

**DETERMINATION  
OF THE BOARD GOVERNANCE COMMITTEE (BGC)  
RECONSIDERATION REQUEST 15-16  
26 JUNE 2016**

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The Requester, CPA Australia Limited, seeks reconsideration of the Community Priority Evaluation (CPE) panel's report, and ICANN's acceptance of that report, finding that the Requester's community-based application for .CPA did not prevail in CPE (CPE Report).

**I. Brief Summary.**

The Requester submitted a community-based application for the .CPA gTLD (Application). The Application was placed into a contention set with all other .CPA applications and was invited to, and did, participate in CPE. The Application did not prevail in CPE. As a result, the Application remained in the contention set, which will proceed to ICANN's last resort auction absent private resolution among all applicants for .CPA.

The Requester claims that reconsideration is warranted because: (1) documents such as the CPE Frequently Asked Questions (FAQ) page were promulgated after the Applicant Guidebook (Guidebook) was released; (2) the CPE Report is purportedly inconsistent with reports issued by other CPE panels; (3) the CPE panel that issued the CPE Report (CPE Panel) did not give enough weight to a letter of support that the Requester received; (4) the CPE Panel did not conduct what the Requester views as sufficient independent research or ask enough clarifying questions; and (5) ICANN staff changed the "Contention Resolution Status" of the Application to "Active" after the CPE Report was issued.

On 12 April 2016, pursuant to Article IV, Section 2.12 of ICANN's Bylaws, another community applicant for .CPA, the American Institute of Certified Public Accountants (AICPA), made a presentation to the BGC regarding its own reconsideration request (Reconsideration

Request 15-17), which addressed many of the same issues the Requester raises here in Reconsideration Request 15-16. The Requester's General Manager, Mr. Craig Laughton, also participated in the AICPA's presentation to the BGC.

The Requester's claims do not warrant reconsideration. The Requester does not identify any misapplication of policy or procedure by ICANN staff or the CPE Panel. Rather, the Requester simply disagrees with the CPE Panel's determination and scoring of the Application. Substantive disagreements with the CPE Report, however, are not proper bases for reconsideration. Because the Requester has failed to show that either ICANN staff or the CPE Panel acted in contravention of established policy or procedure, the BGC concludes that Reconsideration Request 15-16 be denied.

## **II. Facts.**

### **A. Background Facts.**

The Requester submitted a community-based application for the .CPA gTLD.<sup>1</sup>

The Requester's Application was placed into a contention set with a total of six applications for the .CPA string.<sup>2</sup>

On 8 April 2015, the Requester's Application was invited to participate in CPE.<sup>3</sup>

The Requester chose to and did participate in CPE. On 3 September 2015, the CPE Panel issued the CPE Report determining that the Application did not prevail in CPE.<sup>4</sup>

On 18 September 2015, the Requester filed Reconsideration Request 15-16 (Request 15-16) seeking reconsideration of the CPE Report.

The same day it submitted Request 15-16, the Requester submitted a Documentary

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<sup>1</sup> Application Details: Application ID: 1-1744-1971, *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/414>.

<sup>2</sup> *See* Contention Set Status, *available at* <https://gtldresult.icann.org/applicationstatus/stringcontentionstatus>.

<sup>3</sup> Community Priority Evaluation (CPE), *available at* <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>4</sup> *Id.*; CPE Report, *available at* <https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>.

Information Disclosure Policy (DIDP) request seeking documents relating to the CPE Report (DIDP Request), and asked ICANN to postpone its review of Request 15-16 pending ICANN's response to the DIDP Request.<sup>5</sup> ICANN agreed. On 18 October 2015, ICANN responded to the DIDP Request (DIDP Response). The Requester did not revise or amend Request 15-16 and, therefore, has not sought reconsideration of the DIDP Response.

On 12 April 2016, pursuant to Article IV, Section 2.12 of ICANN's Bylaws, another community applicant for .CPA, AICPA, made a presentation to the BGC regarding its own reconsideration request (Reconsideration Request 15-17), which addressed many of the same issues the Requester raises here in Request 15-16.<sup>6</sup> The Requester's General Manager, Mr. Craig Laughton, also participated in the AICPA's presentation to the BGC, and noted that the Requester fully supports the AICPA's application for .CPA. Mr. Laughton stated that the .CPA should be awarded to an accounting body that understands the requirements of the CPA designation in order to protect consumers and maintain consumer trust in the CPA brand.

On 28 April 2016, AICPA submitted a written summary of the 12 April 2016 presentation it made to the BGC.<sup>7</sup>

## **B. Relief Requested.**

The Requester asks that ICANN:

1. "award the Requestor's [*sic*] CPE Report a score of a minimum of '2' points in relation to Criterion 2, 'Nexus between Proposed String and Community'; OR"
2. "reject the analysis provided by the EIU<sup>8</sup> contained in the CPE Report in relation to Criterion 2, 'Nexus between Proposed String and Community'; and"

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<sup>5</sup> Request, § 9, Pg. 11.

<sup>6</sup> See <https://www.icann.org/resources/board-material/agenda-bgc-2016-04-12-en>.

<sup>7</sup> See <https://www.icann.org/en/system/files/files/reconsideration-15-17-aicpa-post-hearing-submission-28apr16-en.pdf>.

<sup>8</sup> Economist Intelligence Unit.

3. “instruct staff to return the Application Status of the string to a status of ‘In CPE’; and”
4. “instruct the EIU to convene a panel composed of new members to evaluate Criterion 2 [...] including engagement with the Requestor [*sic*] and consideration of the information provided in this submission which should have been identified by the original CPE panel.”<sup>9</sup>

### **III. The Relevant Standards for Reconsideration Requests And CPE.**

#### **A. Reconsideration Requests.**

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.<sup>10</sup> The Requester challenges staff action. Dismissal of a request for reconsideration of staff action or inaction is appropriate only if the BGC concludes, and the Board agrees to the extent that the BGC deems that further consideration by the Board 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 Economist Intelligence Unit (EIU), where it is asserted that a panel failed to follow established policies or procedures in reaching its determination, or that staff failed to

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<sup>9</sup> Request, § 9, Pg. 11.

<sup>10</sup> Bylaws, Art. IV, § 2. 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.

follow its policies or procedures in accepting that determination.<sup>11</sup>

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

#### **B. Community Priority Evaluation.**

The standards governing CPE are set forth in Section 4.2 of the Guidebook. In addition, the EIU – the firm selected to perform CPE – has published supplementary guidelines (CPE Guidelines) that do not alter the CPE standards, but provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.<sup>12</sup>

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.<sup>13</sup> CPE is performed by an independent panel appointed by the EIU.<sup>14</sup> A CPE panel's role is to determine whether the community-based application satisfies 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 at least 14 out of 16 points on the scoring of foregoing four criteria, each of which is worth a maximum of four points.

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<sup>11</sup> See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

<sup>12</sup> For CPE Guidelines, see <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>.

<sup>13</sup> Guidebook, § 4.2.

<sup>14</sup> *Id.* at § 4.2.2.

#### **IV. Analysis and Rationale.**

The Requester challenges the CPE Panel's determination that the Application did not qualify for community priority. As discussed below, the CPE Panel adhered to the applicable policies and procedures in rendering the CPE Report. The Requester's substantive disagreements with the CPE Panel's Report are not proper bases for reconsideration. Accordingly, no reconsideration is warranted.

##### **A. The CPE Guidelines Do Not Change Or Violate Any Policies Or Procedures.**

The Requester first claims that reconsideration is warranted because the EIU's use of the CPE Guidelines itself constitutes a violation of policy and procedure. It argues that "subsequent to publication of the [Guidebook] and the Requestor having submitted its [Application], ICANN has adopted substantial amendments to the criteria against which CPEs are assessed."<sup>15</sup>

Specifically, the Requester asserts that "the EIU has introduced no less than five (5) additional documents, guidelines or procedures" related to CPE, namely three iterations of the Guidelines, the FAQ page, and a CPE Processing Timeline.<sup>16</sup> The Requester claims that had it "been given the opportunity to clarify its Application following the release of the CPE Guidelines," it would have received a higher score in CPE. The Requester contends that the EIU's reliance upon these documents violates the policy recommendations or guidelines issued by the Generic Names Supporting Organization (GNSO) relating to the introduction of new gTLDs.<sup>17</sup> At the outset, any such claim is time-barred. Moreover, nothing about the development of the CPE Guidelines or the related documents violates the GNSO policy recommendations, or guidelines relating to the introduction of new gTLDs.

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<sup>15</sup>Request, § 8.1, Pg. 4.

<sup>16</sup> *Id.* at Pg. 5.

<sup>17</sup> *Id.* at Pgs. 4-5.

As a threshold issue, any challenge to the cited documents is time-barred. The last of the five challenged documents was released on 10 September 2014, over a year before the Requester submitted Request 15-16. Reconsideration requests challenging ICANN staff action must be submitted within 15 days of “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.”<sup>18</sup> The proper time to challenge the development of the CPE Guidelines or the other documents related to CPE has long since passed.

Moreover, nothing about the EIU’s use of the CPE Guidelines in administering CPE violates any policy or procedure. As the Requester recognizes:<sup>19</sup>

The [CPE] Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the scoring principles outlined in the AGB. The Guidelines are intended to increase transparency, fairness and consistency in the evaluation process.<sup>20</sup>

In other words, the CPE Guidelines are complimentary to the terms of the Guidebook, not supplementary. While the Requester complains of “the addition” of the CPE Guidelines without an “opportunity to clarify its Application accordingly,” reconsideration is not warranted on this basis because the CPE Guidelines did not “add” anything new to the Guidebook’s provisions related to CPE.<sup>21</sup>

The Requester also incorrectly argues that the development of the CPE Guidelines violates the GNSO’s Policy recommendations or guidelines relating to the introduction of new gTLDs. On 8 August 2007, the GNSO published the Final Report on the Introduction of New Generic Top-Level Domains (GNSO Final Report), which sets forth the principles and

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<sup>18</sup> Bylaws, Art. IV, § 2.5

<sup>19</sup> Request, § 8.1, Pg. 5.

<sup>20</sup> Community Priority Evaluation (CPE), *available at* <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>21</sup> Request, § 8.1, Pgs. 5-6.

implementation guidelines for the introduction of new gTLDs.<sup>22</sup> On 28 June 2008, the ICANN Board adopted 19 specific GNSO Policy recommendations for implementing new gTLDs as set forth in the GNSO Final Report.<sup>23</sup> After approval of the 19 Policy recommendations, ICANN undertook an open and transparent implementation process, culminating in the Board’s approval of the Guidebook. For that reason, actions taken pursuant to the Guidebook – such as the development of the CPE Guidelines – are not inconsistent with the relevant GNSO recommendations

In short, any arguments arising out of the development or use of the CPE Guidelines and related documents are both time-barred and do not support reconsideration.

**B. No Reconsideration Is Warranted With Respect To The CPE Report.**

The Requester challenges the CPE Panel’s determination that the Requester’s Application did not qualify for community priority. As discussed below, the CPE Panel adhered to the applicable policies and procedures in rendering the CPE Report. Accordingly, reconsideration is not warranted.

**1. The CPE Panel Applied The Second CPE Criterion In Accordance With Established Policies And Procedures.**

The Requester claims that the CPE Panel improperly awarded the Application zero out of four points on the second criterion, which evaluates “the relevance of the string to the specific community that it claims to represent” through the scoring of element 2-A, nexus, worth three points.<sup>24</sup> The Requester does not challenge the CPE Panel’s decision to award zero points for element 2-B, uniqueness, worth one point. Before addressing the Requester’s arguments, a brief review of the CPE Panel’s findings with respect to nexus is instructive. In awarding zero out of

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<sup>22</sup> See <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

<sup>23</sup> See [http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm#\\_Toc76113171](http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm#_Toc76113171).

<sup>24</sup> Guidebook, § 4.2.3.



three points for the nexus element, the CPE Panel accurately described and applied the Guidebook scoring guidelines. To receive a maximum score for element 2-A, the applied-for string must “match[ ] the name of the community or [be] a well-known short-form or abbreviation of the community name.”<sup>25</sup> The CPE Panel found that the Application defined the community as its own members and members of “CPA Australia’s globally recognized professional accountancy program and designation,” which collectively total about 140,000-150,000 members in 114 countries.<sup>26</sup> The CPE Panel reviewed that definition and found that, given that there are over 650,000 CPAs in the United States alone, the .CPA string “cannot identify the community as required for credit on Nexus.”<sup>27</sup> The CPE Panel then cited the Guidebook’s standard that the string must not “over-reach[] substantially beyond the community” and for that reason determined not to award any “credit on nexus.”<sup>28</sup>

The Requester asserts three arguments challenging the CPE Panel’s decision and reasoning regarding the nexus element. The Requester contends that: (i) different CPE panels have reached inconsistent conclusions as to the nexus element; (ii) the CPE Panel did not consider material information available to it or conduct sufficient independent research; and (iii) the CPE Panel did not pose any clarifying questions (CQs) in considering the nexus element. Reconsideration is not warranted on any of these three asserted grounds because the CPE Panel adhered to all applicable policies and procedures in determining that the Application merits zero points with respect to element 2-A, nexus.

**a. Differing Results In Unrelated CPE Reports Does Not Warrant Reconsideration.**

The Requester contends that it has “identified a divergent approach to scoring the

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<sup>25</sup> *Id.*

<sup>26</sup> CPE Report, Pg. 3.

<sup>27</sup> *Id.*, Pgs. 4-5.

<sup>28</sup> *Id.*, Pg. 5; Guidebook § 4.2.3.

requirement for a nexus between the applied-for string and the community” such that reconsideration is warranted.<sup>29</sup> Specifically, the Requester argues that here the CPE Panel found that the Application lacked a nexus to the CPA community because the Application’s community definition was over-inclusive, yet in two other unrelated CPE panel reports (for the .SPA and .ART applications), the CPE panels determined that over-inclusiveness was not an “impediment for satisfying the nexus criterion.”<sup>30</sup> Prior CPE panel determinations in unrelated matters do not establish policy or procedure. Different outcomes by different independent experts related to different gTLD applications is to be expected, and cannot be deemed evidence of any policy or procedure violation.

Comparing other CPE reports to the CPE Report here discloses no inconsistency that could constitute a policy or procedure violation. As for .SPA, the CPE panel awarded full credit to the applicant, finding the “common usage of the applied-for string closely aligns with the community as defined in the application[,]” namely spa operators, service providers and associations.<sup>31</sup> The CPE panel also noted that while there are other uses for the word spa, the same is true for many combinations of letters.<sup>32</sup> With respect to .SPA, the CPE panel reasonably concluded that common usage of the word matched the community as described in the application, which accords with the standards set forth in the above-cited Guidebook provisions. As for .ART, the CPE panel awarded only partial credit, noting that “[t]he string closely describes the community and *does not over-reach substantially*, as the general public will associate the string with the community as defined by the applicant.”<sup>33</sup> In contrast, the CPE

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<sup>29</sup> Request, § 8.2, Pg. 7.

<sup>30</sup> *Id.* at Pg. 8.

<sup>31</sup> CPE Report for Application ID 1-1309-81322, .SPA, *available at* <https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>.

<sup>32</sup> *Id.* at Pg. 5.

<sup>33</sup> *Id.* (emphasis added).

Panel here made no such finding. In short, there is no inconsistency: the .SPA report found the string matched the community and awarded full credit; the .ART report identified some problems with the proposed community definition and awarded a partial nexus score; and here (as discussed below), the CPE Panel identified an over-inclusiveness as between the Requester's proposed community and the string, and therefore awarded no points for the nexus element. As such, comparison of these three reports discloses no policy or procedure violation that supports reconsideration.

**b. The CPE Panel Adhered To Applicable Policies And Procedures With Respect To The Cited Letter Of Support.**

The Requester argues that the nexus determination was based on “an erroneous finding” related to a letter of support submitted by another applicant for .CPA, namely the American Institute of Certified Public Accountants (AICPA).<sup>34</sup> The Requester raises two claims with respect to this letter. Primarily, the Requester contends that the CPE Panel did not give sufficient “weight” to this letter because it did not investigate the intent of the AICPA in sending the letter. However, the CPE Panel adhered to all applicable policies and procedures with respect to this letter. CPE panels “will attempt to validate all letters” submitted in support of or in opposition to an application “to ensure that the individuals who have signed the documents are in fact the sender, have the authority to speak on behalf of their institution, and that the panel clearly understands the intentions of the letter.”<sup>35</sup> The Requester does not contend this procedure was not followed, and the CPE Report indicates that it was; the CPE Report in fact indicates that the letter will be understood to constitute “support for the applicant,” namely the Requester here.<sup>36</sup>

The Requester also claims that the CPE Panel erred in finding that the 650,000 CPAs in

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<sup>34</sup> Request, § 8.3, Pg. 9.

<sup>35</sup> See Community Priority Evaluation (CPE) Frequently Asked Questions, available at <https://newgtlds.icann.org/en/applicants/cpe>, Pg. 6.

<sup>36</sup> CPE Report, Pgs. 4-5, fn. 9 (acknowledging receipt of AICPA letter).

the United States are not included in its community definition, an issue the Requester contends is addressed in the AICPA's letter.<sup>37</sup> As an initial matter, no policy or procedure requires (or even permits) ICANN to sit as an appellate tribunal assessing the propriety of the CPE Panel's factual findings. Further, regardless of the contents of the AICPA's letter, with respect to the issue of whether American CPAs are included in the Requester's community definition or otherwise, the CPE Panel adhered to applicable policies and procedures in applying the Guidebook's provisions. The Requester cites no policy or procedure mandating CPE panels to give dispositive weight to factual assertions offered in letters of support, and the CPE Report properly noted that it "cannot, per AGB guidelines, credit the letter in any way other than as support for [the Requester]."<sup>38</sup>

In sum, the Requester has failed to show any policy or procedure violation in connection with the CPE Panel's treatment of the AICPA's letter of support, and accordingly no reconsideration is warranted in connection with it.

**2. No Policy or Procedure Requires The CPE Panel To Ask Clarifying Questions Or Conduct Independent Research Regarding Each Criterion For Which It Does Not Award A Passing Score.**

The Requester further claims reconsideration is warranted because the CPE Panel did not issue CQs or conduct what the Requester views as sufficient public research regarding element 2-A, nexus.<sup>39</sup> However, there is no policy or procedure dictating whether or when a CPE panel should pose CQs, or the extent to which it must undertake independent research.

The Requester contends that "[h]ad the EIU conducted a robust public research program," it would have reached different conclusions as to the number of "global accountants" and the percentage of them that are included "within the community as defined in the Application."<sup>40</sup>

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<sup>37</sup> Request, § 8.3, Pg. 9.

<sup>38</sup> CPE Report, Pg. 5, fn. 9.

<sup>39</sup> Request, § 8.3, Pg. 10.

<sup>40</sup> *Id.*, § 8.3, Pg. 10.

However, as the CPE FAQs make clear, “[t]he CPE Panel will also conduct any additional research as it sees fit.”<sup>41</sup> Here, the CPE Report cites certain independent research that the CPE Panel conducted.<sup>42</sup> The Requester merely disagrees with the substantive results of that research. No reconsideration is warranted based on the Requester’s subjective disagreement with the CPE Panel’s research-based factual findings, given that the CPE Panel may determine, in its discretion, whether and to what extent independent research of public sources is necessary and what weight to give the results of that research.

Similarly, the Requester also contends that reconsideration is warranted because, according to the Requester, the CPE Panel would not have concluded that the string “over-reaches” beyond the community identified in the Application if the CPE Panel had issued CQs. Nevertheless, the CPE Panel Process Document explicitly provides that: “If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant . . . .”<sup>43</sup> Because there is no established policy or procedure requiring a CPE panel to issue CQs, no reconsideration is warranted based on the fact that the CPE Panel here did not issue CQs with respect to element 2-A, nexus.

All in all, no reconsideration is warranted based on the Requester’s perception that the CPE Panel did not conduct sufficient independent research or pose sufficient CQs, because no policy or procedure mandates the CPE Panel to do either. Notwithstanding, it is clear from the CPE Report that the CPE Panel did conduct independent research.

### **C. No Policy Or Procedure Was Violated Concerning The Change In The Application’s Status.**

The Requester argues that reconsideration is warranted because ICANN staff “amended

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<sup>41</sup> See Community Priority Evaluation (CPE) Frequently Asked Questions, *available at* <https://newgtlds.icann.org/en/applicants/cpe>, Pg. 4.

<sup>42</sup> CPE Report, Pg. 4.

<sup>43</sup> See Community Priority Evaluation (CPE), *available at* <https://newgtlds.icann.org/en/applicants/cpe>.

the ‘Contention Resolution Status’ of [the Application] to ‘Active’” after the CPE Report was issued.<sup>44</sup> However, ICANN staff in fact followed all established policies and procedures in updating the Requester’s contention set status. The labels for the contention set status are explained on ICANN’s website as follows:

Explanation of Contention Set Status: The following will be used to indicate the status of Contention Sets:

- Active – *The set contains at least two active applications in direct contention with each other and no applications are identified as On Hold.*
- On Hold – The set contains at least one application with a status of On Hold. Applications in the set cannot proceed to New gTLD Program Auctions until the set is no longer on hold.
- Resolved – No direct contention remains amongst the active applications and no applications are identified as On-Hold.<sup>45</sup>

The CPE Report determined that the Application had not prevailed, and therefore the Application was to remain in contention with the other applications for .CPA. Designation of the Application with the “Active” label was entirely consistent with the aforementioned procedure.

The Requester also briefly argues that reconsideration is warranted based on this status designation because the CPE Report contains a disclaimer that its determination “do[es] not necessarily determine the final result of the application.”<sup>46</sup> Yet, similarly, nothing in the Application’s “Active” label suggests that the “final result of the application” has been decided; to the contrary, the applications in the contention set must reach private resolution, or participate in an ICANN last resort auction, before any application will proceed to contracting and delegation.

In short, to the extent the Requester argues that reconsideration is warranted arising out

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<sup>44</sup> Request, § 3, Pg. 1.

<sup>45</sup> Update On Application Status And Contention Sets, *available at* <http://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en> (emphasis added).

<sup>46</sup> Request, § 3, Pg. 1.

of the Application's contention set status, that argument fails because it accurately reflects the Application's status in accordance with the relevant policies and procedures. Moreover, the change of status in no way harmed the Requester, and the Requester does not argue otherwise.

**V. Determination.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 15-16. If the Requester believes that it has somehow been treated unfairly here, it is free to ask the Ombudsman to review this matter.

The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that no Board consideration is required. As discussed above, Request 15-16 seeks reconsideration of a staff action or inaction. As such, after consideration of Request 15-16, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.

In terms of the timing of this decision, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a reconsideration request within thirty days, unless impractical. To satisfy the thirty-day deadline, the BGC would have to have acted by 18 October 2015. However, the Requester asked that Request 15-16 be suspended until ICANN responded to the Requester's DIDP Request and the Requester was provided with an opportunity to submit any additional arguments. ICANN agreed, and the Requester was provided fourteen days within which to amend Request 15-16 after receiving the DIDP Response on 18 October 2015 (which the Requester opted not to do). Then the AICPA sought, was invited to, and did make a presentation to the BGC, which further delayed the BGC's consideration of Request 15-16, as the presentation involved many of the issues raised therein. The AICPA was provided two weeks after the 12 April 2016 presentation to submit a written summary of its position, which it did on 28 April 2016. As such, the first

practical opportunity to address Request 15-16 after receiving that summary was 26 June 2016.