

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUESTS 14-30, 14-32, 14-33**

24 July 2014

The Requester, DotRegistry, LLC, seeks reconsideration of the Community Priority Evaluation (“CPE”) Panels’ Reports, and ICANN’s acceptance of those Reports, finding that the Requester did not prevail in the CPEs for .LLC, .INC, and .LLP.¹ In light of the CPE results, while the Requester’s applications will not be given priority over other applications for the same strings, each is still in contention to ultimately be, following contention resolution, the prevailing application for its string.

I. Brief Summary.

The Requester submitted community-based applications for .LLC, .INC, and .LLP (“Applications”). The Applications were placed in contention sets with other applications for .LLC, .INC, and .LLP, respectively. As each of the Applications is community-based, the Requester was invited to, and did, participate in CPE for each Application. The Requester’s Applications did not prevail in any of the CPEs. As a result, the Applications go back into contention with the other applications for the same strings; the contention will be resolved by auction or some arrangement among the involved applicants.

The Requester claims that the CPE Panels (“Panels”)² failed to comply with established ICANN policies and procedures in rendering the respective CPE Reports. Specifically, the

¹ Requests 14-30, 14-32, and 14-32 (collectively, the “Requests”) seek reconsideration of the determinations on Requester’s applications for, respectively, .LLC, .INC, and .LLP. Because the Requests are made by the same Requester and raise sufficiently similar issues, they will be addressed in the same proceeding. *Cf.* ICANN Bylaws, Art. IV, § 2.8.

² The “Panels” includes those people who were involved in: (i) evaluating and scoring the Applications; (ii) validating letters of support and opposition; and (iii) issuing the “CPE Report” on the Requester’s Applications.

Requester contends that the Panels: (i) failed to validate all letters submitted in support of or in opposition to .LLC, .INC, or .LLP; (ii) failed to provide details regarding the independent research on which they relied; (iii) engaged in improper “double counting” by factoring its assessment of certain specified CPE criteria into its assessment of other CPE criteria; (iv) failed to independently evaluate each of the Requester’s applications; and (v) improperly applied the CPE criteria.

The Requester’s claims do not support reconsideration. The Requester has failed to demonstrate that the Panels acted in contravention of established policy or procedure in rendering their respective CPE Reports, or that it has been adversely affected by the challenged actions of the Panels. CPE Panels are not required to provide details regarding their independent research, and contrary to the Requester’s claims, the Panels did not engage in prohibited “double counting” in applying the CPE criteria. Further, the Requester has not demonstrated that: (i) it was adversely affected by the Panels’ alleged failure to validate letters of support or opposition; (ii) the Panels failed to independently evaluate its Applications; or (iii) the Panels did not properly apply the CPE criteria. The BGC therefore concludes that Requests 14-30, 14-32, and 14-33 be denied.

II. Facts.

A. Background Facts.

The Requester submitted community-based applications for .LLC, .INC, and .LLP.

The Requester’s applications were placed in contention sets with other applicants for the .LLC, .INC, and .LLP strings, respectively.

On 19 February 2014, the Requester was invited to participate in CPEs for .LLC, .INC, and .LLP, respectively. (See <http://newgtlds.icann.org/en/applicants/cpe#invitations>.) CPE is a

method of resolving string contention, described in section 4.2 of the Applicant Guidebook (“Guidebook”). It will occur only if a community application is in contention and if that applicant elects to pursue CPE.

The Requester elected to participate in CPE for LLC, .INC, and .LLP, respectively, and its Applications for these strings were forwarded to the Economist Intelligence Unit (“EIU”), the CPE provider, for evaluation.

On 4 March 2014, the European Commission (“EC”) submitted letters opposing the Requester’s Applications for LLC, .INC, and .LLP on the grounds that, by seeking to “limit the ability to register these domains for corporate identifiers to US registered businesses only [the Requester] is excluding numerous companies worldwide including European Member States and is therefore discriminating [against] potential registrants in an illegitimate manner.” (*See* <https://gtldcomment.icann.org/applicationcomment/commentdetails/12361>; <https://gtldcomment.icann.org/applicationcomment/commentdetails/12363>; <https://gtldcomment.icann.org/applicationcomment/commentdetails/12359>.) The EC noted, with respect to the Requester’s application for .LLP, that Requester admitted in its application that “EU Member States [such] as Germany, Greece, Poland, Romania, and the United Kingdom are indeed using LLP as a legal form for entities.” (*Id.*)

Also on 4 and 5 March 2014, respectively, InterNext GmbH and Afilias Limited submitted letters of opposition to the Applications on the grounds that they excluded non-United States registrants. (*See* <https://gtldcomment.icann.org/applicationcomment/commentdetails/12358>; <https://gtldcomment.icann.org/applicationcomment/commentdetails/12357>; <https://gtldcomment.icann.org/applicationcomment/commentdetails/12356>;

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12398>;

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12412>;

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12396>.)

On 20 March 2014, Delaware’s Secretary of State sent a letter to ICANN’s Board, stating that while Delaware continued to have “considerable concerns” about granting gTLD strings “defined by state registries as ‘company endings,’” such as .INC, .LLP, and .LLC, it sought to “correct a recent comment letter submitted as part of the [CPE] process by Donuts, Inc.,” which “erroneously implied that the State of Delaware is specifically opposed to the community application of [Requester].” (*See* <https://www.icann.org/en/system/files/correspondence/bullock-to-crocker-20mar14-en.pdf>.)

On 25 March 2014, the EC submitted comments withdrawing its objections to Requester’s Applications. (*See*

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12413>;

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12412>;

<https://gtldcomment.icann.org/applicationcomment/commentdetails/12411>.) The EC stated that

the Requester had “provided extensive field research that provides sufficient basis for a withdrawal of our objection[s], and after discussing in depth the issues raised in our comments

we have a different approach to these community applications.” (*Id.*) With respect to the

Requester’s Application for .LLP, the EC stated that it had “reached an agreement [with the

Requester] based on the commitment that if the string is delegated to [the Requester], parties will work together towards the implementation of a framework which ensures that UK registrants that comply with certain requirements can make use of the corporate identifier.” (*Id.*)

On 11 June 2014, the Panels issued their reports on the Requester’s Applications (“Reports”). The Reports explained that the Applications did not meet the CPE requirements specified in the Guidebook and therefore concluded that the Applications did not prevail in their respective CPEs. (See .LLC Report, available at <https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>; .INC Report, available at <https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>; .LLP Report, available at <https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>.)

On 12 June 2014, ICANN posted the CPE results on its microsite. (See <http://newgtlds.icann.org/en/applicants/cpe#invitations>.)

On 25 June 2014, the Requester filed Requests 14-30, 14-32, and 14-33, requesting reconsideration of the Reports.

B. The Requester’s Claims.

The Requester contends that reconsideration is warranted because the Panels:

1. Failed to validate all letters submitted in support of or in opposition to the Applications, (Request 14-30, § 8, Pgs. 4-7; Request 14-32 § 8, Pgs. 3-5; Request 14-33, § 8, Pgs. 3-5);
2. Failed to “cit[e] any sources or give[] any information about [] the substance or the methods or scope of the ‘research,’” (Request 14-30, § 8, Pgs. 7-8; Request 14-32, § 8, Pgs. 5-6; Request 14-33, § 8, Pgs. 5-6);
3. Violated the policy against “double counting,” which provides that “any negative aspect found in assessing an application for one [CPE] criterion should only be counted there and should not affect the assessment for other criteria,” (Request 14-30, § 8, Pgs. 8-9; Request 14-32, § 8, Pgs. 6; Request 14-33, § 8, Pg. 6);

4. Failed to independently evaluate each of Requester's Applications, (Request 14-30, § 8, Pgs. 9; Request 14-32, § 8, Pgs. 6-7; Request 14-33, § 8, Pgs. 6-7);
5. Failed to properly apply the CPE criteria in evaluating each of Requester's Applications, (Request 14-30, § 8, Pgs. 9-17; Request 14-32, § 8, Pgs. 7-15; Request 14-33, § 8, Pgs. 7-15.)

C. Relief Requested.

The Requester asks the Board to reverse the Reports and grant community priority to its Applications or, in the alternative, assemble new CPE Panels to reassess its Applications for community priority. (Request 14-30, § 9, Pgs. 17-18; Request 14-32, § 9, Pg. 15; Request 14-33, § 8, Pg. 15.)

III. Issues.

In view of the claims set forth in Requests 14-30, 14-32, and 14-33, the issues for reconsideration are whether the Panels, in rendering the Reports, and ICANN staff in accepting those Reports, violated established policy or procedure by:

1. Failing to validate all letters submitted in support of or opposition to the Applications, (Request 14-30, § 8, Pgs. 4-7; Request 14-32 § 8, Pgs. 3-5; Request 14-33, § 8, Pgs. 3-5);
2. Failing to "cit[e] any sources or give[] any information about [] the substance or the methods or scope of the 'research,'" (Request 14-30, § 8, Pgs. 7-8; Request 14-32, § 8, Pgs. 5-6; Request 14-33, § 8, Pgs. 5-6);
3. Violating the policy against "double counting," which provides that "any negative aspect found in assessing an application for one [CPE] criterion should only be counted there and should not affect the assessment for other criteria," (Request

14-30, § 8, Pgs. 8-9; Request 14-32, § 8, Pgs. 6; Request 14-33, § 8, Pg. 6);

4. Failing to independently evaluate each of Requester's Applications, (Request 14-30, § 8, Pgs. 9; Request 14-32, § 8, Pgs. 6-7; Request 14-33, § 8, Pgs. 6-7);
5. Failing to properly apply the CPE criteria in evaluating Requester's Applications, (Request 14-30, § 8, Pgs. 9-17; Request 14-32, § 8, Pgs. 7-15; Request 14-33, § 8, Pgs. 7-15).

IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Priority Evaluation.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.³ (Bylaws, Art. IV, § 2.) Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board or the NGPC⁴ agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that a Panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that

³ Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

⁴ New gTLD Program Committee.

determination.⁵

In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of CPE reports. Accordingly, the BGC does not evaluate the Panels' substantive conclusions that the Applications did not prevail in CPE. Rather, the BGC's review is limited to whether the Panels violated any established policy or procedure.

The standards governing CPE are set forth in Section 4.2 of the Guidebook. In addition, EIU – the firm selected to perform CPE – has published supplementary guidelines (“CPE Guidelines”) that provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.⁶

CPE will occur only if a community-based applicant selects CPE and after all applications in the contention set have completed all previous stages of the gTLD evaluation process. (Guidebook, § 4.2.) CPE is performed by an independent community priority panel appointed by EIU. (Guidebook, § 4.2.2.) A CPE panel's role is to determine whether the community-based applicant fulfills the four community priority criteria set forth in Section 4.2.3 of the Guidebook. The four criteria include: (i) community establishment; (ii) nexus between proposed string and community; (iii) registration policies; and (iv) community endorsement. To prevail in CPE, an applicant must receive a minimum of 14 points on the scoring of foregoing four criteria, each of which is worth a maximum of four points (for a total of 16 points).

V. Analysis and Rationale.

A. The Requester's Claim that the CPE Panels Failed to Validate All Letters of Support and Opposition Does Not Support Reconsideration.

⁵ See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

⁶ The CPE Guidelines may be found here: <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>.

CPE Panels are required to validate all letters submitted in support of or in opposition to an application “to ensure that the individuals who have signed the documents have the authority to speak on behalf of their institution.” (*See* CPE FAQs, *available at* newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf.) Here, the Requester claims that the Panel evaluating the Requester’s Application for .LLC failed to properly validate five letters of support received from individual limited liability corporations. (Request 14-30, § 8, Pgs. 4-5.) The Requester’s claim is unsupported.

First, as the Requester acknowledges, the CPE Panel evaluating its .LLC application did contact each of the five supporting institutions to validate their respective supporting letters, as required by the Guidebook. (*Id.*, § 8, Pg. 5.) The Requester claims that this was insufficient because, when validating the letters supporting the .LLC application, the CPE Panel mistakenly identified the supporters’ letters as involving the Requester’s application for .INC. (*Id.*) The Requester, however, provides no evidence demonstrating that the typographical error represented a substantive misunderstanding, or that those supporting the Requester’s application were confused by the error, or that those supporters’ letters were not ultimately validated by the Panel considering the .LLC application.

Further, the Requester has not demonstrated that the typographical error materially affected Requester in any way. The “support” element of the fourth CPE criterion, “community endorsement,” is worth two points. One point is available where the applicant has documented support from at least one group with relevance. The CPE Panel expressly found that the letters of support that the Requester claims were not validated actually justified the award of one point. (.LLC Report at 7; *see also* Guidebook § 3.2.1.)

In order to have achieved the maximum score—two points—on the “support” element, the Requester would have had to “[be], or ha[ve] documented support from, the recognized community institution(s)/ member organization(s) or ha[ve] otherwise documented authority to represent the community.” (Guidebook § 3.2.1.) The Guidebook defines “recognized” community institution/organization as an “institution[]/organization[] that, through membership or otherwise, [is] clearly recognized by the community members as representative of the community.” (.LLC Report at 7; Guidebook § 3.2.1.)

Correctly identifying that standard, the Panel declined to award the Requester two points on the “support” element because it found that the Requester “was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s).” (.LLC Report at 7.) The Requester does not claim that the individual LLCs that submitted letters in support of its application constitute “recognized community institutions” or “member organizations,” or that their endorsement entitled it to two points on the “support” element.

The Requester also claims that the Panels failed to validate a letter of opposition received from the EC.⁷ The Requester alleges that the EC “confirmed to [Requester] that it was never contacted by [the Panels] in connection with the validation of” the EC’s objection. Requester, however, provides no evidence supporting that assertion. (Request 14-30, § 8, Pg. 6; Request 14-32, § 8, Pg. 4; Request 14-33, § 8, Pg. 4.)

⁷ The Requester also argues that the Panels failed to validate a letter of opposition received by the Secretary of State of Delaware. However, as the Secretary’s 20 March 2014 letter to ICANN’s Board states, the Secretary never submitted a letter of opposition with respect to the Requester’s Applications. (*See* <https://www.icann.org/en/system/files/correspondence/bullock-to-crocker-20mar14-en.pdf>.)

The Requester further contends that the letter of opposition from the EC was rescinded on 25 March 2014, such that the Panels erred in relying on the letter when scoring the Applications. (Request 14-30, § 8, Pgs. 5-6; Request 14-32, § 8, Pgs. 3-4; Request 14-33, § 8, Pgs. 3-4.) The Requester's claim does not support reconsideration, as the Requester has not demonstrated that it was adversely affected by this alleged error. To prevail in CPE, an applicant must receive a minimum of 14 out of 16 points on the scoring of the four CPE criteria. The Requester's Applications each received only five out of 16 points. As such, even had the Panels awarded one additional point on the scoring of element 4-B, which assesses community opposition to an application, the Applications would still have received only six out of 16 points, which is insufficient to prevail on CPE.

As such, the Requester has not stated grounds for reconsideration with respect to the Panels' consideration of letters submitted in support of or in opposition to the Applications.

B. CPE Panels Are Authorized to Conduct Research And Are Not Required to Publish Information Regarding That Research.

The Requester argues that the Panels improperly conducted and relied upon independent research while failing to “cit[e] any sources or give[] any information about [] the substance or the methods or scope of the ‘research,’” (Request 14-30, § 8, Pgs. 7-8; Request 14-32, § 8, Pgs. 5-6; Request 14-33, § 8, Pgs. 5-6.) As the Requester acknowledges, Section 4.2.3 of the Guidebook expressly authorizes CPE Panels to “perform independent research, if deemed necessary to reach informed scoring decisions. (Guidebook § 4.2.3; *see also* Request 14-30, § 8, Pg. 7; Request 14-32, § 8, Pg. 5; Request 14-33, § 8, Pg. 5.) The Requester cites to no established policy or procedure (because there is none) requiring a CPE Panel to disclose details regarding the sources, scope, or methods of its independent research. As such, the Requester's argument does not support reconsideration.

C. The Requester’s Claim That The CPE Panels Engaged In “Double Counting” In The CPE Criteria Does Not Support Reconsideration.

The Guidebook states that in developing the CPE criteria, “[t]he utmost care [was] taken to avoid any ‘double counting’—any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria.” (Guidebook § 4.2.3; Request 14-30, § 8, Pgs. 8-9; Request 14-32, § 8, Pgs. 6; Request 14-33, § 8, Pg. 6.) The Requester claims that the Panels engaged in improper “double counting” in their consideration of certain of the CPE criteria because: (i) “awareness and recognition of a community . . . among its members” is a requirement for both elements of the first CPE criterion—1-A, “delineation,” and 1-B, “extension;” and (ii) in order to be eligible for a score of one point on element 2-B, “uniqueness,” an application must score at least two out of three points on element 2-A, “nexus.” (*Id.*)

The Requester is not alleging that the Panels violated any established policy or procedure. To the contrary, the Requester alleges that the Panels *did* adhere to established policy or procedure, namely by applying the CPE criteria as the Guidebook required. (*See* Guidebook § 4.2.3, CPE Panels are to “review and score . . . community-based applications having elected the community priority evaluation against [the] four [CPE] criteria” set forth in the Guidebook.) As such, the Requester has not demonstrated a basis for reconsideration.

Further, the Guidebook’s provision on double counting states that a “negative aspect found in assessing an application for *one criterion* . . . should not affect the assessment *for other criteria*.” (Guidebook § 4.2.3) (emphasis added.) Double counting did not occur here. There are only four criteria set out for CPE (Community Establishment; Nexus between Proposed String and Community; Registration Policies; and Community Endorsement). Each criterion has sub-parts; for example, Community Establishment is broken into two parts—1-A (Delineation)

and 1-B (Extension). Double counting may be present only when a single negative aspect is used to determine scores in more than one of the four criteria. Here, however, the alleged “double counting” cited by Requester is based upon the use of the same negative aspect in scoring each of the subparts of a single criterion; it did not affect the assessment of *other* criteria. For example, the Requester alleges that the Panels assessed “awareness and recognition of a community . . . among its members” in scoring both element 1-A and element 1-B of the first CPE criterion. The Requester *does not* allege (nor do the Panel Reports demonstrate) that the Panels’ assessment of the Applications’ “awareness and recognition of a community . . . among its members” affected their assessments of the other three CPE criteria. Similarly, the Requester alleges that the Panels’ score on element 2-A of the second CPE criterion affected their score on element 2-B of that same criterion, but that too is not double counting. Here again, there is no demonstration that the score on element 2-A affected the Panels’ assessments of any criteria other than the second CPE criterion. As such, the Requester has not shown that the Panels violated any policy or procedure against “double counting.”

D. The Requester’s Claim that the Panels Failed to Independently Evaluate Each of the Requester’s Applications Does Not Support Reconsideration.

ICANN procedure requires that “each application [filed by a gTLD applicant] will be treated individually.” (*See* <http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en>.) The Requester alleges that the Panels evaluating its three Applications were “working in concert” and therefore failed to treat each of its Applications individually. (Request 14-30, § 8, Pg. 9; Request 14-32, § 8, Pgs. 6-7; Request 14-33, § 8, Pgs. 6-7.) The Requester notes that each Panel awarded the Application it evaluated an identical score, five out of sixteen points, and that the three Reports have “virtually identical language and reasoning” and appear to rely on the

same independent research. (*Id.*)

The Requester cites to no policy or procedure that would prevent Panels evaluating different gTLD applications from consulting with each other and sharing resources. As the Requester’s three Applications (which themselves use identical language) state, .LLC, .INC, and .LLP each represent “commonly used abbreviation[s] for [business] entity types.” (.LLC Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1804>; .INC Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1805>; .LLP Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1808>.) The communities in the Requester’s Applications for .LLC, .INC, and .LLP are defined in identical terms—as those businesses registered as, respectively, limited liability corporations, corporations, and limited liability partnerships. (.LLC Application, § 20(a); .INC Application, § 20(a); .LLP Application § 20(a).) Further, the Applications contain substantially identical registration policies. (.LLC Application § 18(b); .INC Application § 18(b); LLP Application § 18(b).)

Given these similarities, it is not surprising that the community definitions in the Requesters’ Applications raised similar issues, and that the Panels might collaborate in researching and addressing those issues. In all events, the Requester presents no evidence that this alleged collaboration prevented any of the Panels from independently evaluating each respective Application. To the contrary, as the Requester acknowledges, each Panel issued a separate Report, and each Report contained factual details unique to the particular Application being evaluated. (Request 14-30, § 8, Pg. 9; Request 14-32, § 8, Pg. 7; Request 14-33, § 8, Pg. 7.) Accordingly, as the Requester has not demonstrated that the Panels failed to independently

evaluate each of the Requester's Applications, it has failed to show that any established policy or procedure was violated in this regard.

E. The Panels Properly Applied the CPE Criteria.

The Requester objects to each of the Panels' decisions to award only five of the possible 16 points to each of the Requester's Applications. As noted above, in the context of the New gTLD Program, the reconsideration process does not call for the BGC to evaluate the Panels' substantive conclusions that the Applications did not prevail in CPE. Rather, the BGC's review is limited to whether the Panels (or staff) violated any established policy or procedure. As discussed below, insofar as the Requester claims that the number of points awarded by the CPE Panels for various criteria was "wrong," the Requester does not claim that the Panels violated established policy or procedure, but instead challenges the substantive determinations of the Panels. That is not a basis for reconsideration.

1. The Panels Properly Applied the First CPE Criterion.

The Requester claims that the Panels improperly awarded the Requester's Applications zero out of four points on the first criterion, which assesses the community identified in the application. (Guidebook, § 4.2.3; *see also* Request 14-30, § 8, Pgs. 10-14; Request 14-32, § 8, Pgs. 7-11; Request 14-33, § 8, Pg. 7-11.) Specifically, this criterion evaluates "the community as explicitly identified and defined according to statements in the application" through the scoring of two elements—1-A, delineation (worth two points), and 1-B, extension (worth two points). (*Id.*)

a. The Panels Properly Applied Element 1-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the delineation element, an application must identify a "clearly delineated, organized, and pre-

existing community.” Section 4.2.3 also sets forth further guidelines for determining delineation. In awarding zero out of two points for element 1-A (delineation), each of the Panels accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (.LLP Report, Pgs. 1-3; .INC Report, Pgs. 1-3; .LLC Report, Pgs. 1-3.) Each Panel found that while the relevant application identified a “clear and straightforward membership,” it did not “have awareness and recognition of a community among its members” because business organizations, whether LLCs, corporations, or LLPs “operate in vastly different sectors, which sometimes have little or no association with one another.” (.LLP Report, Pg. 2; .INC Report, Pg. 2; .LLC Report, Pg. 2.) Each Panel also found that the community defined in the relevant application had neither “at least one entity mainly dedicated to the community” nor “documented evidence of community activities.” (.LLP Report, Pgs. 2-3; .INC Report, Pgs. 2-3; .LLC Report, Pgs. 2-3.) Finally, each Panel found that the relevant community had not been active prior to September 2007. (.LLP Report, Pg. 3; .INC Report, Pg. 3; .LLC Report, Pg. 3.)

In challenging the Reports, the Requester does not identify any policy or procedure that the Panels misapplied in scoring element 1-A. Instead, the Requester simply objects to the Panels’ substantive conclusions arguing that “while firms may organize around specific industries, locales, and other criteria not related to the entities’ structure . . . this does not preclude firms from also organizing around the entities’ structure.” (Request 14-30, § 8, Pg. 10; Request 14-32, § 8, Pg. 8; Request 14-33, § 8, Pg. 8.) The Requester further argues that Secretaries of State constitute entities “mainly dedicated to the community,” and that members of the defined communities participate in community activities by doing things such as “claiming their status” as limited liability companies, corporations, or limited liability partnerships on tax returns. (Request 14-30, § 8, Pgs. 11-12; Request 14-32, § 8, Pg. 9; Request 14-33, § 8, Pg. 9.)

Finally, the Requester argues that the communities were active prior to September 2007 because limited liability companies, corporations, and limited liability partnerships existed prior to that time. (Request 14-30, § 8, Pg. 12; Request 14-32, § 8, Pgs. 9-10; Request 14-33, § 8, Pgs. 9-10.) The Requester's arguments reflect only substantive disagreement with the Panels' findings, and are not a proper basis for reconsideration

b. The Panels Properly Applied Element 1-B.

The Requester also objects to the Panels awarding the Applications zero out of two points on element 1-B (extension). Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the extension element, the application must identify a "community of considerable size and longevity." (Guidebook § 4.2.3.)

In awarding zero out of two points for element 1-B (extension), the Panels each accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (.LLP Report, Pgs. 3-4; .INC Report, Pgs. 3-4; .LLC Report, Pgs. 3-4.) In particular, each Panel found that while the community defined in each Application was "of considerable size," each, again, did not "have awareness and recognition of a community among its members" because business organizations such as LLCs, corporations, and LLPs "operate in vastly different sectors, which sometimes have little or no association with one another." (.LLP Report, Pg. 3; .INC Report, Pg. 3; .LLC Report, Pg. 3.) Each Panel also found that the relevant community as defined in the application did not demonstrate longevity. (.LLP Report, Pg. 4; .INC Report, Pg. 4; .LLC Report, Pg. 4.)

In challenging the Reports, the Requester claims that the Guidebook and the CPE Panels "do not list the requirement that the community must display an awareness and recognition of a community among its members" in assessing size and longevity. (Request 14-30, § 8, Pg. 8;

Request 14-30, § 8, Pgs. 10-11; Request 14-30, § 8, Pgs. 10-11.) Thus, in the Requester’s view, the Panels should not have considered such “awareness and recognition” issues when assessing the size and longevity factors. However, contrary to what the Requester claims, the Guidebook does define “community” as involving “an awareness and recognition of a community among its members.” (Guidebook, § 4.2.2.) As such, in considering the size and longevity of the communities described by the Requester, the Panels necessarily had to consider whether those described communities even met the definition of “community.”

2. The Panels Properly Applied the Second CPE Criterion.

The Requester claims that the Panels improperly awarded the Requester’s Applications zero out of four points on the second criterion, which assesses the nexus between the proposed string and the community. (Guidebook, § 4.2.3; *see also* Request 14-30, § 8, Pgs. 14-15; Request 14-32, § 8, Pgs. 11-14; Request 14-33, § 8, Pgs. 11-12.) This criterion evaluates “the relevance of the string to the specific community that it claims to represent” through the scoring of two elements—2-A, nexus (worth three points), and 2-B, uniqueness (worth one point). (Guidebook, § 4.2.3.)

a. The Panels Properly Applied Element 2-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the nexus element, the applied-for string must “match[] the name of the community or [be] a well-known short-form or abbreviation of the community name.” (Guidebook, § 4.2.3.) In awarding zero out of three points for element 2-A (nexus), the Panels all accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (.LLP Report, Pgs. 4-5; .INC Report, Pgs. 4-5; .LLC Report, Pgs. 4-5.)

The Requester’s Applications for .LLC, .INC, and .LLP each state that those strings are

“recognized abbreviation[s] in all 50 states and US territories denoting the registration type of a business entity.” LLC Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1804>; .INC Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1805>; .LLP Application, § 20(d), *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1808>.) Each Panel found that given that definition, the relevant applied-for string “capture[d] a wider geographical remit than the community.” (.LLP Report, Pg. 4-5; .INC Report, Pgs. 4-5; .LLC Report, Pgs. 4-5.) The .LLC Panel noted that “LLC” is used as a corporate identifier in jurisdictions outside the US; the .LLP Panel noted that “LLP” is used as a corporate identifier in Poland, the UK, Canada, and Japan; and the .INC Panel noted that “INC” is used as a corporate identifier in Canada, Australia, and the Philippines. (*Id.*)

In challenging the Reports, the Requester does not identify any policy or procedure that the Panels misapplied in scoring element 2-A. Rather, the Requester argues that while its own research confirms that “LLC” is used outside the United States and that “INC” and “LLP” “may be” used outside the United States, those identifiers “are not used outside the US in connection with the [] communities described in the [Applications].” (Request 14-30, § 8, Pgs. 14-15; Request 14-32, § 8, Pg. 12; Request 14-33, § 8, Pg. 12.) Again, the Requester’s substantive disagreement with the Panels’ findings is not a proper basis for reconsideration.

b. The Panels Properly Applied Element 2-B.

The Requester next objects to the Panels having awarded its Applications zero out of one point on element 2-B (uniqueness). To fulfill the requirements for element 2-B, a string must have “no other significant meaning beyond identifying the community described in the

application.” (Guidebook, § 4.2.3.) Section 4.2.3 of the Guidebook further states that “[t]he phrasing ‘...beyond identifying the community’ in the score of 1 for ‘uniqueness’ implies a requirement that the string does identify the community, *i.e.* scores 2 or 3 for ‘Nexus,’ in order to be eligible for a score of 1 for ‘Uniqueness.’”

Because each Panel awarded the relevant Application a score of zero out of three points for “nexus,” each also awarded the relevant Application a score of zero out of one point for “uniqueness.” (.LLP Report, Pgs. 5; .INC Report, Pg. 5; .LLC Report, Pg. 5.) The Requester argues that those scores were improper because the scores for “nexus” were improper. (Request 14-30, § 8, Pg.15; Request 14-32, § 8, Pg. 12; Request 14-33, § 8, Pg. 12.) As discussed immediately above, the Requester’s arguments relating to the Panels’ evaluation of the “nexus” requirement do not support reconsideration. So too, then, the Requester’s claims concerning the “uniqueness” criterion also must fail.

The Requester also appears to argue that the Panels should have disregarded the Guidebook in scoring this element—it contends that “regardless, since [“LLC,” “INC,” and “LLP”] ha[ve] no other significant meaning outside the US, [the Applications] should have been awarded one point for Uniqueness.” (*Id.*) That argument is not a basis for reconsideration.

3. The Panels Properly Applied the Third CPE Criterion.

The Requester claims that the Panels improperly awarded the Requester’s Applications three out of four points on the third criterion, which assesses an applicant’s registration policies. (Guidebook, § 4.2.3; *see also* Request 14-30, § 8, Pgs. 15-16 Request 14-32, § 8, Pgs. 12-14; Request 14-33, § 8, Pgs. 12-14.) This criterion evaluates the applicant’s registration policies through the scoring of four elements—3-A, eligibility (worth one point); 3-B, name selection (worth one point); 3-C, content and use (worth one point); and 3-D, enforcement (worth one

point). (*Id.*)

The Requester challenges the Panels' evaluation of criterion 3-D, enforcement. (Request 14-30, § 8, Pgs. 15-16 Request 14-32, § 8, Pgs. 12-14; Request 14-33, § 8, Pgs. 12-14.) Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the enforcement element, an applicant's policies must "include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms." (*Id.*) In awarding zero out of one point for element 3-D (enforcement), the Panels all accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (.LLP Report, Pgs. 1-3; .INC Report, Pgs. 1-3; .LLC Report, Pgs. 1-3.) Each Panel found that while the relevant application "outlined policies that include specific enforcement measures constituting a coherent set," it "did not outline an appeals process." (.LLP Report, Pg. 6; .INC Report, Pg. 5; .LLC Report, Pg. 6.)

In challenging the Reports, the Requester does not identify any policy or procedure that the Panels misapplied in scoring element 3-D. Rather, the Requester argues its Applications do in fact outline appeals processes. (Request 14-30, § 8, Pgs. 15-16 Request 14-32, § 8, Pgs. 12-14; Request 14-33, § 8, Pgs. 12-14.) Again, the Requester's substantive disagreement with the Panels' findings is not a proper basis for reconsideration.

4. The Panels Properly Applied the Fourth CPE Criterion.

Finally, the Requester claims that the Panels improperly awarded the Requester's Applications two out of four points on the fourth criterion, which assesses community endorsement of an application. (Guidebook, § 4.2.3; *see also* Request 14-30, § 8, Pgs. 16-17; Request 14-32, § 8, Pgs. 14-15; Request 14-33, § 8, Pgs. 14-15.) This criterion evaluates community support for and/or opposition to an application through the scoring of two

elements—4-A, support (worth two points), and 4-B, opposition (worth two points). (Guidebook, § 4.2.3.)

a. The Panels Properly Applied Element 4-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the support element, the applicant must be, or “ha[ve] documented support from, the recognized community institution(s)/ member organization(s) or ha[ve] otherwise documented authority to support the community.” (*Id.*) In challenging the Reports, the Requester does not identify any policy or procedure that the Panels misapplied in scoring element 4-A. The Requester simply disagrees with the Panels’ substantive conclusion that while Secretaries of State “ha[ve] responsibility for corporate registrations and the regulations pertaining to corporate formation in [their] jurisdiction[s],” they “are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community.” (LLC Report at Pgs. 6-7.)⁸ The Requester’s substantive disagreement with the Panels’ findings is not a proper basis for reconsideration.

b. The Panels Properly Applied Element 4-B.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the opposition element, there must be “no opposition of relevance” to the application. (*Id.*) In challenging the Panels’ awarding its Applications only one out of two points on this element, the Requester makes the same arguments discussed above regarding the opposition letter submitted by the EC. For the reasons already stated, that argument does not support reconsideration.

⁸ As to the .LLC Panel, the Requester also again argues that the Panel failed to consider certain letters of support. (Request 14-30, § 8, Pg. 17.) As discussed above, there is no evidence that any of the Panels failed to consider those letters—in fact it appears that the Panels did consider them. That argument therefore does not support reconsideration.

VI. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Requests 14-30, 14-32, and 14-33. As there is no indication that either the Panels or ICANN violated any ICANN policy or procedure with respect to the Reports, or ICANN's acceptance of those Reports, the Requests should not proceed. If the Requester believes that it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC concludes that this determination is final and that no further consideration by the Board (or the New gTLD Program Committee) is warranted.