

## RECOMMENDATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)

### RECONSIDERATION REQUEST 14-7

13 MARCH 2014

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The Requester Asia Green IT System Ltd. seeks reconsideration of the NGPC's<sup>1</sup> 5 February 2014 resolution deferring the contracting process for the .ISLAM and .HALAL strings until certain noted conflicts have been resolved. The Requester also seeks reconsideration of an alleged staff action implementing the NGPC's resolution; namely, the 7 February 2014 letter from Steve Crocker, Chairman of the ICANN Board, to Requester.

#### **I. Brief Summary.**

The Requester applied for .ISLAM and .HALAL. The applications were the subject of two GAC<sup>2</sup> Early Warning notices, an evaluation by the Independent Objector, an objection filed with the ICC,<sup>3</sup> three issuances of related GAC Advice, and significant objections from a number of other entities and governments. Ultimately, the NGPC resolved to take no further action on the .ISLAM and .HALAL applications until and unless the Requester resolves the conflicts between its applications and the objections raised by the organizations and governments identified by the NGPC. The Requester claims that the NGPC failed to consider material information in taking its action and also claims that ICANN staff violated an established policy or procedure by failing to inform the Requester how it should resolve the noted conflicts.

With respect to these claims, there is no indication that the NGPC failed to consider material information in reaching its 5 February 2014 Resolution. Rather, the record

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<sup>1</sup> New gTLD Program Committee.

<sup>2</sup> Governmental Advisory Committee.

<sup>3</sup> International Centre for Expertise of the International Chamber of Commerce.

demonstrates that the NGPC was well aware of the information Requester claims was material to the 5 February 2014 Resolution. In addition, the Requester has not identified an ICANN staff action that violated an established ICANN policy or procedure. Instead, the action challenged by the Requester was that of the Board, not staff, and, in any event, the Requester has failed to identify any ICANN policy or procedure violated by that action. Given this, the BGC recommends that Request 14-7 be denied.

## **II. Facts.**

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

The Requester Asia Green IT System Ltd. (“Requester”) applied for .ISLAM and .HALAL (“Requester’s Applications”).

On 20 November 2012, the Requester’s Applications received GAC Early Warning notices from two GAC members: (i) the United Arab Emirates (“UAE”) (<https://gacweb.icann.org/download/attachments/27131927/Islam-AE-23450.pdf>); (<https://gacweb.icann.org/download/attachments/27131927/Halal-AE-60793.pdf>); and (ii) India (<https://gacweb.icann.org/download/attachments/27131927/Islam-IN-23459.pdf>); (<https://gacweb.icann.org/download/attachments/27131927/Halal-IN-60793.pdf>.)<sup>4</sup> Both members expressed serious concerns regarding the Requester’s Applications, including a perceived lack of community involvement in, and support for, the Requester’s Applications.

In December 2012, the Independent Objector (“IO”)<sup>5</sup> issued a preliminary assessment on

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<sup>4</sup> Concurrent with the public comment period, the GAC may issue GAC Early Warning notices concerning particular applications. The notices provide the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. (Applicant Guidebook (“Guidebook”), Section 1.1.2.4.)

<sup>5</sup> The Independent Objector, Professor Alain Pellet, was appointed by ICANN to serve for the duration of the New gTLD Program and lodge objections to highly objectionable gTLD applications on limited public interest and community grounds. (Guidebook, Section 3.2.5.)

the Requester’s application for .ISLAM, noting that the application received numerous public comments expressing opposition to a private entity, namely the Requester, having control over a gTLD that relates to religion (“IO’s Assessment on .ISLAM”). (<http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment>.) The Requester submitted responses to the IO’s initial concerns, and the IO ultimately concluded that neither an objection on public interest grounds nor community grounds to the application for .ISLAM string was warranted. (See IO’s Assessment on .ISLAM.)

On 13 March 2013, the Telecommunications Regulatory Authority of the UAE filed community objections with the ICC to the Requester’s Applications (“Community Objections”).<sup>6</sup>

On 11 April 2013, the GAC issued its Beijing Communiqué, which included advice to ICANN regarding the Requester’s Applications, among others.<sup>7</sup> Specifically, the GAC advised the Board that, pursuant to Section 3.1 of the Applicant Guidebook (“Guidebook”), some GAC members:

[H]ave noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.<sup>8</sup>

(Beijing Communiqué, Pg. 3, available at <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>.)

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<sup>6</sup> UAE’s Community Objections asserted that there is “substantial opposition to [each] gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.” (Guidebook, Section 3.2.1; New gTLD Dispute Resolution Procedure (“Procedure”), Art. 2(e).)

<sup>7</sup> The New gTLD Program includes a procedure pursuant to which the GAC may provide Advice to ICANN concerning a specific application for a new gTLD. The procedures are set out in Module 3 of the Guidebook. (<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>).

<sup>8</sup> GAC Advice regarding a new gTLD application may include advice: “[T]hat there are concerns about a particular application []. The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns.” (Guidebook, Section 3.1.)

On 18 April 2013, ICANN published the GAC Advice thereby notifying the Requester and triggering the 21-day applicant response period.<sup>9</sup> Requester submitted to the Board timely responses to the GAC Advice, which included, among other things, a summary of the support received for the Requester's Applications and a draft of the proposed governance model for the .ISLAM string ("Requester's Responses to GAC Advice").

(<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-2130-23450-en.pdf>; <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-2131-60793-en.pdf>; *see also* Summary and Analysis of Applicant Responses to GAC Advice, Briefing Materials 3 ("NGPC Briefing Material") available at <https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>.)

On 4 June 2013, the NGPC adopted the NGPC Scorecard ("4 June 2013 Resolution") setting forth the NGPC's response to the GAC Advice found in the Beijing Communiqué ("NGPC Scorecard"). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>; <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf>.) With respect to the .ISLAM and .HALAL strings, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice.... Pursuant to Section 3.1ii of the [Guidebook], the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.

(NGPC Scorecard, Pg. 3.) The NGPC Scorecard further noted the Community Objections filed against the Requester's Applications and indicated that "these applications cannot move to the

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<sup>9</sup> Where GAC Advice is received by the Board concerning an application, ICANN is required to: "[P]ublish the advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board." (Guidebook, Section 3.1.)

contracting phase until the objections are resolved.” (*Id.*)

On 18 July 2013, pursuant to Section 3.1.II of the Guidebook, members of the NGPC entered into a dialogue with the governments concerned about the .ISLAM and .HALAL strings to understand the scope of the concerns expressed in the GAC’s Advice in the Beijing Communiqué.

On 25 July 2013, the Ministry of Communications for the State of Kuwait sent a letter to ICANN expressing its support for UAE’s Community Objections and identifying concerns that the Requester did not receive the support of the community, the Requester’s Applications are not in the best interest of the Islamic community, and the strings “should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation.” (<http://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf> )

On 4 September 2013, in a letter to the NGPC Chairman, the Republic of Lebanon expressed general support for the .ISLAM and .HALAL strings, but stated that it strongly believes “the management and operation of these TLDs must be conducted by a neutral non-governmental multi-stakeholder group representing, at least, the larger Muslim community.” (<http://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf>.)

On 24 October 2013, the expert panel (“Panel”) appointed by the ICC to consider UAE’s Community Objections rendered two separate Expert Determinations (“Determinations”) in favor of the Requester.<sup>10</sup> Based on the submissions and evidence provided by the parties, the

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<sup>10</sup> .ISLAM Determination, available at <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-430-ICANN-47-Expert-Determination/>; .HALAL Determination, available at <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-427-ICANN-44-Expert-Determination/>.

Panel determined that UAE failed to demonstrate substantial opposition from the community to the Requester's Applications or that the Applications created a likelihood of material detriment to the rights or legitimate interests of a significant portion of the relevant community. (.ISLAM Determination, ¶ 157; .HALAL Determination, ¶ 164.) The Panel dismissed the Community Objections and deemed the Requester the prevailing party. (.ISLAM Determination, ¶ 158; .HALAL Determination, ¶ 165.)

On 4 November 2013, the Secretary General of the Organization of Islamic Cooperation ("OIC") submitted a letter to the GAC Chair, stating that, as the "second largest intergovernmental organization with 57 Member States spread across four continents" and the "sole official representative of 1.6 million Muslims," the Member States of the OIC officially opposed the use of the .ISLAM and .HALAL strings "by any entity not representing the collective voice of the Muslim people" ("4 November 2013 OIC Letter to GAC Chair".) (<http://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en.pdf>.)

On 11 November 2013, having received a copy of the OIC's 4 November 2013 letter, the ICANN Board Chairman sent a letter to the GAC Chair, noting that the NGPC has not taken any final action on the .ISLAM and .HALAL applications while they were subject to formal objections. The letter further stated that since the objection proceedings have concluded, the NGPC will wait for any additional GAC input regarding the strings and stands ready to discuss the applications if additional dialog would be helpful. (Cover Letter to 4 November 2013 OIC Letter to GAC Chair.)

On 21 November 2013, the GAC issued its Buenos Aires Communiqué, which stated the following with respect to the Requester's Applications:

GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided

advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.

(Buenos Aires Communiqué, Pg. 4, available at

[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2).)

On 29 November 2013, the GAC Chair responded to the ICANN Board Chairman's 11 November 2013 correspondence, confirming that the GAC has concluded its discussion on the Requester's Applications and stating that "no further GAC input on this matter can be expected." (<http://www.icann.org/en/news/correspondence/dryden-to-crocker-29nov13-en.pdf>.)

On 4 December 2013, the Requester submitted a letter to the ICANN Board Chairman requesting contracts for .ISLAM and .HALAL "as soon as possible." (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-04dec13-en.pdf>.)

On 19 December 2013, the Secretary General of the OIC sent a letter to the ICANN Board Chairman, stating that the Foreign Ministers of the 57 Muslim Member States of the OIC have unanimously approved and adopted a resolution officially objecting to the .ISLAM and .HALAL strings and indicating that the resolution "underlines the need for constructive engagement between the ICANN and OIC as well as between ICANN and OIC Member States." (<http://www.icann.org/en/news/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.)

On 24 December 2013, the Ministry of Communication and Information Technology on behalf of the government of Indonesia sent a letter to the NGPC Chairman, stating that Indonesia "strongly objects" to the .ISLAM string and, in principle, "approves" the .HALAL string

“provided that it is managed properly and responsibly.”

(<http://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en.pdf>.)

On 30 December 2013, the Requester submitted a letter to the ICANN Board Chairman challenging the nature and extent of the OIC’s opposition to the Requester’s Applications, reiterating its proposed policies and procedures for governance of .ISLAM and .HALAL, and requesting to proceed to the contracting phase.

(<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-30dec13-en.pdf>.)

On 5 February 2014, the NGPC adopted an updated iteration of the NGPC Scorecard (“Actions and Updates Scorecard”). (5 February 2014 Resolution, available at

[http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-](http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm#1.a.rationale)

[en.htm#1.a.rationale](http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm#1.a.rationale); Actions and Updates Scorecard, available at

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.)

With respect to the Requester’s Applications, the NGPC’s Actions and Updates Scorecard stated in pertinent part:

The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community.

(Action and Updates Scorecard, Pg. 8.) In addition, the NGPC directed the transmission of a letter from the NGPC, via the Chairman of the Board, to the Requester (“7 February 2013 NGPC Letter to the Requester”). ([http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-](http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf)

[07feb14-en.pdf](http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf).) The 7 February 2013 NGPC Letter to the Requester acknowledges the

Requester’s stated commitment to a multi-stakeholder governance model, but states:

Despite these commitments, a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM....



There seems to be a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved.

(7 February 2013 NGPC Letter to the Requester, at Pg. 2.)

On 26 February 2014, the Requester filed Request 14-7.

**B. Requester's Claims.**

The Requester claims that the NGPC failed to consider material information when it approved the 5 February 2014 Resolution. Specifically, the Requester contends that the NGPC ignored, or was not otherwise made aware of, material information including:

1. The ICC's Determinations dismissing the Community Objections;
2. The Requester's proposed multi-stakeholder governance model; and
3. The differences between the .ISLAM and .HALAL Applications.

(Request, Section 8, Pgs. 6-9, 12-14.)

In addition, the Requester claims that the 7 February 2013 NGPC Letter to the Requester was a staff action that violates the policies set forth in the Guidebook and underlying the gTLD program because it fails to provide the Requester with guidance on how to resolve the conflicts identified in the letter. (Request, Section 3, Pg. 1; Section 8, Pgs. 9-12.)

**C. Relief Requested.**

The Requester asks that its Applications be immediately approved for contracting, or alternatively, at least the application for .HALAL be immediately approved for contracting.

(Request, Section 9, Pg. 14.)

If the Requester's Applications are not immediately approved for contracting, the Requester asks that ICANN explain why the purported "conflicts" referenced in the 7 February 2013 NGPC Letter to the Requester have not been resolved, and "provide clear criteria for the [the Requester] to 'resolve' those purported conflicts." (Request, Section 9, Pg. 14.)

### **III. Issues.**

In view of the claims set forth in Request 14-7, the issue for reconsideration appears to be whether the NGPC failed to consider material information in approving the 5 February 2014 Resolution, which deferred the contracting process for the Requester's Application until the identified conflicts have been resolved. Specifically, the issue is whether the NGPC ignored, or was not otherwise made aware of, the information identified in Section II.B, above. An additional issue for reconsideration is whether the 7 February 2013 NGPC Letter to the Requester was a staff action that violated ICANN policies because it failed to provide clear criteria for the Requester to resolve conflicts with the objecting entities and countries.

### **IV. The Relevant Standards for Evaluating Reconsideration Requests.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with the criteria specified in Article IV, Section 2.2 of the Bylaws.<sup>11</sup> (Bylaws, Art. IV, Section 2.) Requester is purportedly challenging a Board action or inaction and a staff action.

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<sup>11</sup> Article IV, Section 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.

Dismissal of a request for reconsideration is appropriate if the BGC<sup>12</sup> recommends, and in this case the NGPC agrees, that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws for challenges of a Board action or inaction as well as a staff action. (Bylaws, Art. IV, Section 2.9.)

**V. Analysis and Rationale.**

**A. The Requester Has Not Demonstrated That The NGPC Failed To Consider Material Information When It Approved The 5 February 2014 Resolution.**

A challenge of a Board action or inaction must be based upon the Board acting or failing to act without consideration of material information or as a result of the Board's reliance on false or inaccurate material information.<sup>13</sup> (Bylaws, Art. IV, Section 2.2.) A proper request for reconsideration claiming that the Board acted without consideration of material information must: (1) identify the information that the Board had available to it but did not consider; and (2) identify that the information would be material to that decision. (*Id.*) If the Board did not have the information, the Requester must explain why it did not provide that information to the Board in advance of the decision that is being challenged.

Based upon the Request, the Requester has not sufficiently stated a request for reconsideration of the 5 February 2014 Resolution. The Requester has identified some information that the NGPC had available to it and purportedly should have considered before approving the 5 February 2014 Resolution. But the Requester has failed to demonstrate that the NGPC did not consider this information or that the information was material and would have changed the NGPC's decision to defer the contracting process for the Requester's Applications

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<sup>12</sup> Board Governance Committee.

<sup>13</sup> The Requester is not claiming that the 5 February 2013 Resolution was the result of the NGPC's reliance on false or inaccurate material information.

until certain conflicts have been resolved, as set forth below.

**1. The Requester has not demonstrated that the NGPC failed to consider the Determinations dismissing the Community Objections, or that the Determinations were material to the NGPC's Resolution.**

The Requester contends that ICANN “has no right to second-guess” the ICC’s dismissal of the Community Objections. (Request, Section 8.I.a., Pg. 7.) The Requester, relying on Section 3.1 of the Applicant Guidebook, further claims that the Guidebook specifically indicates that the ICANN Board “should consider the advice of experts in making determinations about new gTLD applications which raise sensitive government issues.” (*Id.* at Pg. 8.) The Requester concludes that because the ICC, an appointed expert, has not advised ICANN to reject the Requester’s Applications, it “seems clear that the NGPC did not consider this material information” in reaching its 5 February 2014 Resolution. (*Id.*) But the Requester’s conclusions are not supported.

There is no evidence that the NGPC did not consider the ICC’s Determinations on the Community Objections in adopting the challenged Resolution. To the contrary, in the NGPC’s Actions and Updates Scorecard that was adopted by the NGPC as part of its 5 February 2014 Resolution, the NGPC specifically referenced the ICC’s Determination on the Community Objections:

On 24 October 2013 decisions were posted in favor of the applicant on the community objections filed by the Telecommunications Regulatory Authority of the UAE.

(Actions and Updates Scorecard, Pg. 8.) Moreover, in communications with the GAC, ICANN noted that it did not take any final action on the Requester’s Applications while the applications were subject to formal objections, but that the “objection proceedings have concluded.” (Cover Letter to 4 November 2013 OIC Letter to GAC Chair.)

The Requester has also failed to demonstrate that the ICC's Determinations were material to the NGPC's Resolution or otherwise identify how the Determinations would have changed the actions taken by the NGPC. With respect to the Requester's Applications, the ICC only evaluated UAE's Community Objections, and the fact that the Panel determined that UAE failed to demonstrate substantial opposition from the community to the Requester's Applications does not change the fact that the NGPC was made aware of opposition by many other entities and governments, such as the OIC, after the ICC rendered its Determination. In other words, the ICC's Determination would not affect the conflict identified by the NGPC between the Requester's commitment to a multi-stakeholder model and the concerns raised by other entities/governments outside the ICC's proceedings. The NGPC is not second-guessing the ICC's determination, as argued by the Requester, but is instead addressing a separate and distinct issue of concern.

**2. The Requester has not demonstrated that the NGPC failed to consider the Requester's proposed multi-stakeholder governance model, or that the model was material to the NGPC's Resolution.**

The Requester asserts that the NGPC failed to consider the Requester's proposed "multi-stakeholder governance model" in reaching its 5 February 2014 Resolution. (Request, Section 8, Pg. 8-9.) But this assertion is also unsupported, for a couple of reasons.

First, the Requester's purported multi-stakeholder governance model was a subject of the Beijing Communiqué, the Requester's response to the Beijing Communiqué and the ICC's Determinations. The NGPC's 5 February 2014 Resolution makes clear that the NGPC considered the Beijing Communiqué, the NGPC Briefing Material summarized the Requester's response to the Beijing Communiqué, and, as set forth above, the NGPC was well aware of the ICC's Determinations. Thus, there is no support for the claim that the NGPC did not consider

the Requester's purported multi-stakeholder governance model in reaching its 5 February 2014 Resolution. Second, as the Requester concedes (Request, Section 8, Pg. 9, FN 11.), the 7 February 2013 NGPC Letter to the Requester identifies (and applauds) a 4 December 2013 letter and a 30 December 2013 letter from the Requester to ICANN relating to its proposed multi-stakeholder governance model. And finally, the Requester does not identify any other materials relating to the Requester's proposed governance model that should have, or could have, been considered by the NGPC before reaching its 5 February 2014 Resolution.

In addition, the Requester makes no effort to demonstrate that the Requester's proposed governance model was material to the NGPC's resolution or otherwise identify how the proposed model would have changed the action taken by the NGPC. Rather, the 7 February 2013 NGPC Letter to the Requester shows that the NGPC was concerned with conflicts between the Requester's purported model and the claims made about that model in the letters urging ICANN not to proceed with .ISLAM and .HALAL.

**3. The Requester has not demonstrated that the NGPC failed to consider differences between the .ISLAM and the .HALAL Applications, or that such differences were material to the NGPC's Resolution.**

The Requestor claims that there are differences between the .ISLAM and .HALAL Applications and that the NGPC failed to consider these differences in reaching its 5 February 2014 Resolution. (Request, Section 8, Pg. 12-13.) The Requester's only support for this claim is a letter from Indonesia objecting to .ISLAM, but "endors[ing]" .HALAL, and a letter from the Islamic Chamber Research and Information Center ("ICRIC") expressing support for .HALAL. (*Id.*) But the record indicates that the NGPC reviewed both of these letters before taking its action. The 7 February 2013 NGPC Letter to the Requester specifically identifies the letter from

Indonesia and that Indonesia was objecting to .ISLAM only and the NGPC Briefing Material specifically identifies the ICRC's letter of support for .HALAL.

In addition, the Requester has not explained how consideration of these two letters is material to the NGPC's Resolution or otherwise identify how the letters would have changed the action taken by the NGPC. There were significant concerns expressed to ICANN with respect to both applications. Moreover, every submission made by the Requester treated both Applications the same.

**B. The Requester Has Not Demonstrated That The ICANN Staff Took An Action Inconsistent With An Established ICANN Policy Or Process.**

The Requester's final ground for seeking reconsideration appears to be a claim that the 7 February 2013 NGPC Letter to the Requester was a staff action that violates the policies set forth in the Guidebook and underlying the New gTLD Program because it fails to provide the Requester with guidance on how it should resolve the conflicts associated with the .ISLAM and .HALAL Applications. (*See Request*, Section 3, Pg. 1; Section 8, Pgs. 9-12.) This is not a proper basis for seeking reconsideration.

To challenge a staff action, the Requester would need to demonstrate that it was adversely affected by a staff action that violated an established ICANN policy or process. (Bylaws, Art. IV., Section 2.2.) Here, however, the 7 February 2013 NGPC Letter to the Requester was not a staff action, it was a Board (or NGPC) action. The letter was sent to the Requester under the signature of the Chair of the ICANN Board, Stephen D. Crocker. More importantly, the NGPC, delegated with all legal and decision making authority of the Board relating to the New gTLD Program, (<http://www.icann.org/en/groups/board/documents/resolutions-10apr12-en.htm>), directed transmission of the letter to explain its reasoning for the 5 February 2014 Resolution. (Actions

and Updates Scorecard, Pg. 8.) As such, the 7 February 2013 NGPC Letter to the Requester is a Board (or NGPC) action and cannot be challenged as a staff action.

Even if this were to be considered a staff action, which it is not, there is no established ICANN policy or procedure that requires the ICANN Board or the NGPC to provide gTLD applicants with individualized explanations or direction on what the applicants should do next. To the contrary, and as set forth in the Guidebook, after receiving GAC Advice, the NGPC is required to publish the advice, notify all relevant applicants, give the applicants an opportunity to respond to the GAC Advice, take action on, or respond to, the GAC Advice and then publicly post its decision along with a rationale for that decision. (*See* Guidebook, Section 3.1.)

This is precisely what the NGPC did with respect to the Requester's Applications. Based on the GAC Advice, and subsequent concerns raised by a number of entities and governments, the NGPC decided that it will take no further action on the .ISLAM and .HALAL Applications until and unless the noted conflicts have been resolved, one way or another, as the NGPC explained in the Actions and Updates Scorecard and the 7 February 2013 NGPC Letter to the Requester. Nothing more is required of the NGPC at this time.

## **VI. Decision.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore recommends that the Request be denied without further consideration. There is no indication that the NGPC failed to consider material information in reaching its 5 February 2014 Resolution. In addition, the Requester has not identified an ICANN staff action that violated an established ICANN policy or procedure.