



We are submitting this comment in reference to the recently announced comment forum that is intended to address the topic of batching within the New gTLD Program.

Particularly, in response to questions 1 and 2, FairWinds believes that the existing evaluation process should be implemented as follows:

- Initial evaluation results should be posted all at once.
 - o Those that must proceed to Extended Evaluation, are in a contention set, or have received an objection should proceed through the proper channels to resolve the appropriate roadblock.
 - o Those that are allowed to move on to the registry agreement process should be given a draft Registry Agreement. Then, as the applicants return the Registry Agreement to ICANN (either edited, or not edited), ICANN should process the agreements and, once the agreement is finalized, proceed with pre-delegation testing on a First-In-First-Out (FIFO) basis through using a time-stamp mechanism to process requests.
 - o When applications have passed all tests, they should be inserted into a launch queue, again, on a FIFO basis.
 - o As applications move through the pre-delegation and launch queue process, ICANN should provide complete transparency on where each application stands through a publicly available online portal.

Before the initial evaluation results are posted, ICANN should hold a comment forum focused on generating feedback around the already proposed registry agreement. These comments should be considered and incorporated into a new and final registry agreement that will be published along with initial evaluation results.

The transparent process outlined above in conjunction with extended evaluations, contention sets, objections, and the time it takes an applicant to review and edit the Registry Agreement will naturally stagger applications in a way that will help ICANN remain below the 1,000-gTLD annual limit and avoid subjectively influencing prioritization of applications.

The following text explains our position in more detail:

Position

FairWinds Partners is an applicant (for .FAIRWINDS) and after reviewing the space, discussing the topic with dozens of other applicants, and analyzing all relevant and related considerations, we have concluded that the process of batching, metering, and/or smoothing should not include subjective elements, arbitrary determinations, or technology solutions that have the potential of impacting the prioritization process. The only way to ensure a fair and transparent process is to allow the applicants themselves to control their placement within the process within the currently proposed program architecture and to provide the community with complete transparency throughout the delegation process. Proper batching, metering, and smoothing can be achieved through the application process already outlined within the Applicant Guidebook – namely, the process of evaluation itself, the objection process, contention set procedures, the actual registry agreement negotiation process and, ultimately, transition to delegation. These existing elements, in conjunction with a revised registry agreement, a FIFO policy will allow the program to move towards the release of new gTLDs in a consistent, predictable, fair, and transparent manner.



Initial Evaluation & The Registry Agreement

Initial Evaluation results should be posted all at once. At this part of the process, ICANN should not attempt to meter or spread out applications by withholding or issuing a timed release of results. Doing so would result in providing certain applicants with unfair advantages or disadvantages. All applicants should be notified simultaneously of whether or not they pass Initial Evaluation, are in a contention set, or have received a formal objection. Those that pass the evaluation process, are not currently in a contention set, and have not received any formal objections will be allowed to proceed on to the registry agreement process. Those that must proceed to Extended Evaluation, are in a contention set, or have received an objection should proceed through the proper channels to resolve the appropriate roadblock.

Those that are allowed to move on to the registry agreement process should, again, all be notified at the same time. In conjunction with the release of results, ICANN should release the final version of the New gTLD Registry Agreement in an editable format. ICANN should be modifying the agreement in light of the size of the program, recent developments, and the fact that the community should be allowed to weigh in on the agreement itself over the next six to nine months.

In advance of the results of the Initial Evaluation, ICANN should hold a short Public Comment Period to receive feedback about the agreement. ICANN should make clear that it will be revising the Registry Agreement based on the feedback from the Public Comment Period, and that it will release a final version of the Registry Agreement when the Initial Evaluation results are posted. Once the agreement has been released, all applicants that can proceed should download the agreement and review it. If the applicant deems that no edits are necessary, the applicant should return an executed copy to ICANN. Once ICANN receives an executed version of the agreement from an applicant and ICANN provides a countersigned agreement (should be provided by ICANN within five business days), that applicant may proceed to the transition to delegation process.

Should applicants wish to edit and negotiate the registry agreement, they may provide edits in redline, and then return a version to ICANN for its review and subsequent edits. We are certain that hundreds will necessarily have to redline the Registry Agreement, and this process will automatically and naturally spread out applicants over a period of multiple months. Final agreement on edits and negotiation will also follow a FIFO process. These Registry Agreements will be reviewed and ICANN will provide feedback to each applicant as it comes in. Those who are most keen on going live with their gTLDs sooner will trend towards fewer (or no) edits while certain applicants will require more time.

Delegation & Launch Queue

Once through the contracting process, applicants will proceed with transitioning to delegation and passing all of the technical tests necessary to launch their new gTLDs.

Once all tests have been passed and the new gTLD is ready for launch, the applicant will be placed into a Launch Queue that will then determine when it will be released into the root. Should a back-log of applications be built up in the Launch Queue ICANN will proceed with releasing the approved new gTLDs per their place in the Launch Queue, again, prioritization should follow a FIFO process. This process will allow ICANN to remain below the 1,000-gTLD annual limit, will allow the orderly release of new gTLDs, and will place the prioritization in the hands of applicants. This is a reasonable solution since, as mentioned, ICANN cannot subjectively influence the prioritization in any way without inciting backlash from the applicant community.



Critical components of this process are transparency and accountability. ICANN should leverage a time stamp mechanism to properly process requests in a FIFO manner and should provide the community with an online portal that displays the status of each application as it moves through the pre-delegation phases. This will require ICANN to develop an internal system that is clearly defined with mileposts that show the status of all applications.

Additionally, it should be noted that if the GAC determines that incorporating an element of geographic diversity in the Launch Queue prioritization is necessary to establishing the equitable distribution and metering of new gTLDs, additional mechanisms can be inserted downstream per the GAC's specific recommendations. That said, the process outlined above is transparent and will establish a level playing field.

Extended Evaluation, Contention Sets & Objections

Extended Evaluation, contention sets, and objections will also naturally stagger applications in a way that will help ICANN remain below the 1,000-gTLD annual limit and avoid subjectively influencing prioritization of applications. Applications that do not pass Initial Evaluation and are, therefore, placed into Extended Evaluation must first pass the Extended Evaluation before they can move on to the registry agreement process. Contention sets must be resolved before those applications proceed to the registry agreement phase. Likewise, applications that receive a formal objection must first resolve the objection before the applicant can move to the registry agreement process. The registry agreement review, edits, and final agreements will then proceed as outlined above.

There are approximately 1,400 applied-for unique strings. While several will withdraw from the process, in the interest of being conservative, we are assuming that none will be withdrawn. FairWinds expects that many (although not a majority) will necessarily be placed into Extended Evaluation. This will likely result in adding several months of process time to a number of applications and would aid in the prioritization and smoothing process. Further, given the fact that approximately 750 strings are already in direct contention sets and that a number of additional contention sets will be identified based on string similarity, we expect that hundreds of applications will be delayed beyond the results of Initial Evaluation. Lastly, given the myriad of issues that have already been raised publicly, FairWinds expects that hundreds of applications will receive at least one formal objection. All of these assumptions will potentially push a significant portion of the applied-for new gTLDs out over an extended period of time and will help minimize any back-log in the Launch Queue.

Conclusions

Certain applicants care greatly about how soon they are able to release their new gTLD, while others are content to take their time and let the space mature before they launch their own new gTLD. The process outlined above will allow applicants to control most of the time required to go to market.

ICANN plays no subjective role in parsing out or metering applications under the process outlined above. It is likely that at a back-log in the Launch Queue will materialize at times. However, the existing mechanisms will help spread out applications over time. If a FIFO process is followed and properly executed, the delegation process will be fair and transparent. It will allow applicants to take action and guide themselves in a manner that is aligned with their particular strategy.