28 February 2009

To: ICANN Board, Peter Dengate Thrush, Chair

From: Robin Gross, Chair, Noncommercial Users Constituency

Dear Peter:

The NCUC is pleased to submit a proposed charter for the new Noncommercial
Stakeholders Group (NCSG).

We have been working on this charter since June of 2008, and have entered into
extensive consultations with ICANN staff members, ALAC, At Large representatives,
Board members and our own constituency members on its development. We have been
asked by staff to prepare a cover letter to accompany the proposal which provides an
executive summary and explains why we have adopted innovative approaches to certain
problems posed by the formation of stakeholder groups.

The essential elements of this proposal are:

1. Noncommercial stakeholders join the NCSG directly, and the NCSG keeps track
   of membership and administers voting for Council seats by the membership as a
   whole.
2. The NCSG is administered by an annually elected Chair and a Policy Committee.
   The Policy Committee is composed of the 6 elected GNSO Councilors and one
   representative from each Constituency.
3. There are three classes of membership: 1) large organizations (which receive 4
   votes), small organizations (which receive 2 votes) and individuals (who receive 1
   vote).
4. Constituencies are formed as sub-units within the NCSG. We have deliberately
   made it relatively easy to form and join constituencies; at the same time we have
   de-linked Constituency formation from Council seats so that NCSG participants
   do not have artificial incentives to fragment into competing groups. *If the Board
   wishes to approve constituency formation under these terms we will embody this
   requirement in the charter.*
5. Constituencies are given special rights to propose Working Groups and assured
   that their positions are incorporated into any and all public comments submitted
   by the NCSG into the policy development process.
6. To protect the voice of minorities in the policy process, we require *all* NCSG
   representatives on the GNSO Council to vote in favor of the formation of a
   Working Group if it has the support of 1/3 of the constituencies or 1/5 of the
   whole membership.

Now we would like to explain how this plan advances the principles and goals of the
GNSO Improvements process. As you know, the Board has articulated four "vital
principles" that are critical to the GNSO revitalization process. They are:

- GNSO policy development activities should become more visible and transparent to a wider range of stakeholders;
- Reforms should enhance the representativeness of the GNSO Council and its constituencies;
- Operational changes should help enhance the GNSO's ability to reach consensus on policy positions that enjoy wide support in the ICANN community; and
- GNSO stakeholder representation structures need to be flexible and adaptable.

Our proposal meets these goals better than any of the proposed alternatives.

Principle 1: *Visibility and Transparency.*
When noncommercial stakeholders are fragmented into independent constituencies, each with their own mailing list, administrative structure and representatives, it is literally impossible for an ordinary noncommercial organization to keep track of them all. Noncommercial stakeholders in one constituency would have no idea what is happening in other constituencies. Our proposal integrates all policy deliberation and voting into a unified structure. This enhances the visibility and transparency of the SG.

Principle 2: *Representativeness.*
Our proposal enhances representation in several ways. First, by adopting a model of flexible and easy-to-form constituencies as sub-units within the NCSG, we allow a far more diverse set of interests and coalitions to form. Most important, through unified voting for GNSO Council seats, our proposal ensures that whoever represents noncommercial stakeholders on the Council has support across all constituencies, not just a bare majority of a small subgroup of the SG.

Principle 3: *Consensus.*
We believe that the old GNSO constituency structure, which assigns a specific number of Council seats to specific constituencies, is inimical to the formation of consensus. That approach encourages small subgroups to break away and form their "own" constituencies in order to gain a guaranteed Council seat. Once a constituency controls specific Council seats/votes, they have little incentive to seek support from other Council members for their views or their representatives. We already have evidence from this; we note that none of the "new constituencies" currently being proposed for the Noncommercial Stakeholders actually represent newcomers to the ICANN space as envisioned. All of them are existing members of NCUC or RALOs who wish to gain guaranteed seats on the GNSO Council without having to win an election among a large number of other noncommercial entities and individuals.

Our proposal is understands that policy development in the new GNSO will not come from a Council acting as a legislator, but from consensus-based Working Groups. Therefore, we allow relatively small minorities of the NCSG to bind our Council representatives to support the formation of a Working Group. Once a Working Group is formed, its proponents will have to convince many other stakeholders to agree on a

common policy. We think there should be a low threshold for the formation of a WG, so that anyone can have a chance to convince the rest of the GNSO of the need for a policy.

Principle 4: *Flexibility and Adaptability.*
The old constituency model is broken. It rigidly assigns Council seats and representation to categories of users that are constantly changing, categories that may overlap in numerous ways. Dividing the world up into mutually exclusive categories known as "constituencies" is always bound to exclude some people who don't fit the categories, and at the same time over-represent entities who qualify for two or three of the categories. By detaching Constituencies from Council seats, our proposal can make constituencies much more flexible and lightweight. We make constituencies more like intra-Stakeholder Group working groups – easier to form and not mutually exclusive. NCSG members can join multiple constituencies, and constituencies can form and disband more easily without disrupting the entire representational structure of the NCSG. Under the old model, once a constituency is formed, there is a strong danger that it can be captured or controlled by a small group, especially as membership and participation declines. The NCSG charter proposed here solves this problem by situating constituencies in a large NCSG membership that cannot be easily captured.

We hope the Board appreciates the careful thought and collective effort that went into this proposal. We are of course willing to modify it based on reasoned comments and criticisms that may come from the Board and any other noncommercial groups that have not been involved. We look forward to consulting with you in Mexico and at future meetings as we hone the details of the proposal. Thank you.

Best regards,

Robin D. Gross,
Chair, Noncommercial Users Constituency