
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 16 December 2019 at 20:00 UTC

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JULIE BISLAND: Good morning, good afternoon, good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Monday, the 16th of December, 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

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

With this, I will turn it back over to Jeff Neuman. You can begin, Jeff.

JEFF NEUMAN: Thanks. Some good philosophical issues going on in the chat. Welcome, everyone. This is Jeff Neuman. This I think, if I remember correctly, would be our last call of the calendar year. Is

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that correct? I believe it is, although maybe I – yeah, it is. So welcome, everyone.

Let me ask for any updates for statements of interest before we go over the agenda and start the materials.

All right. Nobody has any end-of-the-calendar-year updates, so let's dive into the agenda. What we're going to do first is hopefully finish the predictability framework, and then, if we have some time, which I'm hoping we do, we get into the string contention mechanisms of last resort.

While we start getting into the predictability framework, let me just – there you go. The link is put onto the chat. So you beat me to it. Then I will note that I know we have an action item to develop flowcharts for the predictability framework, but unfortunately those are not yet completed. But we will work on those to get those in the new year so that people can follow along the next time this subject comes up with these flowcharts and also make some comments on the e-mail list.

I will note that, on the last time, we spent a lot of time – probably the bulk of the time – talking about the concept of the predictability framework. This time, I'd like to get into some more specifics. I know that there still a couple people that aren't necessarily convinced about the predictability framework. I appreciate that. I think we spent a lot of time discussing the concept and discussing the philosophy behind it. We've noted all the questions that still remain on that, but I think the way to make some progress on this is to go through some of the more specific questions that we have in the later pages of this subject.

If I could just ask – I think it’s Julia that’s controlling the screen, or is Steve or Emily; one of the three; I forgot who’s controlling it – just to scroll down a little bit more towards the middle – there we go – of Page 5 in the Google Doc, if you’re following the Google Doc.

Where I think we’ll start is in more specific questions about the role of the Spirit Team and GNSO policy change process. So I’m going to go over that paragraph that’s above the charts. We may skip the charts because I want to get to the more specific questions. We need to go through some of the notes from last time to make sure that everything is consistent. If there are things that are inconsistent with our discussion the last time, I just don’t want to spend time on that because we’ll make those changes to these chart examples.

The first paragraph, which I think is consistent with our discussion the last time, is that we’re recommending that the Spirit Group should begin its work after the publication of the final Applicant Guidebook in order to consider changes in the implementation. The Spirit Team should be constituted in advance, and, to the extent possible and applicable, follow the rules set forth in the IRT principles and guidelines document.

Then there’s a couple of examples in there. We can choose whether we think those examples are helpful to keep in the text or whether they may create some more confusion. The first time I read those examples, it confused me, but then, as I read it a couple more times, I think it made a little bit more sense. So I’ll go through these examples but we can decide whether to keep them or not.

So what is says in this text is that the Spirit can, for example, review any potential change before it's made to determine which of the categories delineated above are relevant to the change. The reason this sentence confused me is because, in rereading it, it would seem that the Spirit Team needs to review the changes before their made. But I think what it's meant to say is that they will review the changes to determine which categories above the change fits into it. So I think that sentence, if I'm interpreting it correct, really should mean that the Spirit can, for example, review any potential change to determine which category it fits in, or something like that, as opposed to what it says now, which almost implies that the Spirit Team can review it after the change is made. I don't think that was the intention.

We are in the middle of Page 5 under the section that says "Role of the Spirit and GNSO Policy Change Process in Change Control."

Jim has his hand up. Jim, please?

JIM PRENDERGAST:

Thanks, Jeff. Apologies for missing the last call where this may have been discussed because I can see the word is in light blue. But that previous sentence, where, "Spirit should be constituted in advance and, to the extent possible and applicable," that's giving me a little bit of pause with "to the extent possible and applicable, follow the rules." Were there examples or are there examples where people wouldn't have a problem if this group didn't follow the IRT principles and guidelines? There must be something that

is in somebody's mind on this one. I'm wary when we say we're going to deviate from the GSNO guidelines.

JEFF NEUMAN:

Jim, I added that word "applicable" just because I wasn't sure that every one of the principles and guidelines would be applicable to the Spirit Team. It's not that I had an example in mind. It's just that this is of a different type of team, where the term, as we'll talk about, of the members on this team is not or may not be limited until an issue is solved. There's no "effective date" of the policy implementation. Normal IRTs are in place, according to the rules, after the policy is developed up until such time as the effective date of the policy. That's in the operational rules. But that doesn't really apply to this type of IRT, which is a standing IRT. So that's why I put, if it's applicable: there are some rules of an IRT are not intended to apply to something that's standing. But I understand your concern. We could say to use it as a guide, but if you say to use it as the law of what they have to do, then I'm afraid that not everything fits in.

JIM PRENDERGAST:

If I could just respond ... [Anne]: "Uses legalese in there. Too loosey-goosey," in the chat. What's giving me pause is, if they're not bound by some existing procedure that the GNSO Council has already signed off on, then what's to prevent the leadership of Spirit from going off in directions that nobody has anticipated before. I know we're coming up with something new, but I think we also need to somehow establish rules and procedures that govern

it. They can't just decide to follow when they want to and not decide to follow when they want to.

JEFF NEUMAN:

Thanks, Jim. That makes sense. What if we just said, because we're not going to be developing all the rules, something like our recommendation is that the Implementation Review Team come up with the exact rules for this Spirit Team based on then IRT principles and guidelines document. This way, they're going to through a normal implementation process. They will be approved by the community. I just didn't want, in this document, because we're not getting down to all then finer details, to say it has to follow to the letter of the IRT.

Would that make it a little bit better?

I'll go to – well, I was directing that at Jim, but I [inaudible]

JIM PRENDERGAST:

Hey, Jeff. Sorry. I had a double mute going. Sorry. What if we then put in a note to the council in this document that describes what we just talked about, which is we're not being completely prescriptive here. It's up to the group to set its rules and procedures. However, we recommend that there are agreed-upon rules and procedures in place before the Spirit Team begins work.

JEFF NEUMAN:

I think that makes sense, but let me go Anne. The intent is not to have it loosey-goosey. That's not the intent. Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Jeff. I think, to a large extent, when this original concept was discussed, we said, yeah, it works if it operates the way an IRT does. We used to call it the standing IRT. We put it out for public comment as a standing IRT, and we didn't put this kind of hedge language in.

I think, to try to be constructive, I would say I don't think "if applicable" is the right way to go. I think it's "IRT rules should apply to the greatest extent possible." I don't think it's "if applicable." So I think I could live with a little wiggle room, but I think it would have to be far more precise than this. I think that "if applicable" would have to go out and it would have to be "to the greatest extent possible."

I don't think we should hold up the IRT with figuring out what the rules of the Spirit Team are. I think we've said what they are in the predictability framework and that there should be a correlation and IRT rules should apply to the greatest extent possible. Thanks.

JEFF NEUMAN: Thanks, Anne. I guess I'm okay with that. Again, the very fact that it is a standing group is actually a conflict with the rules. I'm not going to push back on this. I think we're all on the same page. We'll figure out the language, but I think the concept is all there.

Someone had posed a question – I think it was Paul – of who the Spirit Team is accountable to. It's accountable to the GNSO Council as a group. We'll talk about the composition in a couple paragraphs from now. They may have a little bit of double

accountability, both to the council and perhaps to a group that nominates it. We'll talk about whether that applies or not as we go further in this document.

Going back to the chat, Annabeth states – sorry, I was reading Rubens' comment ... Donna says, "So the IRT decides the rule, not the Spirit?" At the end of the day, we're setting policy here as the policy group. But, remember, an implementation review team will be set up to implement all of our policies. So, if we do not put in all of the rules but are more generic, then of course an implementation review team always has the discretion to fill in any of the implementation details that are based on our policy recommendations. That doesn't change. That's the same with all policies that are approved by the GNSO Council.

Annebeth states, "Could it mean that the Spirit can recommend a change to be decided by the GNSO Council without the other stakeholder groups being involved?" I think that question is something we will get to also in a little bit as far as the scope. What we're talking about now are the rules for the Spirit Team.

I'm going to skip these – oh, sorry. We missed a sentence. That last sentence in there states that also the ... Yeah, there is some wording issues there. I think we made some deletions. But the group can raise any issues on its own as well. So the group can raise any issues of policy implementation conflict to the GNSO Council for further discussion and possible uses, for example, of EPDP and GNSO guidance process.

I'm not sure that sentence actually helps. I mean, it's true, but I think it's a little bit confusing in this particular section. So I'm going

to ask staff to put a bracket around it because we'll get to possible outcomes and things in a couple paragraphs.

Rubens states, "My experience in the [Reg] Data Policy IRT makes me suggest that the working group work hard towards not leaving too much to IRT." Yeah, Rubens, understood. We're going to get to as much as we can, but, at some point, an implementation team is going to have to put ... We're not going to get to everything, but we will try to provide as much guidance as we can.

Paul is saying, "That sentence is an example of why I'm afraid that the Spirit will just be another group to be lobbied." Hold on a sec on that one, Paul. We do get to that issue as well. So I'm going to ask everyone to skip these charts because they need to be updated with some of the discussion items that we had last time and they have not yet been. So if I can ask Julie or Steve – sorry, Steve is controlling the version that's up ... Steve, you did that quickly.

So we are on Page 6 now for the role of the Spirit section. Anne is saying, "We definitely should not have the IRT define the Spirit role." Right. We're not asking the IRT to define the Spirit role, but it can fill in holes with specific processes if we do not cover every situation. So let's do what we can. Hopefully we will have done our job.

Here we have the role of the Spirit Team and what decision-making authority does the Spirit have, if any. What it says here is that all decisions are advisory in nature and intended to serve as guidance for ICANN staff as well as the GNSO Council and

community. So the point here is that there's no binding decisions. There's nothing that the Spirit Team will in theory do that doesn't have oversight from the GNSO Council. Then we'll talk about what role the rest of the community has in a couple lines.

Then the next question, when will the GNSO Council be consulted? What it says here is that the Spirit will submit its advice recommendations to the GNSO Council, who maintains a supervisory role, which is what we've said previously a couple times. Then the GNSO Council should employ processes and procedures to consider the Spirit recommendations as expeditiously as possible. Ultimately, the GNSO can choose to accept the recommendations of the Spirit or reject them by letting the Spirit Team know of its decision rationale and propose[d] next steps.

Before we talk about a proposal I put in here just for discussion purposes, does anyone have any questions on those bullet points? Then we'll get to the proposal I put in for us to consider.

Anne is saying, "The implementation review team should not be filling in holes. No way can we or the IRT anticipate all situations. If situations arise that don't fit the IRT rules as applied to Spirit, the GNSO Council must [weigh in too many layers and delay]."

Sorry, Anne. I'm a little bit confused with that comment. The normal process is for our group to be recommending policy. Then an implementation review team will be, assuming it gets adopted by the council and then the Board, an implementation review team is constituted to come up with how to implement our policies. Inevitably, there will be areas where we have prescribed a policy

or a policy has been approved, but some of the details will need to be filled in by an IRT. So I'm not sure what the issue is. Sorry. Maybe I'm missing something. Sorry.

Anne, please?

ANNE AIKMAN-SCALESE: Jeff, thanks. I think that the point is, again, for continuity, is that, really, this Spirit Team just acts as an IRT at a certain point in time after the applications come in. Therefore, I don't know why there would be a need for the IRT itself to further deliberate on what the Spirit is supposed to do. That is what I'm saying is too many layers and too much delay. I think that, once you constitute the Spirit, it acts in the same way as an IRT and it just does so based on what the IRT has already done. But there doesn't need to be, in my mind, another layer where the IRT starts defining the role of the Spirit. The role of the Spirit is essentially an IRT role that is a standing role that starts after the applications are received. Period.

JEFF NEUMAN: Yeah. I think Cheryl is helping me out here with understanding. So I think what you're saying is that all the rules are going to be settled by the time the Spirit Team is formed and starts operating. So that is true, yes.

ANNE AIKMAN-SCALESE: Okay, thanks.

JEFF NEUMAN: Sorry. I'm the slow one today, which is fine. It's not unusual. Anyone else? Anne, that's still left up (your hand)? Okay.

Now we need to decide—

GREG SHATAN: This is Greg. My hand is up.

JEFF NEUMAN: Oh, sorry, Greg. I don't know how I missed it. There you go. Greg, thanks. Please.

GREG SHATAN: It's okay. It's a very small, Trumpian hand. I think what caused this little frolic and detour is the idea that the Spirit would somehow vary from the standard IRT rules. That's what really needs to be filled in. We could do a gap analysis between what we think the standard IRT rules and what we think they need to be for the Spirit, or we could leave that gap analysis to the implementation review team. There may be very few gaps, other than the standing nature of it itself. Perhaps one thing to do would be to just say, to the extent the Spirit Team wants to do anything that is different from the standard IRT rules, they need to make a proposal to the GNSO Council, just like a working group would do with a charter change. That should be the mechanism. That way, we don't have to guess now what variances they will need from the standard IRT rules. Thanks.

JEFF NEUMAN:

Thanks, Greg. I think that makes sense. It was probably confusion caused by me because the very notion, as you said, Greg, of a Spirit Team being standing is in and of itself not in accordance with the IRT operating rules. That may be the only area. So I think maybe I'll take it as an action item: to see if we think there's any other deviations and, to the extent we agree as a group that there are, we can just spell those out as the only exceptions and then move on.

At the end of the day, I think we're all in agreement that the rules of this Spirit Team – the role and how it operates – should be set in advance before this team is constituted and starts its work. So I think we're all on the same page there.

Now the Spirit Team, let's assume, has made a recommendation or has some advice it wants to give to the council. What should the role of the council at that point be? We could say that the GNSO Council has to affirmatively vote to accept those recommendations or advice and then act upon that, depending on what the actual advice recommendations are. But we could instead say that the council could have a period of time to, let's say, object. If it doesn't object by that period of time, it could be deemed accepted or we could say that the council could have an opportunity to say it wants to discuss it more and have a formal vote to accept it.

The reason I'm bringing this up – you guys can say, no, it should all be by formal acceptance – is that one of the things we wanted to do with the Spirit Team is create more efficiencies and move a little bit quicker. The GNSO Council, when they have to approve things, has to do it by a formal vote. I'm not sure this would fall

into the type of vote that could be done on e-mail. Perhaps it is. But then there's also the ability to table discussions or resolutions. So it's just something thrown out there as something to think about. Are we saying that the GNSO Council has to affirmatively approve all of these, or are we saying something else?

So I think that's what I want to hear some thoughts on, again, keeping in mind that, with that very last sentence, we're trying to go for some efficiency. Our goal is not to delay things, but, on the other hand, we don't want to do rush into anything, either.

Maxim is saying, "Vatican style. No food in until it's resolved." Okay, that's one way to do it."

Paul says, "Accepted unless rejected within a certain period of time is pretty scary. [We've been] inviting the filibuster at the council table." Right. But, also, Paul, if we say that something needs to be accepted affirmatively and it's an implementation detail where there needs to be quick resolution without holding up, let's say, the application process or anything else, is there something else we could do other than the normal "it has to be accepted by the council using its regular rules"? We could say that. That's fine, but I just want thought given to that question.

Rubens is saying, "All voting can be done by e-mail but requires both discussion and prior notice so it's not as quick." Paul is saying, "You could limit deliberations to two meetings." But, Paul, that could be two months or more, right? Let's say there's a question or a recommendation where ICANN wants to change the format of a system that takes in public comments, and the Spirit Team reviews this new system and says, "You know what? We

don't see anything functionally different about this system. We don't think that there needs to be anything further done because, in essence, we believe, according to our expertise, that this fulfills the same role and doesn't really change any implementation or policy component. Therefore, our recommendation is that ICANN should be okay to forward with it." Think about it before we say the council has to accept that recommendation. That would be a little bit drastic in that circumstance.

Paul, please?

PAUL MCGRADY:

Thanks, Jeff. Yeah, that's the happy example of something that clearly appears to be implementation. It doesn't really have any effect. So that's one corner.

The other corner is some significant change that wipes out an entire class of applicants. That's the real-life example of what we lived in the last round with closed generics.

So I don't know how to handle your happy example, but the real-life examples of changes coming out after the Applicant Guidebook is published and after applicants pay their money and invest all kinds of money to get ready to file the application – business plans internally and externally; you name it ... The problem here is the substantive changes that come down the pike. So I think that that's what we need to be planning for. If there are happy examples, like we're going to use public – Vendor A [instead] of public comment, Vendor B – maybe that's not stuff for the Spirit. I don't know. Thanks.

JEFF NEUMAN:

Thanks. Most of the situations – I know you were calling it my happy example and making it sound like it was the outlier – were smaller things, like changes in the PDT testing. But, yes, there were some major ones. You would assume, though, that, in your the scary-of-scary situation, in your scenario, the Spirit Team would erroneously recommend that they don't believe there's policy implicated and that ICANN should be able to implement it on its own. Then, if we gave a period of 30 days for the Council to say, "Wait a minute. We need to consider this more fully," you would assume that no one has alerted the council for 30 days and the council hasn't taken a step to say, "Wait a minute. We need to discuss this more fully."

There are going to be, at least if the last round is the guide, many more smaller happy changes, as you described it, then there will be the earth-shattering change of contract, change of classes of applications. There's going to be both examples, and we need to come up with something that I think is going to work with both. We would also have to assume that the Spirit Team who we the community are nominating aren't going to hear – well, we'll talk about that in a second – how they operate: whether they're representative or independent. But I would think that, if there's some earth-shattering change like that, then the Spirit Team would either make a more substantive recommendation, and then the council would in fact intervene if it didn't agree.

Paul, your hand is still up, so please.

PAUL MCGRADY: Thanks, Jeff. Thanks [for] putting my hand down. Then I put it back up. In that situation, maybe then solution is that then Spirit can make its recommendations and they could all agree that they don't think there's any substance there. But, if a GNSO councilor – it should only be one – disagrees, they can have it brought to the council for consideration, which would stay implementation of the proposal. Then we would limit the council to two meetings to talk about it, and then council would have to take a vote and either up or down it. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. That's in line with the proposal I put in there. Whether that's one councilor, that may be right. Or maybe it's a different threshold. [We'll] get input on that. But, yeah, that's essentially what I was trying to put down in this proposal: exactly what you said. You probably said it better. So it could be one councilor. Well, you don't mean just like a PDP. Or maybe you do. Is that more like something that could go on the consent agenda, unless one councilor wants to move it to the full agenda? Something like that? Which we could do.

So what do people think about that? Basically, if I can restate – I'll probably do worse than Paul just did – it's essentially that the Spirit Team will make its advice recommendations to the council. The council will have a period of whatever it is – let's just say 30 days for now – to decide to either take it up as a full issue or not or either by default or by affirmatively saying it doesn't need to take it up. It could do that. Or, if one councilor says, "Wait a minute. We need to consider this more fully," then automatically, as Paul said, the change cannot be made or stayed until such time that the

council does affirmatively take it up and approve it. Then the council would be given a limit of either a certain number of days or certain number of meetings to make its final decision.

Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Jeff. On the one-councilor rule, we should take a look at how that interacts with our supremacy clause, where it only takes one councilor to raise an issue under the input guidance and EPDP processes. So, if we're also now creating a Spirit Team one-councilor rule, there could be a question as to which one is being invoked and what the interaction between the two is.

Can you hear me?

JEFF NEUMAN: Yeah, we can hear you. Sorry.

ANNE AIKMAN-SCALESE: Okay.

JEFF NEUMAN: So we do have a supremacy notion here, which says that the GNSO Council could always institute one of its own processes. So, if that happened, then, depending on what the council ... I think that it's too hard for us to legislate what would happen there. My guess is that, if a councilor were to bring up and say that this should be a GNSO input process or something else, that would

be accompanied by a request to stay the change if it was caused by this.

ANNE AIKMAN-SCALESE: Yeah. If I may follow up, I'm just suggesting that, if we're going to write that rule in there, we need to consider these specific interactions with the annexes that already exist in the bylaws.

JEFF NEUMAN: Okay. Thanks, Anne. Fair enough. And I think that's what you put in – yeah, that's what you put in your comment as well on there.

Does anyone else have any thoughts on that proposal as we discussed and as modified from Paul's comments and Anne's comments?

Okay. Now we get to another question. If I miss anyone in the comments or someone's hand is up, please, someone let me know. The composition of this Spirit Team. Many of the commenters, when we asked the specific question of what the composition should be, just said it should be similar to that of IRTs. It was just left at that. But then the registries expressed some concern that there needed to be the required expertise on the group to handle some niche questions that might arise before this Spirit Team.

The example I raised is: let's say that the pre-delegation testing provider (assuming we still have pre-delegation testing) decides to change its processes. You want to make sure that there's someone on the Spirit Team that understands the pre-delegation

testing process. Or is it satisfied with the notion – I know it's a couple question later – that says that the Spirit Team can always call for expert opinions or expert advice? That could be a mechanism to handle it.

Thoughts?

Jim says, "Phone a friend."

Anne, please?

Anne, if you are speaking now, I can't hear you. You might still be on mute.

ANNE AIKMAN-SCALESE: Here, let me unmute.

JEFF NEUMAN:

Okay. Anne, you're still on mute. Let me go quickly then to ... Maxim states, "Are we suggesting any edits to the ICANN bylaws?" No. We are not suggesting any edits to the ICANN bylaws. Then Maxim says, "Currently, changes to PDT is an internal business of the testing org." But, Maxim, that's one of the reasons why we're setting up this PDT to where the changes to the testing have an impact on the applicants as it did in the last round. That is something that the Spirit Team should be able to weight in on. That's one of the reasons why we are creating it.

Julie is saying, "Zoom will not let us unmute Anne." So, Anne, you are in a permanent state of mute.

Anne states that, “Just to note that the CPIF (that’s the Consensus Policy Implementation Framework) already has a provision regarding technical expertise on the IRT, and IRT rules apply. Are you saying that a technical expert may not be a standing member and may need to be added?”

I guess what I’m saying, Anne, is that, when the standing team is constituted, it is going to be in the dark as far as what the issues will be or could be that would be raised. So, unlike a regular IRT, when you constitute it, you pretty much now then policy that the IRT is going to implement. Therefore, you can predict with fair ease the type of experts you need, if any, on the IRT. But, with the standing committee that you’re setting up even prior to knowing what any of the issues might be, you may or may not have an expert on there in that particular issue that eventually comes to that standing team.

That being the case, we could either create a permanent spot for some type of expert on the standing team, or we can just say that, when such issues arise, it’s the expectation that the standing committee would reach out to experts on such issues. Then we can just leave it at that.

But I’d love to hear your input. Hopefully you’re able to unmuted. If not, let me see if there’s anyone else. There must be people with thoughts on this, other than Anne.

All right, Anne, are you still on mute. Oh, Anne says in the chat, “[You just saying that you add an expert] doesn’t change the fact that the Spirit Team should be representative of the community.” That’s a correct statement, that this is not saying it shouldn’t be

representative. It's just saying that there may be a need to get experts in on this.

Annabeth says, "I think the community organization should have members on the Spirit Team." So what you're saying, Annabeth, by "community organizations," is ... Actually, I don't know what you're saying. I was thinking of supporting organizations and advisory committees. But is there something else you mean by "community organizations"?

ANNABETH LANGE:

Hi. No, it's not really. I think that it's important that the organizations, like the SOs and ACs, are represented because this will happen after the guidebook has been finished. Then, with some of the efforts they have done to participate in the process in making the AGB, if there's going to be changes afterwards, they should have the possibility to chime in. That's what I meant. I hope you can hear me.

JEFF NEUMAN:

Yeah, I can hear you. Thanks, Annabeth. That's what I thought you meant, but then I was thinking that maybe you meant something else, like community application, because there's ...

ANNABETH LANGE:

No. Sorry for the confusion.

JEFF NEUMAN: No, that's okay. Maybe someone could help me here as to what the general IRT rules say about representation of SOs and ACs. Does it already address that? Does anybody know offhand?

Steve, please?

STEVE CHAN: Thanks, Jeff. You'll see a note on the side. It's a summarization of what the composition element of the IRT guidelines looks like. In terms of composition, it talks about at least one person from the PDP, if that makes sense. It also talks about a council liaison. I think the third part is probably the most relevant to this section, which is about the composition. So IRTs are expected to be open to all interested parties, but it doesn't necessarily guarantee representatives of the ICANN community. So the reason it states for why that might not be the case is the fact that it's dependent on the issue and interest related to that topic.

So, from the staff side, why we actually included this note is that some of these discussions about whether or not the Spirit needs to be representative, in some way, is a little bit contrary to the IRT guidelines because the IRT guidelines note that IRT should be open, whereas, in this case, there seems like there's at least been some discussion of making the Spirit representative, I guess akin to how the EPDP has limited numbers of participants from each of the community organizations. Thanks.

JEFF NEUMAN: Thanks, Steve. That was another area where I had said earlier that there may be only certain parts of the operating roles that

may be applicable. I forgot about that one until you just mentioned it.

So there's a couple things we need to discuss in there. Let's address those individually. The first thing is the notion of making it completely open. I'll give you my personal perspective and [not shared] perspective. My personal perspective is that I don't think it should be always open. I think a standing team should be appointed/nominated/whatever you want to call it and then that should be the team – obviously, a process for either adding new members, if we have to, or replacing members. But having a completely open team, where newcomers can just join at any point in time just seems to contrast a little bit with this notion of this standing panel. So I think that I'd love to hear a discussion on that question.

Let me go to Anne. I think you may be unmuted, so let me ask if you want to try to jump in.

ANNE AIKMAN-SCALESE: Yeah. Thanks. I think I'm back, Jeff. Thank you very much to Julie. I think that the issue about appointed representatives is a very significant one and one I'm sure is somewhat worthy of public comment because, if you take, for example, the EPDP experience and where the IPC sits in that, I don't think the IPC would be looking for the type of representative participation that has the same weighting we find in the EPDP process. I don't know.

Perhaps Greg or others can say more about that. Honestly, I haven't reviewed this for the IPC because it wasn't part of what we

were seeking public comment on before. But I can anticipate some issues with voting representation similar to that on the EPDP. Thank you.

JEFF NEUMAN:

Thanks, Anne. We'll talk about how this group makes decisions as well.

An interesting comment from Elaine, which I want to read because it has worked well. Elaine served on the Customer Standing Committee for a number of years. Elaine Pruis states, "I think we should look at the Customer Standing Committee composition for a good example. In that situation, there were four expert members and liaisons from all ACs and SOs. There were two-year appointments, so there was consistency and corporate memory." I think that was in my head as we were drafting this originally: to have that continuity.

But there's a couple concepts here. One is what then composition is, and two is how it operates going forward. I think – well, let me go to Karen, actually. Karen, please?

KAREN LENTZ:

Thank you, Jeff. The point I was going to make I think has been covered a little bit by you and Elaine and Anne. But, in regard to the principle of efficiency and composition and term length, I was thinking also of size. I think, if your goal is to have a standing group that is able to take an issue and come out with a recommendation on a fairly quick basis, then looking at something like the IRT, which is open-ended and which may have people

coming and going and lots of people from one group and none from another doesn't exactly fit for what you're trying to do, with some respect, with the Spirit. So I was trying to picture something like what Elaine is describing in terms of a group [with] composition and specific roles. Thanks.

JEFF NEUMAN:

Thanks, Karen. I think other people are weighing into to say that that makes sense – I think Paul McGrady, Annabeth, Justine – but Donna is saying, “The narrow scope is the CSC is also a testament to its success, so clearly articulating the scope of the Spirit is also important.” Agreed.

Cheryl states, “Yes, Spirit needs to balance and/or the ability for inclusion of all interested parties but still limit its size as such.” So I think we're starting to have some semblance of agreement.

Greg?

GREG SHATAN:

Thanks. Wasn't sure if you'd see my hand as a hand, so I decided to put it in chat. In any case, I want to sound a note of caution here because the CSC is a, by nature, narrowly-focused, technically-oriented group. It's aimed at the functioning of the IANA, essentially, and it does not really get into what, broadly speaking, we call policy debates and the like. So it's fairly easy, too, to define what types of expertise are needed and who's an expert. Unless we have a very narrow mandate for the Spirit, it's hard to imagine that that sort of self-selective group could be made to happen here.

If we're defining it as generally as most IRTs would get defined, then it just would not work. We can define, as we had with other IRTs, that people need to have experience with the policy-making that led up to it, but it's not the same. I would caution against comparing it to the CSC unless we really want it to be as narrowly focused as the CSC. We can certainly do things to define some roles here, but CSC grew out of a long compromised discussion, where the original idea was much more of a broad, multi-stakeholder community. Only after discussing, really, the nature of the CSC did it generally seem to people that it really needed to be constituted differently than a broadly multi-stakeholder group that might either be balanced among many groups or be open. So I don't know if this works. Thanks.

JEFF NEUMAN:

Thanks, Greg. I did not take Elaine's comments to say that then composition has to be the exact same as what is in the Customer Standing Committee, only that the group should be a closed group, appointed – we'll get into exactly who. But it should be a group that, once constituted, is closed, and people are on there for a period of time, unless they need to be replaced. But it's not an open group. So we can and should discuss what the composition should be exactly, but I wasn't taking it as having the exact same constitution.

But there are some comments, so maybe others took it in a different way. Donna states – I think this is important as well – “Staff should be members of the Spirit, as they are also potential experts for changes.” I think that's exactly right. I think they might be the ones actually to bring the changes in many cases, so I do

think they should have a strong role, since they will certainly be impacted by anything this group is talking about.

Jim states, “Are their requirements for IRT participants to participate in the PDP?” I do not believe there’s that requirement because, as Steve read, they want at least one person who is on the PDP to be on the IRT, but the others can be all new participants. I don’t think there’s a requirement that they would have had to have participated in any other policy process.

Donna is stating, “The CSC is still multi-stakeholder.” I’d rather not get into a debate as to whether the CSC is multi-stakeholder or not because I think there are probably people with different views. I think that, once we agree upon what the composition should be, the intent is to have it be closed and to not have a completely open group.

Greg said, “I also did not think it would be the same composition. The CSC is [fit] for a particular purpose.” Yeah.

Donna says, “[inaudible] staff lead the IRT, so I don’t see any concern.”

Greg states, “Are we getting confused those who implement and those who review implementation?” I don’t think we are, Greg, but perhaps.

Anne says, “Jeff, you missed three chat comments saying the Spirit Team should have members with [g]TLD PDP Working Group experience and preferably IRT experience.” Sorry for missing those. I feel like it’s almost self-serving for us to say that we should have members from this group on that group, but

perhaps it's not. If the group wants us to recommend that, we certainly, but I just know I'm a little hesitant to say that it should have people from this group. But, if that's the will of the group, I'm happy to put that in.

Greg, please?

GREG SHATAN:

Thanks. I disagree with your last point, Jeff. I think it's been pretty much understood in other IRTs that it should draw from the working group out of which the work that it is implementing comes from. It's not solely limited to those folks, but I think it's generally encouraged. It would be much harder to run an IRT that had nobody from the working group. There'd be no institutional memory, other than staff.

So I think that this is certainly something that we should encourage. I don't think it should be a rule. Thanks.

JEFF NEUMAN:

Thanks, Greg. I put it in the chat just to recall that, by the time we set up the Spirit Team, there will already have been an implementation review team that has at least one member of the PDP on it. But are we too far removed by the time that we constitute the Spirit Team? I actually don't have an opinion one way or another. I'm fine with doing it as an encouragement, but I just threw that out there.

We do need to come to some recommendation. I do want to reiterate that this section absolutely is going to out for public

comment, so we will certainly get the community commenting on this. But I would love, rather than throwing it open to questions, if we can, to have a recommendation for the public to weigh in on. So this is something I think we should try to at least come up with the qualifications that we've been talking about already and some semblance of a proposal for having a lengthy term for.

Let me just read what's in here. Anne says, "You need more than one person with the [PDP] working group background. If there's only one, there's no checks and balances on that one member's interpretation of what happened in the policy-making process." Okay. I think those are all good thoughts.

Kathy says she agrees. "We would want more than one member of the original PDP." Okay. Well, think about if you mean the original PDP. Or do you mean the original IRT? Or do you mean both? Because, again, there's going to be an IRT after this PDP. Then that will end in accordance with the GNSO operating procedures. Then a Spirit Team will be constituted. So you could have a year or more in between this PDP and ultimately the constitution of the Spirit Team.

Let's go to the next question, which I think we may have already talked about, which is the length of the term. I had put a note in here, although I put to my name in here. But this is my note that says, "Given that the role of the Spirit Team is intended to be a standing committee, I would recommend a term of two years, unless replaced by that particular group that put the person on the Spirit Team. I do not believe there is a need for a term limit, but what do others think?"

If we decide that it needs to be representative or have one representative from the different communities, do we just leave it up to that community to decide on what the rules are for replacing that person? Or do we need to be more prescriptive?

Sorry. Justine says yes, and I did not ask a yes/no question. Sorry, Justine. I should have asked the question in a better way.

While Justine's typing a response, Greg says, "Given the timeline, Spirit should certainly have members of the IRT." Okay.

Paul says, "Lifetime position unless removed for high crimes." I assume you mean "or misdemeanors" in there. Then Paul says also, "[inaudible]." Okay. And Justine is saying, "Yeah, leave it to the appointing group." I think that's right. I don't think we need to be so prescriptive as to how someone appoints members if they're given a member to appoint, just that they should follow their normal rules. At least I personally don't think we need to do a term limit or something like that because I think the appointing group should and can make those decisions.

Sorry, Greg. You say "and versus or." I'm not sure what that refers to. Is that to Paul's comment of a pension and/or company car? Or is that to something else?

"Inside joke." Okay, sorry. I must be an EPDP thing, which I'm thankful for not being involved in. Or a CCWG thing.

Oh, RPM thing. See, that was my third guess. Okay.

The next question is, is the Spirit Team member representative or independent judgement? I put a proposal in here for people to talk

about. I think it makes more sense for them to be independent. The accountability there is that the group that appointed them can always, according to its own process, remove them. But I think, if the person on there has to go back to the community that appointed it for every single decision or thought, that would defeat the efficiency purpose.

But what do others think?

Paul, please?

PAUL MCGRADY:

Thanks. I think independent judgement here is fine for two reasons. One: especially if we end up adopting the “one councilor can pull it out of the steam and have the GNSO Council look at the output, then that, I think, is a good safety net on that issue.

Secondly, as a practical matter, trying to find one representative for the GNSO, if each SO and AC has one person appointed, that represents everybody’s views? I’ve yet to meet that person. Thanks.

JEFF NEUMAN:

Thanks, Paul. I thought you’d be that person, but I guess I’m wrong. But I thought you could do it. It’s a joke. Paul is laughing.

I think that’s right. I agree that, even if every group within ICANN could appoint someone to this, it’d still be virtually impossible for them to be representatives. So I do think that independent makes sense.

Anybody disagree with that?

Okay. Obviously, this not a vote or anything. I'm just trying to get a range of opinions. So, conflicts of interest. We talked about this a little bit last time. On the call last time, because the role is limited to providing advice, the recommendations are not binding in nature. We certainly are having a requirement for an SOI (Statement of Interest). Perhaps – I put a note in here – we do a more tailored statement of interest, like the Name Collision Analysis Project did so it's got some more question on there if we want other things disclosed than what is normally disclosed on a statement of interest. I'm not sure that we need stricter conflicts of interest procedures for this, but that could be controversial.

Kathy, please.

KATHY KLEIMANN:

Hi, Jeff. Hi, everybody. Sorry to be late. This new time is a killer for some of us. I actually wanted to go back to the prior point: the role of the Spirit member being representative versus independent judgement. I think the group has to be representative of the community or the independent judgement doesn't work. People are coming in with their own biases, and they are coming in with their own backgrounds, and they are coming in with their own clients and their legal obligations to their clients, the corporations. So I really actually do want to pose a question on this one. You got me thinking as we went through there. So I'd definitely like it noted that there are concerns about this exercise of independent judgement and that the balance itself, as we always talk about –

this multi-stakeholder balance – that really helps us make sure that there's multiple perspectives.

JEFF NEUMAN:

Thanks, Kathy. If I could state that another way or ask a question, if this working group is satisfied with the composition of who's on it and the different groups and things like that, I think what we're saying is then that person that comes from that community or any community should exercise independent judgement on the ultimate questions or issues before it. Is that a fair statement? If we're satisfied with the composition of then group.

KATHY KLEIMANN:

Jeff, can I ask you a question. Are we saying, under not circumstances and at no time, would the Spirit members have to report back to their communities or to other communities to check on, say, difficult questions or borderline questions or puzzling questions?

JEFF NEUMAN:

Well, we'll get to the issue of confidentiality later, which I don't think we're saying. I just think that that would be up to the group that's appointing the person as to what they will require in terms of reporting back. I don't think we, in our group, should be mandating how each person that serves on here has to be accountable to its own group. So we're definitely not saying that they shouldn't have the right to do that, but we're also not prescribing that they have to do that, I think.

KATHY KLEIMANN: So let's talking about who the appointing groups are. Or the appointing groups in this case.

JEFF NEUMAN: Kathy, because you came late, we certainly haven't finalized that question, but we did have a pretty lengthy discussion on it. If I can just have you go back and read the notes or listen to that section. But certainly no final decisions have been made. But if we can just move on—

KATHY KLEIMANN: That's fair. That's absolutely fair and I apologize for coming in late. But, if that appointing group does not know if its ongoing accountability – appointing groups often come and go. ... This is a very new type of group, and the oversight may be something that doesn't exist right now or that the appointing group may not know. So I think we do have to clarify all of that then. Then I'll sign off. Thanks.

JEFF NEUMAN: Thanks, Kathy. I think, if you listen back, you'll hear some of, I think, what you want to hear. But, if not, certainly raise them on e-mail. Like I said, we're not by any means done with this discussion. So I'll just encourage you to do that.

Cheryl is saying, "Some appointing bodies may have specific rules and requirements already." Yeah, Cheryl. Thanks. That's what I'm

trying not to get in the way of. I don't want us to create anything that would put these groups in a situation where they have to treat this as something completely new, unless that group wants to do that. So, to the extent that we can rely on existing rules that these groups have, I think the better. But, please, if anyone disagree, let us know.

Do members of this group agree that a statement of interest – albeit, we could probably recommend a more targeted statement of interest – would be enough from a conflict of interest [inaudible], realizing the limited role that this group has – the fact that they're not making decisions, that they're only making recommendations, that the council effectively has checks and balances and all of that?

Anne is saying, "A more detailed statement of interest tailored to the team." I think that make sense. I think, given what we talked about, that should be enough. I don't think we need anything more specific. I know Donna has brought up the point that there may be applicants on there. That might be true, but, again, I think that would need to known not only to the group that appointed it (the Spirit Team) but also to the other team members. I think that would certainly make sense to ask very specific questions if they are associated with applications and what specifically is their role.

Also, how this group makes its decisions, which I think is coming up either in the next – if we scroll down a little bit ... Because we don't want an applicant to block others or anything like that.

Donna, please?

UNIDENTIFIED FEMALE: Donna, you're not unmuted.

JEFF NEUMAN: Donna may have lowered her hand because—

DONNA AUSTIN: Thank you.

JEFF NEUMAN: Oh. No. Good. Yeah, please, Donna.

DONNA AUSTIN: I agree that a tailored SOI is a good option. I think we all need to recognize that, in large part, there are going to be people on this [spurt] that will be conflicted. Maybe it's an element of trust that we have to apply that I don't think somebody's conflict of interest should exclude them from any discussion. I know, in some cases with the Board, the Board has a process in place that they need to recuse themselves from discussions. I'd hate to think that's the path we would go down for this. I think the enhanced statement of interest is good, recognizing that people are going to have conflicts of interest. But that shouldn't mean that their voices should be lesser heard or anything like that. Thanks.

JEFF NEUMAN:

Thanks, Donna. I think that's right. In fact, many of those that would be considered having conflicts may actually be the ones that this impacts the most and in fact may have the expertise to help resolve whatever situations are out there. So, as long as we can trust the members and trust that the information they put on the statement of interest (this tailored one) is correct and everyone understands these conflicts, I think it should be okay.

I think we already talked about ICANN staff participation. I forgot what we wrote down in this section, but let me just read it quickly. "Should ICANN's role be similar to their role in the IRTs ..." I think we agreed just before that ICANN should be an integral part of this Spirit Team. They can raise issues. So I think it is important for staff to have a role in this group.

Let me just ask if anyone disagrees with that.

Okay. I want to skip "who can raise?" for a moment because this was brought up: the decision-making process. This is always a tough question. In general, groups to try to operate by consensus, but these are going to be issues that need resolution. So, if we require some sort of consensus, that may end up being a way to delay or cause delay. I don't think we want that. In theory, this group is supposed to exercise independent judgement. We don't want them intentionally to be lobbied.

I did skip the confidentiality. Sorry about that. We'll come back to that, unless people think we need to talk about that first if it has an impact on the decision-making process. So we'll come back to confidentiality. Sorry for skipping that.

Donna is saying, “Maybe we have some rules, like no more than one person from an organization or something like that.” I think that makes sense. But what about the decision-making process? Like I said, normally we say consensus, but we don’t want this group to get stuck. So is majority enough?

Also a second question in there is, “Do we give any extra weight to those who may be impacted more similar to the contracted parties in their agreements?”

Kathy had her hand raised. Is it still up?

No, unless I’m missing it. Anybody have any thoughts on that?

KATHY KLEIMANN: Hi, Jeff. My hand is back up again.

JEFF NEUMAN: Kathy, please?

KATHY KLEIMANN: I think we’re pushing this a little fast. If I understand what you said, this is going to be under a veil of confidentiality, that it won’t be open and transparent, that people won’t be able to monitor what’s going on with these questions. We’ve got people who could be representing their own clients. We really haven’t talked about it—the attorney/client privilege issue of so many attorneys with their clients. So independent judgment may well be your client judgement.

Now we're talking about that, if there is diversity– I've really worried about the diversity of this group – we're going to ignore it and maybe go for majority versus consensus. I think that's dangerous. I understand there's a rush, but I don't think majority is a good way to go. There should be agreement of this group.

With the type of people should be on, that shouldn't be hard to do. If it's pretty clear what direction there is to go, then this group should go on it together. I think it could be dangerous otherwise. Thanks, Jeff.

CHERLYL LANGDON-ORR: Jeff, if you're speaking, you're on mute.

JEFF NEUMAN:

I was. Thank you, Cheryl. Oops. So, yeah, I accidentally skipped the confidentiality section, but I did not mean, by skipping it, that everything is confidential. In fact, what it says there is, "Absent extraordinary circumstances, all proceedings should be open, recorded, transcribed, and publicly available." So I apologize for leaving the impression that everything is confidential. So hopefully that is a little bit better.

I do think attorneys that represent clients need to be very careful on this type of committee, or I think groups should be very careful in selecting an attorney, if that attorney is going to have client confidential information that is going to stand in the way of it providing its thoughts on this IRT. I think that that's something it's going to have to work out. There's no way for us really to account for that as a policy organization.

That said, I think that it's not that we want a majority to rush things through. It's just that we don't want groups ... Whatever issue is brought before the Spirit Team is an issue that needs to be resolved. Period. Unlike policy groups, where you can have a majority but not a consensus and therefore nothing gets done, I don't think you have that option with this Spirit Team. It needs to act. Therefore, that's why I recommended the [jury]: not because it should be a speedy thing but it has got to make a decision.

Let's see. All right. Kathy has got a new hand. Anyone else? Steve, did you have a hand, too? Sorry.

STEVE CHAN: I did [inaudible] staff role section.

JEFF NEUMAN: Oh, okay. Let's just finish this one. I know we're getting close on time. Martin is saying, "Process should be in a timely manner."

Kathy, is this a new hand?

KATHY KLEIMANN: Yeah. Jeff, may I speak?

JEFF NEUMAN: Yeah.

KATHY KLEIMANN: Okay. I really wish that the comments would reflect that there's some concern about this proposal of majority in the righthand side. I was going to say what Martin said. Absolutely we can make decisions in a timely manner. The question is, what is the standard for those decisions? That's what's in question. It doesn't mean they have to be [inaudible] forever. It doesn't mean they have to be discussed or debated forever. There can be a time limit set, but there should be consensus going out of this group that the direction picked is the right direction. Thanks.

JEFF NEUMAN: Thanks, Kathy. I accidentally put myself on mute again. I will note that there's some concerns, but I would love to hear, from those that have concerns, how we get ... These decisions will need to be made. Action needs to be taken. So perhaps there could be some thought on if a group is not able to achieve consensus. We need to get an outcome. We can't just be in a position where nothing is done.

Cheryl, please?

CHERYL LANGDON-ORR: I know Greg's hand has been up for a while as well, so let's hear from him. He may very well say something I'm going to and save me from doing that.

JEFF NEUMAN: Okay. Greg, please?

GREG SHATAN: Thanks. I'm also concerned about the majority. We have a longstanding and mostly successful use of consensus, rough consensus, and consensus even with substantial agreement but still something we define as consensus. I think this is where we need to have a chair that exercises some more guidance in terms of getting to decisions. Those on the group need to practice their consensus-building skills. As it says in the expected standards of behavior, those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build a consensus with other participants and, more broadly, should try to think beyond their own parochial concerns, which we all have. There is nobody here who is from Mars when it comes to this stuff. It's throwing in the towel to say that we can't act in a reasonable fashion and maintain our core decision-making function or methodology. Thanks.

JEFF NEUMAN: Thanks, Greg.

CHERY LANGDON-ORR: Cheryl here, Jeff. I'm glad I waited. Hang on a sec, Jeff. I didn't totally relinquish. I simply stood aside as Greg went past me – willingly, I'll hasten to add. And I'm glad I did because I am a fan of consensus, but I'm equally not a fan of log jams and issues that can't be resolved not being able to be forwarded. I don't think this community is incapable of doing that. I think, if we have standards of the expectations that include consensus-building being the

norm and every effort should be made to, but we have it limited and timebound, deadlines and forwarding of progress can also be met. We do have better [inaudible] or capable leadership, then that also should help. If need be, I guess you can in fact report a voted outcome.

But that voted outcome is still only a recommendation, so I don't actually see tying to a measure of some form of majority, be it a super majority or other form, is as vitally important as passing on to final decision-make a true and accurate reflection of where the consensus-building of the community representatives within Spirit we're able to get to. That's my very personal view. Thanks.

JEFF NEUMAN:

Thank, Cheryl. I know we're getting towards the end, but I think we said it does make a lot of sense, at the end of the day, if we just say that the group is responsible for reporting out the level of consensus reached on advice recommendation. That just might be enough. If it gets consensus, great. It's a recommendation for the council, anyway. We might not even need to say that nothing ... Sorry, I'm not being clear. But the way you said it, Cheryl, made a lot of sense, so I don't need to add onto that. You said it better than I could.

Paul is saying, "This underscores why one council should be able to" – right – "do what it does."

I know we're getting towards the end. I think we've made it most of the way through. There are some important questions we need to pick up on. I would like to, to the extent we can, do some

discussion on the list and then maybe reserve the first 10 or 15 minutes of the call the next time, which is next year, for reviewing and recapping this. But please do put comments in e-mail.

Let me just see. Steve, your hand is up. I do want you to be able to say what you were going to say, so let me give you the last comment and then we'll close it up.

STEVE CHAN:

Thanks. I feel bad though since we're already two minutes over. But, sure, I'll keep it very brief. The thing I wanted to raise on the ICANN staff role – you touched on this already, Jeff – is that this is another potential inconsistency with the IRT guidelines. For IRT, as Jeff noted, the group that facilitates the IRTs is staff. In some circumstances here in the conversations, it sounded like it may be a role that's more appropriate for some form of chair. So that's part of the reason why we, in the proposed language, had a little bit about the IRT guidelines. Donna had mentioned, does this group need a chair? Or had asked that in the chat. So that might be a question you will want to consider.

Then just a real quick comment on then decision-making processes in the IRT guidelines. Maybe there is a case where it could be consistent. [inaudible] follow the methodology outlined in the GNSO Working Group guidelines. So, in the end, maybe this group is actually taking best of breeds from multiple sources, like the IRT guidelines, the working group guidelines, the CSC operating procedures, and things like that. Thanks.

JEFF NEUMAN:

Thanks, Steve. Sorry, everyone, for going over. The two areas we didn't cover are the role of public comment and appointment – well, we did cover appointment of outside experts. So I think it was just really the role of public comment. Let's see if we can get some discussion on the list.

Our next call is in January. I can't think of the date off the top of my head, but it is and should be on your calendar already, unless someone already put it in the chat. So please consult your calendar. If you did not get a calendar invite, please send ICANN staff a message so that we can get one on your calendar.

Everyone have a healthy and happy new year and holidays. I look forward to hitting the ground running on our next call. Thank you, everyone.

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