I think what we want from comments from the community is, can we get agreement on a direction to go in? So, let's say people really loved that group's proposal in the community, but they're saying, "You know what? I don't think they need to be not-for-profit if they meet all the other criteria."

What we want from the community is some indication of, "Yeah, we like that direction. We may not agree with all the details, like the non-profit stuff, but we think that more work in that direction is warranted."

Or, by the same token, it could be from Kurt's paper, of, "Yeah. You know what? We do think it shouldn't be as restrictive, that we should allow them, but here are some guardrails we think we should put

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in.” That’s what we want. We don’t want ... I don’t know how to say this.

I’m trying to say that I don’t want the community to look at these proposals and just go “yes” or “no,” and then we really don’t get valuable feedback on the higher-level concepts, I guess is what I’m trying to say. Not very well.

So, trying to look at the chat, here. Justine is saying, “Do we have a working definition of closed generics?” So, Justine, a closed generic is as defined in the ICANN agreements. So, I believe we must define it somewhere in the section. I believe we do, but we can double-check to make sure that it’s clearly defined, if it’s not.

Marc says, “So, to make clear that these three proposals are just that, proposals.” Correct. “Please comment that they do not have to accept them as-is.” Correct. Yes. And in fact, in some ways, it’s more valuable to ... Yes. Sorry, yes. You said it right, Marc. Yes. We’ll make that clear. Sorry, did I miss any other comments? I see Christopher and George have their hands up but I’m not sure if they are leftover or ...?

GEORGE SADOWSKY: We’re leftover.

JEFFREY NEUMAN: Oh, okay. Thanks, George. Let me go with Alan. Alan, go ahead.



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ALAN GREENBERG: I'm not quite sure how to say this. I don't really know where we're going at this point. It is quite clear that none of the current, certainly none of the original two proposals—Jeff, yours came in a little bit too late for me to make a pronouncement about it—are going to be acceptable to this whole group and say we have consensus.

And I guess what we're asking the public commenters to do, or the team itself, is, can we somehow take parts of these and find something which is going to be acceptable to all?

The only common thing I've heard acceptable to all right now is I think Marc said—but I'm not sure it was Marc, it may have been someone else—that both Jeff's and the one that George's team led, are so complex that we're never going to be able to implement them.

And if we can't accept completely open, with a few guardrails, then maybe it's better not to have closed generics at all. I think I said something comparable to that at one point. So, maybe we do have agreement on that.

I'm just not sure how we're going to present these proposals in the report to end up getting something that is useful. There is no way we're going to end up with everyone suddenly rallying around one of them and saying, "Hey, that's perfect." So, I'm wondering how ... Yes, I put a lot of work into that proposal, and I want to see it presented. On the other hand, I'm not quite sure what the end-point is of presenting them. So, I'm just a little bit foggy. Maybe it's the time of day here.

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JEFFREY NEUMAN: Yeah. Alan, I know we've been discussing this for years, so I think a lot of us are just kind of burnt out on discussing it. So, I sometimes share some of that skepticism, as well.

But look, at the end of the day, if it turns out that there are a considerable amount of comments in support of looking at the public interest angle, or of supporting the GAC advice—that was that it must serve a legitimate public interest goal—then perhaps that does give us a little bit more within the working group to say, “You know what? Maybe we can agree that it needs to serve a public interest goal, even if we can't agree on exactly how to define it or how it gets measured.”

There are elements that we may be able to glean from the public comments, and I'd rather take one last shot at it than just kind of abandon it all and say, “Well, forget it.” So, that's kind of my view. But Alan, yes, go ahead.

ALAN GREENBERG: Yeah. Then maybe we need to ask those questions. I mean, the core questions. George was talking about, what are our targets? What are our aims? Maybe we can give the proposals and say, “Here are some examples that people have gone, and please comment on them,” but we also need overall guidance.

Are we looking for something that is, in fact, aligned with GAC advice, or does the overall community say, to be blunt, “To hell with it. That's not something that we can really do. Let's override it,” because it really comes down to that. Thank you.

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JEFFREY NEUMAN:

Okay. Thanks, Alan. I'm just trying to think about ... So, when you look at my proposal, it was to try to keep the reason why ... And Christopher was right with saying that it's short on details, which is very true because my proposal is really almost primarily just high-level concepts.

I put that out there for a reason, to see ... Because we can all get in the weeds a lot, and George's proposal gets very deep, in some areas, in the weeds. But I try to pull out of George's proposal, and, frankly, other discussions that you see in section B or C—I think it's B—of those factors, because I think that may get us back to discussing the higher-level concepts.

But at the end of the day, if we can't agree on those, then at least we could say to the board that we have tried every possible angle and we're still at a "no agreement," and that's it. That's all we can say.

So, the text here on the "no agreement" is the same text that has been in there. This is what we think needs to be in section A. It is just an objective statement of what happened in the 2012 round.

I understand, Kathy, again, it does not have the "bend" in there, and I know you wanted it in there. But at the end of the day, because there is a disagreement as to the impact of what the board did and characterizing it, leadership believes that objectively stating what happened without trying to characterize it is the way that we should go in section A.

Sorry. I have not scrolled down a little bit. Okay. Still some discussion. Okay. Kathy, one last comment on this, and then I'd like

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to go to the ... Sorry, not predictability. The mechanism of last resort. Kathy, go ahead.

KATHY KLEIMAN:

I hope you're sitting down, Jeff, since you raised my name. I just thought I'd say "okay," but also that we do need to clarify the goals and highlight what people should be reviewing and reading, whether it's the old proposals of months ago, the old discussions, some of them from individuals, or whether we want people to focus on the new ones with some framing language about the goals. But I just wanted to say, okay, I get what you're saying. I think there was a bend in the first round. A lot of people agree. But if we don't want to say it that way, so be it. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Kathy. So, as far as what ... Just to get to your question, the working group should be reviewing these, the section A, B, and C. The commenters should focus on those sections, as well as the new proposals that were submitted. But I don't think at this point, prior to the draft final report coming out, that working group members should focus on either, or any of, the three new proposals at this point. We will come back to them after the draft final report comes out. Does that make sense?

KATHY KLEIMAN:

No, it doesn't make sense to me.

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JEFFREY NEUMAN: Okay.

KATHY KLEIMAN: I thought we were putting out the proposals for public comment.

JEFFREY NEUMAN: Yes, we are. Sorry. You asked me a question of, “What should we focus on?” and I didn’t know what you meant by “we.” So, I am separating what the working group needs to focus on versus what the public will focus on.

We, the working group, should not be focusing right now on the three proposals that were submitted. Those three proposals are definitely going out for public comment, as-is. What I want us working group members to focus now on is what’s in A, B, and C of this closed generics section. Is that any better, hopefully? Go ahead, Kathy.

KATHY KLEIMAN: Yeah. But A, B, and C, were written before this discussion, right? So, don’t they need to be revised before we talk about them to reference and highlight the three proposals now, before the working group, and what we want the commenters, the public, to extract from them? Don’t we need to revise what we’re looking at, since it was written some time ago, now?

JEFFREY NEUMAN: So, thank you, Kathy, actually. So, there are two things that we still need to do. One is an added paragraph or so on the three

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proposals, that we received those proposals as a working group and that we're putting it out for public comment. So yes, we do need to add a paragraph, but that will not change drastically any of the sections here, with the exception of just inserting a new paragraph in section B.

And then, in the Google Form, there will be the, for lack of a better word, "questions." And yes, we will discuss that separately, but that won't change sections A, B, or C, here. Hopefully, that makes sense.

Okay. Let's go onto the model six, mechanisms of last resort. So, I apologize for the little bit of lateness. This went out earlier today. Part of that is my fault. I'll take some blame for that.

All we did here was revise model five to put in what we think the discussions resulted in, and now labeled it as model six. So, what you see in ... I guess you see it in red, here. Although, in the link, I don't know if it's red or a different color. On the screen, here, it's red.

You'll see these are where the changes were made. And so, Paul, you'll see a bunch of the wording changes you had that were ... Clarifications were put in, here, in other places where I thought it was more substantive that we didn't necessarily have agreement on. I highlighted them or put them in a comment form. Hopefully, that makes sense.

Sorry, Justine, going back to the last topic, asks when we might have that paragraph for closed generics. I don't want to give you a definitive answer right now because I want to check with Steve, and

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Emily, and Julie, but in short order. That's all I'll say. But I can't commit because they're probably the ones that are going to draft that paragraph, and they'll shoot me if I say, like, "tomorrow." But we'll post an update on the e-mail list.

Okay. So, the first change, here, was that ... So, I kept out the first ... This doesn't show up as a revision in model five, although it ... So, I forgot. But there was a sentence above this "ensure" that says, "This model combines a few different models." I didn't think we needed that in model six.

So, it starts with this first point, which there are no changes to that text. But then, the first sub-bullet point states, "All private resolutions reached by means of forming partnerships or other joint ventures resulting in the withdrawal of one or more applications must follow the application change processes set forth in that section," and then the rest of it is as it was in that paragraph already.

But the first area that I think we should talk about is this language here. So, all of this language was recommended by Paul. Most of this, and the second sub-bullet point, I thought was clarification. But the one part I thought we needed to delete, or at least talk about, was the words "non-auction."

So, what it says now is, "Any modified application resulting from a private resolution is subject to," and then it goes on with the rest. Because it's talking about a modified application, whether it's a result of an auction or some other private resolution I don't think is the point.

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I think Justine made that point the last time, when we were reviewing Paul's language. So, I would propose there we delete the words "non-auction," because I think it makes it more clear. Anyone object to that change? Okay.

Then the next part is some clarification language added by Paul that I thought, again, made sense. We discussed this the last time. It just clarifies that ... Just adds some words in there about objection that could have been filed against the surviving application or the withdrawn applications. I think that, as Paul said, it makes it more specific to the contention set, which was the intention anyway. Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. Can you just clarify, when we're talking about this private resolution, are we talking about the contention set completion resolution, or is it possible that this also refers to two applicants within a contention set of five who are now resolving something between the two of them? I just wanted to be clear about that. Thanks.

JEFFREY NEUMAN:

Yeah. So, this applies to ... Because I think it says, "Resulting in the withdrawal of one or more applications." So, it's intended to apply to private resolution of part or all of the contention set. So, yes, it could be just a subset, as Rubens states.

JAMIE BAXTER:

Okay, thanks.



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JEFFREY NEUMAN: Marc, go ahead.

MARC TRACHTENBERG: I'm just trying to unpack this language a little bit. It says, "All private resolutions reached by means of forming partnerships with other joint ventures, resulting in a withdrawal of one or more applications, must follow the application change process set forth in section whatever."

So, if it's a private resolution, what does "partnership" mean? So, if two applicants are in a contention set and they agree that one will withdraw, and the withdrawing party can have some sort of contractual relationship with the party that stays in, is that a partnership that falls under here? And if so, how does that fall under the application change process?

JEFFREY NEUMAN: So, any combinations of ... "Partnerships," here, is not intended to connote a legal partnership, but more a combination joint venture. I think the FCC does it well when they define it, and we could perhaps be a little bit more clear. It's basically anything that results in a combination of applications resulting in or more of them withdrawing their applications.

MARC TRACHTENBERG: But what do you mean, a combination of applications? So, in my example, let's say there is applicant A and applicant B, and they

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agree that applicant A will withdraw its application. If applicant B wins then applicant A will get ten cents royalty for every registration. Is that a partnership [inaudible]?

I'm not trying to be difficult or think of just fringe possibilities, but I don't think something like that is so unlikely. Is that kind of resolution intended to fall under this "partnership"? And if so, how is that recorded in an application change process? Because there is not really any change to application.

JEFFREY NEUMAN:

So, if we look at when we get to the transparency of information, we talk about the fact that a settlement has been reached, and so that should be disclosed, not the amounts or what is promised. So, if it wouldn't result in what normally would go in an application change request, but otherwise results in a settlement, it still needs to be disclosed.

So, you're asking good questions, which means we need to be a little bit more specific on that part. And if you have some language to cover the concept ... Essentially, what we're saying is that if there is some combination that, because of a private resolution that would ordinarily result in an application change request, you've got to file an application change.

MARC TRACHTENBERG:

Right. But I mean, if you already have to file the application change, it's just superfluous. And what is—

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JEFFREY NEUMAN: Well, yeah. Well, yes or no. I mean, what we didn't say in here which we say in the transparency section is it needs to be filed prior to the contention ... Well, if it's the whole ... If it's resolving the entire contention set then, obviously, you're right. It would be superfluous. If it's only resolving part of a contention set, then that would need to be disclosed prior to the mechanism of last resort so that could be added. Pardon.

MARC TRACHTENBERG: [cross talk] both in an application change, and we have to follow the application change process. So, that's why it's just superfluous.

JEFFREY NEUMAN: Yeah. I certainly understand what you're saying and I think it's just more reinforcing that you need to do that. But yes, I can understand why you read it that way. Jim, go ahead.

JIM PRENDERGAST: Yeah. Thanks, Jeff. I think Jamie asked a question, but I don't know if we followed up, and I think it's important. That is, say you're in a contention set of five or more people, and two entities form a JV to compete for the string. That still leaves three or more parties that are still competing for the string. So, just because a JV is formed doesn't necessarily mean the contention set is resolved. So, that's why I think there are questions about the language in this section. Thanks.

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JEFFREY NEUMAN: Yeah. Thanks, Jim. So, if there is language to make it more clear, what we say here is that all private resolutions reached by means of forming partnerships or other joint ventures resulting in the withdrawal or one or more applications—I guess we could say within a contention set—must follow the change request. So, it's the intention that this cover even partial resolution of contention sets. Or ... Yes.

MARC TRACHTENBERG: Jeff? Yeah. I don't think it does, though. I mean, that's the problem.

JEFFREY NEUMAN: Okay. So, what words ... What can we do to this to make that more clear?

MARC TRACHTENBERG: Having read through it once a couple of hours ago, I'm not sure. But I can throw some language on the list and make some suggestions.

JEFFREY NEUMAN: Sure.

MARC TRACHTENBERG: But I think this is the point of confusion. This is something that I think has been a theme through the last couple of conversations, and that is there is this assumption that a JV suddenly solves the contention set, when in fact that is now what could happen in reality.

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As we saw in the last round, there are anywhere from two to ten parties applying for the same string, and just because two, or three, or four parties form a joint venture doesn't necessarily solve the contention set.

It still may go to another method of solving it, and that's why I think, to help Marc understand it a little bit, if you form a JV, that changes the nature of the application, and that's why you have to disclose and go through the resubmission, or the revaluation process from ICANN. So, I think we're missing some stuff here. I don't think it's complete.

JEFFREY NEUMAN: Okay. Thanks, Jim. Yeah. Any language to make it complete would be very much appreciated. It is the intention to cover those. Paul, go ahead.

PAUL MCGRADY: Thanks. Yeah, I would love to see some language from Jim, because I don't understand his concern. If we have five members in a contention set and two form a JV, one application will be dropped. The other application, presumably, will be assumed by the JV, and then a change request will have to go in at that point. So, I just don't see what Jim is seeing. So, maybe some concrete language from him would help a lot. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Paul. So, it's we're all in agreement on the concept of what it applies to. So Jim, yeah, if you have some language on

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that, great. Let's take a look at that. On the second bullet point ... I'm sorry. If we can go down the ... Yeah. So, the second main bullet point. Scroll down a little bit to the second sub-bullet point.

So, this is about the good faith intentions. The second sub-bullet point was ... Actually, I think this was one ... I think Paul had wanted some changes since I took what I thought we agreed in the discussion, which says, "Applicants can mark portions of any such responses of confidential. If the responses include proprietary business information then such portions will not be shared or communicated by the evaluator."

There is a comment Paul wanted in there: "In no event will an applicant be required to disclose any trade secrets." And I think the result of the last call was to stay silent on this, simply because, obviously, if an applicant believes something is a trade secret then they won't disclose it. But it's between the applicant and the evaluator as to whether the evaluator needs that information for evaluating the application.

But we don't want to get into—and this is what we discussed the last time—and applicant claiming that information needed by an evaluator to effectively evaluate the application is a trade secret because the evaluator needs to have enough information to do the evaluation. And so, that's a risk that the applicant can take on, but I don't think that sentence is needed in there.

Yeah. So, Paul's saying, "@Jeff, I don't want to beat a dead horse, but keep in mind there is no NDA in place between applicants and the evaluators," which is true, Paul. So, as an applicant, you need to make the assessment of, are you answering the questions by the

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evaluators with enough detail to allow the evaluator to make an assessment? And if you don't believe ... So, you're going to have to devise it in a way not to disclose those trade secrets. I mean, I think there is no way around that.

Okay. The next thing is, once the application submission period closes, the string similarity evaluation for all applied-for strings must be completed prior to any application information being revealed to anyone other than the evaluators and ICANN Org.

Okay. So, Paul had wanted language in here that modified the disclosure to ICANN Org with something that said something akin to, essentially, only those within ICANN Org that has a need to know will actually get that information. I don't think this concept was truly discussed.

Jim, your hand is raised but I'm not ... Okay. I don't think that "with a need to know" is in there, because everyone at ICANN Org has their own non-disclosure agreements or whatever with the employer. So, I don't think that's needed in there, but we'll let everyone talk.

Yeah. Paul, frankly, I hear what you're saying. "The industry continues to make," let me read it, "room for the same old thing but no innovation. This is just one more example of that." I just don't see that, Paul.

I think you need to provide, as an applicant, enough information to an evaluator to pass the evaluation, period. There have to be ways that you can pass an evaluation without disclosing trade secrets.

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I mean, in every other RFP, for any other service, you need to provide enough information so that you can be evaluated according to the criteria. If you don't think that you can be evaluated ... I mean, you're a good lawyer, Paul. You could certainly pass an evaluation without disclosing a trade secret.

"Any RFP is subject to an NDA." Not always, Marc. Not always. But again, the NDA is with the organization itself, and you have the right to mark things confidential in your application. Okay.

The next part, although it's marked as a change, it's just adding ... Or the movement of some language. So it says, "At the end of the string evaluation period, applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. Any applicants that wish to compete for their applied-for string in an ICANN auction of last resort must submit a sealed bid for each relevant application."

This language, I think, was from Paul, to just define that a last resort sealed bid. So, you'll see that change. We also discussed, the last time, about deposits, which essentially just follow the same rules as 2012. There is some discussion of not disclosing trade secrets. Yeah. Again, I think this is a little bit of a ... Well, anyway.

So, the next bullet point. Can we scroll down? I think the only thing changed in here ... This is from Paul's language that we thought was clarification. This is really just defining what reveal day is, and it's basically stating that it's only going to publish the non-confidential information, which is actually what happened in 2012, as well, or was supposed to happen before the glitch.



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So, that has now changed. Yeah. So, there is some more clarity about private resolutions. Still some more discussion of fear that you can't pass a good faith without disclosing all aspects of how you're operating the TLD. Okay. I still think that can be done without disclosing trade secrets.

Next part that we added is just the definition. We just substituted the definition, last resort, sealed bid. So, we added a sentence here that says, "In the event of a partial resolution of a contention set through the formation of a joint venture and the corresponding withdrawal of one or more applications." So, Steve, did you add this language in? "I added it." Okay, so this came from Paul. All right. I'm just reading the sentence and trying to think if I just should not have added this in.

"In the event of a partial resolution of a contention set through the formation of a joint venture and the corresponding of one or more applications, the partnership or joint venture must choose between the various last resort auction bids."

I think we needed to discuss this. I think I meant to highlight this, because I thought the resolution we had was that everyone would be able to submit new bids. So, we need to highlight that part. I think I meant to highlight it and flag it as an issue to discuss. Okay. Let me just go to the chat, here. Okay. Jim, you go ahead, and then I want to go back to the chat because there are some good questions in here.

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JAMIE BAXTER: Just above what is highlighted there in the parentheses that includes losing in CPE as a way of shrinking the contention set ...

TERRI AGNEW: Jamie, you seem to be a bit [low]. Are you able to speak a little closer to the mic?

JAMIE BAXTER: Yeah. Sorry about that. Is that any better, Terri.

TERRI AGNEW: Just slightly better.

JAMIE BAXTER: Oh, okay.

TERRI AGNEW: Oh, that's way better.

JAMIE BAXTER: Oh, great. Okay. Sorry about that. In the area that's highlighted right now, in the parentheses just above it, it says "losing in CPE," and that's noted as a way of shrinking a contention set. I don't quite understand how that happens, though. Because when you lose in CPE, you just go back into the contention set as a standard applicant. Well, you're still—

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JEFFREY NEUMAN:            Yeah.

JAMIE BAXTER:            Considered to be the applicant, but you don't—

JEFFREY NEUMAN:            Right.

JAMIE BAXTER:            Get knocked out of it.

JEFFREY NEUMAN:            Yeah. So, that's highlighted, and I agree. I think that should be just crossed out.

JAMIE BAXTER:            Correct.

JEFFREY NEUMAN:            Yeah. So, let's just cross that out. I think you're right, there. It's this last sentence that I think we need to figure out what ... I thought we agreed, at the end of the day, if there is a joint venture that wants to ... Sorry, I'm just thinking about this again.

If it's a partial resolution of contention set through the formation of a joint venture, I thought we agreed that, if the joint venture wanted to, the joint venture would be asked to submit a new bid, as well as the other applicants if they wanted to.

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But that might still be a last [inaudible] question. So, I want to skip that for now, just because I know we only have five minutes left. Or in fact, let's start here on the next call so we can get this straight. I'll go back and review the notes again to resolve that point.

The rest of it, please do review this for Thursday's call. I think it has everything in there that we agreed upon in synthesizing all of the comments. So, consider all of these my comments, I guess, except where I indicated in a highlighted area that someone had proposed adding something in, and that's a comment.

So, don't worry about what was Paul's, what was mine. Consider it all mine if that makes it easier. But it's all based on the notes and the discussions that we had. It's not just based on a draft that was submitted by one person. We discussed all of these points as clarifications, and they've been out there for a while. But again, if you want to review it after this call, please do, and give some comments. So, Jim, go ahead.

JIM PRENDERGAST:

Thanks, Jeff. Noting the time, I don't expect an answer now, but maybe you can highlight it in the document, since it's a live document. For Thursday, can you point out in the document where we are addressing the board's concerns about rolling auction proceeds from one auction to another to fund other applications? Thanks.

JEFFREY NEUMAN:

Sure, Jim. So, yeah. So, we will do that. I think what you'll see is that we have not, as a group, agreed on how to handle that concern

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from the board. But if we can agree on the next call, that would be great. Okay.

The next call will be 20:00 UTC on Thursday. We will go through a demo. Please do keep on e-mail and look for updates, including descriptions of the changes. Paul, I see. Just give me one sec. Look out for the descriptions of the changes that we have between the initial and supplemental and this draft final report. Also, for preamble language. Go ahead, Paul. 15 seconds. Maybe 30.

PAUL MCGRADY:

Thanks, Jeff. This has to do with the factors at the very end of it. I saw there were some language changes there. But I thought the goal was to get rid of the intention, bona fide intention, or non-good-faith, or bad faith, and make them factors, as they would apply to a potential breach of the terms and conditions, which is where all this sits, anyway. And so, I just wanted to say that I thought we were going to do more there. I'm happy to propose language, if that would be helpful.

JEFFREY NEUMAN:

Yeah. Thanks, Paul. I did change it from rebuttable presumptions to factors. And so, we'll be looking at that on the next call, anyway. So, yeah. Please do not make changes in the document. Let me just ask that. Comments made in the document are fine, and if you want to put new language in the comments, that's fine, but don't make changes to this Google Doc other than adding comments, if that's okay. All right. Any other last questions?

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JAMIE BAXTER: Yeah, Jeff.

JEFFREY NEUMAN: Great. I think we got a lot – oh, sorry. Oh, Jamie, sorry. I thought your hand was ... Sorry. I thought that was an old hand. Go ahead, Jamie.

JAMIE BAXTER: No problem, Jeff. Sorry. After further thought, and I think Rubens caught this, as well, I do realize that the applicant contention set could be reduced when someone loses CPE if there are multiple community applicants and one of them does pass. So, I guess that is a viable way of reducing a contention set, but it probably needs further descriptor. Thanks.

JEFFREY NEUMAN: Okay. Maybe it's just the short time period, but I'm trying to follow that. So, let's think about that, because I'm not sure that would—

JAMIE BAXTER: Yeah. If there are multiple community applicants—

JEFFREY NEUMAN: Right.

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JAMIE BAXTER: They all go through CPE, and two of them don't pass CPE, it still reduces the contention set because that means there is only one community applicant left. So, there is—

JEFFREY NEUMAN: Oh, so you're saying there are three ...?

JAMIE BAXTER: If there were three community applicants, two of them failed CPE, that is, I guess, one way of reducing a contention set.

JEFFREY NEUMAN: Yeah, but if one of them passed, then wouldn't that go forward?

JAMIE BAXTER: Yeah, but it would win. The standards would be knocked out, as well. So, it reduces the contention set because, going into CPE, there would be three applicants intending for the same string.

JEFFREY NEUMAN: Right, but it would resolve the contention set, and if it resolves the contention set it then doesn't matter.

JAMIE BAXTER: That is true. Yep, that is true.

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JEFFREY NEUMAN:           Okay. But maybe there is more, so let's do some more thinking about that. I might be missing something, but it is late. For me, anyway. Cool. All right. Again, we're still on target to get this out in the next couple of weeks, so we're down to some of our last elements. So, please do stick on e-mail, please do review. I will talk to everyone on Thursday. Thank you.

TERRI AGNEW:             Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your ...

**[END OF TRANSCRIPTION]**