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REFERENCE MATERIALS TO NEW gTLD PROGRAM COMMITTEE
SUBMISSION 2014.01.30.2b

TITLE: **Reconsideration Request 13-17**

Summary Background

While the full background can be found in the documentation attached to this Reference Materials, Reconsideration Request 13-17 brought by GCCIX, W.L.L. (“GCCIX”) asked the Board (or here the NGPC) to reconsider the NGPC acceptance of the GAC’s¹ consensus advice to reject the GCCIX’s application for .GCC.

The BGC considered Request 13-17 at its 8 January 2014 meeting. As detailed in the Recommendation and the documents attached to this Reference Materials, the BGC concluded that the Request has not stated proper grounds for reconsideration. The BGC recommended to the NGPC that this Request be denied without further consideration

Document/Background Links

The following attachments are relevant to the BGC’s recommendation regarding Amazon’s Reconsideration Request 13-17.

Attachment A is [Reconsideration Request 13-17](#), submitted on 14 November 2013.

Attachment B is [Annexes A-D to Request 13-17](#), submitted on 14 November 2013.

Attachment C is a [Letter from WIPO to the BGC](#), submitted on 20 November 2013.

Attachment D is the [BGC Recommendation on Reconsideration Request 13-17](#), issued on 8 January 2014.

¹ Governmental Advisory Committee

Submitted by: Amy A. Stathos
Position: Deputy General Counsel
Date Noted: 24 January 2014
Email: amy.stathos@icann.org

Reconsideration Request

November 14, 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requester Information

Name: **GCCIX, W.L.L.**

Address: Contact Information Redacted

Email: Contact Information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

NGPC acceptance of GAC Advice to reject .GCC gTLD application. NGPC refusal to consider expert WIPO panelist determination, and NGPC refusal to consider contrary recommendation from GNSO.

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

June 4, 2013. Rationale for the action and inaction was requested via letter to ICANN dated June 19, 2013, and again via letter to ICANN dated September 25, 2013 (copies attached in Exh. A). The letters further requested the chance to request Reconsideration once such rationale was provided.

It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

- 1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;
- 2) to refuse to request rationale from the GAC;

3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;

4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first. Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter from Ms. Christine Willett, discussed below.

5. On what date did you become aware of the action or that action would not be taken?

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

October 31, 2013. In response to Applicant's letter dated September 25, 2013, ICANN's letter of October 31 (copy attached in Exh. A) seems to indicate that no rationale for the action or inaction is forthcoming, despite Applicant's repeated requests. Until that date, due to correspondence between Applicant and Ms. Willett, and ongoing work of the GNSO PDP Working Group referenced below, it was not clear that Ms. Willett or ICANN believed the NGPC resolution to be supported by any documented rationale. Until that date, Applicant reasonably believed that ICANN would provide some semblance of documented rationale for this critical decision.

6. Describe how you believe you are materially affected by the action or inaction:

Applicant has invested more than USD 400,000 in its application to operate a gTLD string that is not prohibited by the terms of the Applicant Guidebook. Applicant reasonably estimates a multi-million dollar business opportunity from operating the .GCC gTLD.

Applicant's TLD application has been rejected by the GAC in its Beijing Communique, without any rationale whatsoever. The GAC rejection was accepted by the NGPC, without any rationale whatsoever, except to refer to the Applicant Guidebook provisions with respect to GAC Advice. Applicant has tried via two letters to initiate discussion with ICANN staff, and has specifically requested rationale both times, but it has not been provided.

Applicant fully responded to the Legal Rights Objection filed by the Cooperation Council for Arab States of the Gulf, which claims rights in the GCC acronym. Applicant provided voluminous evidence, including an expensive expert survey, to refute the CCASG's assertion of rights (copy attached as Exh. B). ICANN without rationale has instructed WIPO not to hear the Objection. This response cost applicant at least USD 50,000, including expert panelist fees which have not been refunded. Applicant's two letters specifically requested that ICANN instruct the WIPO panel to proceed with the expert determination, as the Applicant Guidebook specifically suggests that the ICANN Board should consider any such determination, or to provide rationale for the refusal to do so. ICANN has not responded to these requests.

Applicant has tracked the progress of a GNSO PDP Working Group, which has just issued its Final Report on the Protection of IGO and INGO Identifiers (copy attached as Exh. C). The Final Report, Section 3.5, documents the formal "Consensus Against" any recommendation to protect IGO acronym identifiers. The draft GNSO Council resolution, to be discussed at the November 20, 2013, meeting in Buenos Aires, would resolve as follows (Section 3; copy attached as Exhibit D):

At the top-level, acronyms of the RCRC, IOC, IGOs and INGOs under consideration in this PDP shall not be considered as "Strings Ineligible for Delegation".

In other words, purported acronyms of any IGO are considered by the GNSO Working Group, and thus likely by the GNSO Council, to be eligible for delegation as

contemplated in the Applicant Guidebook. It is expected that the ICANN Board consequently will accept that recommendation of the Council.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

Internet users who seek to use the .GCC domain name are harmed by its continued unavailability. See Exh. A, June 19 letter. The GNSO constituencies, Working Group members, and public commenters, who were virtually unanimous in their recommendation against IGO acronym protection, will be harmed by the NGPC refusal to consider their consensus recommendation. See Exh. C, Sec. 3.5. ICANN itself will suffer further degradation in community interest in PDP participation, if the consensus recommendation is ignored by NGPC. ICANN will further be harmed if the ICANN Board accepts the GNSO Council recommendation as expected, as the NGPC action thus far to reject the .GCC application is directly contrary to that recommendation.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

In response to the NGPC action of June 4, 2013, accepting the GAC Advice to reject the .GCC application, Applicant submitted a letter to ICANN on June 19, 2013 – within fifteen days of the action – seeking rationale for the decision since absolutely none had, or has, been provided. See Exh. A. The letter further requested the chance to request Reconsideration once such rationale was provided. The letter further described the ICANN Board's instruction to the GNSO with respect to protection of IGO names, and the emerging consensus in the GNSO against any top-level protection for IGO acronyms. And the letter further requested that the NGPC allow the WIPO Legal Rights Objection to be heard.

On September 5, 2013, purportedly in response to the June 19 letter, Ms. Christine Willett of ICANN responded. Unfortunately, despite the ten weeks taken to prepare and forward a response, Ms. Willett still did not address in any meaningful way GCCIX' direct questions about ICANN's purported rejection of the .GCC new gTLD application. See Exh. A. Instead, the letter merely quoted the NGPC resolution and

the accompanying Briefing Materials, neither of which provide any rationale for the decision. The letter ignored Applicant's request to consider the GNSO PDP, and Applicant's request that the Legal Rights Objection be heard.

Therefore, on September 25, 2013, Applicant wrote again to explain that no rationale had yet been provided, to reiterate its request about the Legal Rights Objection and request rationale for the apparent refusal to grant such request, and to update Ms. Willett with respect to the GNSO PDP consensus. See Exh. A.

No rationale for GAC and NGPC rejection of .GCC application.

Applicant carefully reviewed the documents linked within the September 5 letter, which Ms. Willett claimed to provide rationale for ICANN's purported rejection of the application -- specifically the two documents at these links:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>

<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en>

The Briefing Materials provide no rationale from the GAC or ICANN Board, but only include GCCIX' response to the GAC Advice. The NGPC resolution makes no mention of the .GCC application whatsoever, nor any effort to explain its rejection. The NGPC resolution adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to the Resolution. That document, in turn, states only the following with respect to the .GCC application:

Summary of GAC Advice: The GAC Advises the ICANN Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number 1-1936-2101).

NGPC Response: The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC Advice and Section 3.1, of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw ... or seek relief according to ICANN's accountability mechanisms

In turn, the GAC Advice stated within the Beijing Communique dated April 11, 2013, simply stated that the GAC had reached consensus to reject the .GCC application, without any explanation whatsoever. The GAC meetings in Beijing were closed to the public and to GCCIX, and the GAC made no public effort to explain its decision as to .GCC.

Clearly, GCCIX has not been provided any rationale whatsoever for the GAC's or the NGPC's purported rejection of the .GCC application. GCCIX knew this in June, when it specifically asked ICANN for such rationale. ICANN still has failed to provide it, some four months and two letters later. Thus, Applicant again reiterates the request for written documentation of the rationale for this critical decision, which if ultimately implemented will cost GCCIX hundreds of thousands of dollars in lost investment, and millions of dollars in lost business opportunity.

No rationale for disregarding Legal Rights Objection process.

ICANN has also failed to provide any rationale for stopping the Legal Rights Objection process initiated with respect to the .GCC application, even though that Objection was fully briefed by the Objector and the Applicant, and fees paid to WIPO to adjudicate the dispute. The Applicant Guidebook, §3.1 re GAC Advice, specifically provides: "The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in

cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.”

ICANN has not provided any rationale for failing to allow the independent expert to hear the Legal Rights Objection, even though the issues raised in the GAC Advice appear to be pertinent to that Objection. Of course it is hard to determine whether it is pertinent, as the GAC has not provided any rationale for its decision. But GCCIX has been informed by GAC members that the Objector, Cooperation Council for the Arab States of the Gulf (“CCASG”), was the prime instigator of the GAC advice to reject the .GCC application. Any reasoning of the GAC, if any, remains a closely guarded secret within the GAC and ICANN, as all relevant GAC sessions in Beijing were closed to the public, and no minutes have ever been distributed. But the CCASG’s public Legal Rights Objection indicates that its opposition to the application is based upon CCASG’s purported legal rights to the GCC acronym.

So, it defies common sense that the ICANN Board would fail to allow an independent expert to provide its opinion on the application; particularly when the governmental entity behind the GAC advice has participated in the Objection process, and the applicant has invested heavily in its Response. The ICANN Board cannot reasonably address whether it should disregard the “presumption” to accept GAC advice, if it fails to consider the expert determination on the issue which is specifically contemplated in §3.1 of the Applicant Guidebook. Therefore, GCCIX reiterates its

request that ICANN direct WIPO to continue to decide the Objection, and that the ICANN Board consider the decision of the independent WIPO expert.

At minimum, the NGPC itself should consider the Objection and the Applicant's Response itself, if it is not interested in the independent expert determination by WIPO. See Exh. B.

No rationale for disregarding GNSO input re protection of IGO identifiers.

In her September 5 letter, Ms. Willett stated that:

[T]he NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC's IGO List dated 22/03/2013 while the GAC and NGPC work through the implementation issues. This list previously established by the GAC includes the name "Cooperation Council for the Arab States of the Gulf," and its acronym "GCC".

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>

However, that NGPC resolution is irrelevant, as it only addresses acronym protection at the second level of new gTLDs. This is clear from Ms. Willett's letter, referring to a requirement of registry operators, and from the resolution itself which

refers to Specification 5 of the draft Registry Agreement. The NGPC resolution does not address IGO acronym protection at the top level. Furthermore, the GAC List provides no rationale for including GCC as the purported acronym of the CCASG.

The GNSO Working Group on Protection of IGO Names has issued its Final Report to the GNSO Council. See Exh. C. That Working Group has reached broad “Consensus Against” any recommendation that IGO acronyms shall not be protected at the top-level. This is reflected in the draft GNSO Council resolution to be discussed on November 20, 2013, in Buenos Aires. See Exh. D. Given the level of consensus within the Working Group, it is likely that a Supermajority of the GNSO Council will approve this recommendation, which per the ICANN Bylaws (§3.9.i and Annex A, §9.a) “shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

ICANN has given no rationale for disregarding the pending final recommendation of this PDP Working Group and the GNSO Council, or for circumventing the GNSO PDP process and ICANN Bylaws provisions which likely will require the Board to approve that recommendation. At minimum, ICANN should allow the GNSO process to complete, and the Board to act on the GNSO Council recommendations, before rejecting the .GCC application on the purported ground that GCC is an acronym of the CCASG. Such rejection would run directly counter to the GNSO PDP

recommendation on this point, and cannot be in the best interests of the ICANN community or ICANN.

Last word from ICANN; Decisions to be Reconsidered.

On October 31, 2013, Ms. Willett responded to Applicant's Sept. 25 letter by stating only that Applicant has not sought reconsideration in time. See Exh. A. However, Applicant has timely and repeatedly requested some semblance of rationale for the NGPC action, and has further timely and repeatedly requested the ability to request reconsideration once such rationale is provided. It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

- 1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;
- 2) to refuse to request rationale from the GAC;
- 3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;
- 4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first. Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

The NGPC action to accept GAC Advice should be reversed, pending further investigation by the NGPC. The NGPC should request from the GAC its rationale for its Advice, since the Board cannot legitimately evaluate whether to accept it in the

absence of any rationale for it. The NGPC should instruct WIPO to hear and provide an independent expert determination in the Legal Rights Objection that has been fully briefed, with fees paid, per the Applicant Guidebook. The NGPC should consider the forthcoming GNSO Council resolution with respect to IGO acronym protection at the top level, and consequent Board action in response to the Council resolution. Upon receiving those three inputs, the NGPC should reconsider whether to accept the GAC Advice to reject the .GCC application.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

Applicant has suffered more than USD 400,000 in damages, in the event its .GCC application is ultimately rejected. This includes the USD 185,000 application fee to ICANN, plus legal and consulting fees in support of the application. Reversal of the current rejection, and consideration of the additional inputs requested by Applicant, may lead the NGPC to ultimately refuse to accept the GAC Advice.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

 Yes

X No

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

Exhibit A – Copies of letters between Applicant and ICANN since June 19, 2013.

Exhibit B – Applicant's Response to Legal Rights Objection, plus Annexes – this voluminous documentation is downloadable at the following Dropbox link:

<https://www.dropbox.com/s/tii7195izvlfwka/LRO%20response%20final.zip>

Exhibit C – Final Report on the Protection of IGO and INGO Identifiers

Exhibit D – Draft GNSO Council Resolution re Final Report recommendations

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

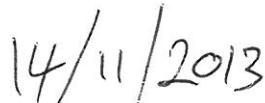
Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.



Signature



Date



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EXHIBIT A

Dr. Stephen D. Crocker
Chair, ICANN Board of Directors

Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094
USA

Sent by email to steve.crocker@icann.org

June 19, 2013

Re: ICANN Board action following the GAC's Advice on our application for Dot GCC

Dear Mr Chairman,

I wanted to reach out and provide you with an update on our application for what we see as a crucial TLD for Internet users in the Persian Gulf and Greater Middle East regions. Dot GCC has been the subject of much controversy in the past few months and as CEO of the organisation applying for this TLD, I am keen to ensure that the GAC, as a whole, has reliable and factually correct information about our application.

First some basic facts. We are the sole applicant for Dot GCC. Our application (number 1-1936-21010) has prioritization number 594. It has passed Initial Evaluation. In its Beijing Communiqué providing the ICANN Board with Advice on new gTLD applications, the GAC listed Dot GCC as one of only two applications on which it had reached consensus on the basis of Applicant Guidebook Module 3.1, part 1. Without explanation, the GAC has advised the Board to reject our application. In its June 4 scorecard approved at its June 4 meeting, ICANN's New gTLD Program Committee responding to the GAC's Advice by accepting it.

Although the GAC has not provided rationale for its inclusion of our application in its Beijing Communiqué, leaving us in the dark as to the committee's exact reasons for doing so, over the last few months Dot GCC has been the target of concentrated attacks from one specific organisation. It has submitted a GAC Early Warning and filed a Legal Rights Objection with WIPO, and now has successfully lobbied the GAC to include our application in its formal advice delivered through the Beijing Communiqué.

The organisation in question is the Cooperation Council for the Arab States of the Gulf (or CCASG for short). Clearly, this entity has been successful in convincing the GAC that Dot GCC should be rejected, though we are uncertain on what basis the GAC has acted. The Early

Warning mentioned both purported legal rights in the GCC acronym, and purported lack of community support. We feel that neither basis could be further from the truth, and that the CCASG efforts represent their misguided attempt to apply artificial controls on the Internet namespace, where no such controls exist in the physical world.

Whilst, as an applicant, our focus over the past year has been in finalising our application and meeting (and indeed exceeding) ICANN's criteria for the administrative, technical and financial operations of a TLD, the CCASG has been concentrating on lobbying against Dot GCC. As an applicant, we had not expected politics to play such an important role in the potential approval, or rejection, of our TLD. We expected Dot GCC to be judged solely on its merits, in accord with the rules as set forth in the Applicant Guidebook, as promised by ICANN.

CCASG has filed a Legal Rights Objection against our application. At least in doing so, it was working within the confines of the new gTLD program's rules and procedures as set out in the Applicant Guidebook. In our response to this Objection, we contend that it is unfounded and that the objector does not even have standing to be making it. CCASG has provided no proof of any legal right in the acronym GCC. The treaty that established the CCASG bears no mention of a GCC or Gulf Cooperation Council. No treaty exists establishing any "GCC" entity. For the CCASG to claim that it is commonly known as GCC does not make it true, and does not give it any legal right over the three letters "GCC". We are confident that the WIPO arbitrator will find in our favor. We are happy to provide the complete set of documents filed by both sides with respect to the Legal Rights Objection, if the Board would like to review these.

The CCASG apparently shared our confidence that it will not be successful in objecting to our application on legal grounds, and instead has lobbied the GAC to block Dot GCC before the objection procedure had even gotten under way. No entity should be able to circumvent the established procedures in this manner. It particularly should not be allowed within the GAC, where we have had no formal opportunity to be heard, deliberations have been in secret, and any rationale for the rejection has been neither explained nor justified.

Not only does the CCASG not have any rights to the "GCC" acronym, but the ICANN Board has recently informed the GAC that protection of IGO acronyms at the top-level of the DNS is not feasible given the many others with competing rights to such acronyms. The Board specifically referred to Dot GCC and provided more than a dozen other legitimate users, and specifically so as not to give IGO's greater trademark rights via the TLD program than they otherwise possess. Furthermore, consensus that IGO acronyms should not be reserved at the top-level seems to be emerging in the Working Group tasked by the GNSO to work on protections for IGO names. The work of this specifically-chartered GNSO Working Group should not be short-circuited by unilateral, back room lobbying.

So clearly, formal GAC Advice against Dot GCC at this stage risks undermining both the new gTLD program's carefully crafted objection procedures and ICANN's multi-stakeholder process as a whole.

This becomes even more evident when the new gTLD program Independent Objector's (IO) consideration of the Dot GCC application is taken into account. The IO examined whether filing a Limited Public Interest Objection or a Community Objection against Dot GCC was warranted. In both cases, the IO determined that it was not, encouraging the CCASG to file such objections if it deemed doing so appropriate. The IO's message was the same as ours. The processes established for the new gTLD program, of which the objection process is one, should be allowed to function and not be short-circuited.

GCC IX was pleased to see the IO resist outside pressures for him to do just that. We feel it is a great pity that the GAC were unable to resist those same pressures, and chose to request that the plug be pulled on our application before the objection process had been allowed to work.

The work of the ICANN community should not be pushed aside before it is even finished. IGOs should not be afforded greater protections on the Internet than they enjoy in law. In particular, the CCASG has never before in its history sought to protect the GCC acronym as its exclusive property. GCC has become a common term in the region, used by many companies and entities, as proved by a study we commissioned, which has been supplied to the WIPO arbitration panel.

GCC was not on ICANN's exhaustive list of prohibited geographic terms, and thus was permitted to be the subject of our TLD application. The requirement for a predictable and dependable framework of rules should not be ignored because one organisation has decided to pull every string it can to get what it wants. There is a due process for new gTLD applications, and that process must be protected if the program is to have any credibility with the world outside of ICANN. There is no legitimate reason for the rejection or withdrawal of our application, and so we refuse to withdraw it.

Through the operation of Dot GCC, our mission is to promote and support Internet growth and development in the Gulf and Middle East region. Our company was created in August 2011, registered with the Bahrain Ministry of Industry and Commerce, and has operated since its inception without any objection from the CCASG. They claim that national laws protect against use of their name, yet neither CCASG nor anyone else has brought any national law proceedings against our application for Dot GCC. We can only assume the reason for that is the CCASG's recognition that such proceedings would be thrown out of any court.

The study we commissioned demonstrated that the acronym GCC in the Gulf region is separate from the CCASG organisation. It shows widespread, long established and general use for "GCC". There are numerous examples of companies using the GCC initials as part of the branding for products and services aimed at the Gulf market. The study shows that the use of the GCC acronym in the media and by academics, consultants, analysts and think tanks -- as referring broadly to the region rather than specifically to the CCASG -- is so widespread as to be impossible to quantify.

In all these cases, throughout the use of the GCC acronym as a popular term in the Gulf region, the CCASG has never once objected to its use. Further, the term GCC was not

included in any list of reserved terms under the new gTLD program rules. As an applicant, we have therefore applied for a term on which we, contrary to the CCASG, have a right (Danish trademark number VR 2013 00642 registered in the Danish Register of Trade Marks) and the use of which the CCASG has never opposed anywhere else or by anyone else.

In a sense, it is a pity they have not. If such a precedent had existed, we might have been able to anticipate that they would warp the GAC Advice procedure to attempt to block our application. This might have enabled us to have a full picture of the potential political pressures we might be a victim of, before investing significant time and resources (in excess of USD 400,000) to play by the Applicant Guidebook's rules, contract with a registry services provider (Afilias) and a data escrow agent (NCC Group), and go through ICANN's application procedure.

We did so in good faith, based upon the guidelines set out in the Applicant Guidebook. We did not deviate from these guidelines in any way. We therefore urge you not to let the process be usurped now. Dot GCC should be allowed to proceed through both the ICANN evaluation process and the new gTLD program objection procedure.

We cannot accept the CCASG's attempt to usurp the new gTLD process to mount a double-pronged attack on our application, without proper grounds for doing so. We urge the Board to show its faith in the new gTLD program and the bottom-up, consensus-driven, multi-stakeholder policy development process that led to its creation.

If the CCASG is shown to have no right to the string GCC, then our application should be allowed to proceed. We have faith in the WIPO objection procedure and confidence that this is what it will show. We ask that you show the same faith and not prevent the Dot GCC application from being given a fair hearing in accord with the rules of the new gTLD program.

We are committed to improving the ability of people in the region to get online and use the Internet. The name of our company, GCC IX, means "the GCC Internet eXchange". An Internet eXchange Point (IX or IXP) is a physical infrastructure through which Internet Service Providers (ISPs) exchange traffic between their networks. IXs underpin smooth and reliable Internet operation by reducing the cost of interconnects as well as the latency of user connections.

Internet eXchanges have been commonplace in the west since the mid-1990s, but almost non-existent in our region. GCC IX was the first independent, carrier-neutral IX in the Gulf. Carrier neutrality provides a level playing field for all Internet providers, not just those who take services from the incumbent telecommunications company in any given territory. This promotes competition and innovation, which in turn stimulates economic growth.

Our Internet eXchange has been in operation since 2011, and we have invested in excess of 1M Bahraini dinars (approximately USD 2.7M) in our network across the Gulf. We have contracts in place with a number of national-level telecoms operators in the Gulf region, as well as with the GCC Interconnection Authority (GCCIA). We are a Local Internet Registry, registered with the RIPE NCC, which exists within the ICANN/IANA framework as the RIR for Europe and the Middle East. We have recruited key staff from across the globe, with a

permanent headcount of four, as well as employing the services of highly qualified consultants. Our staff attends and presents at, and we have sponsored, major regional Internet industry conferences.

Having made a positive impact on interconnectivity options and content availability in our service region, we identified that the local domain name market was immature when compared to Europe or Asia. Around the Gulf, ccTLD names are generally costly and onerous to register, with many applications being processed manually. As a result of national registries in the region almost all being run either within or by the national governments, access to the region's ccTLDs is heavily regulated, with the application of strict regulations and the physical verification of identity. This control has tended to limit competition or innovation, drive domain prices up with fees sometimes as high as \$200 a year, and yield delegation times which can sometimes be measured in weeks.

We estimate that the total cumulative regional registry size in the Gulf and Middle East region is around two hundred thousand names. According to German registry Denic's latest 2013 stats, the .DE namespace grows by that much every six months!

Because of the relative inaccessibility of ccTLD domain names, registrants instead tend to gravitate towards the gTLD pool where, as relative latecomers, they face a significant reduction in consumer choice, as it is rare for their name still to be available. Users therefore settle for less attractive gTLD names (e.g. by adding suffixes to their company name) when in many cases their primary choice of name remains unregistered within their local ccTLD.

With the opening of New gTLD applications by ICANN, we see a real opportunity to make a tangible improvement to this state of affairs by offering a gTLD with a true local feel, with which local users and business could easily identify, and where first-choice names would be available. We set out with the intention to offer the best in industry standard registration processes, while maintaining respect for local cultural and social norms. We undertook this ambitious and wide-reaching project confident that the rules set out by ICANN and its community through the GNSO PDP that led to the new gTLD program made it possible for us to apply and be judged impartially, through a predictable process, on our technical and operational merits as an applicant, rather than see our hopes for a Gulf region focused TLD dashed by a one-sided political decision.

In response to updated ICANN requirements, we have submitted a set of Public Interest Commitments (PIC). We note that not all applicants have done so and feel that this should further serve to highlight the deep responsibility we feel to serve and uphold the public interest through our Dot GCC application.

I hope this letter has provided you with a better insight into our application, the rationale behind it, the political situation surrounding it and the hopes for our region's Internet emancipation that it carries.

In order not to dash those hopes, I would ask that ICANN stick to the due process for its new gTLD program as described in the Applicant Guidebook. The GAC has provided no rationale for its Beijing Communiqué Advice on Dot GCC. The Board has provided no rationale for its

New gTLD Program Committee's decision to accept the GAC Advice on our application as explained in the NGPC scorecard. Both these groups seem to hold no faith in the ongoing objection process, even though that process is being handled by WIPO. The experience and expertise of WIPO in handling dispute resolution processes is clear. Yet ICANN does not seem to have faith in the body it has itself selected to handle Limited Right Objections under the new gTLD program.

As GCC IX CEO, I therefore make the following requests:

- That the Board provide us with its rationale for accepting this advice (I will also be writing to the GAC Chair to ask the committee provide us with the rational for its Beijing Communiqué Advice).
- That we be given a chance, once this rationale is known, to address the concerns expressed via Reconsideration Request and cooperative engagement as set forth in ICANN's Bylaws, Art. IV.
- That the ongoing WIPO Legal Rights Objection procedure, which affords us the right to respond to objections made against our application – a right which we have so far not been given by the GAC or the Board -- be allowed to run its course before any decision to terminate our Dot GCC application is taken.

I look forward to your positive response to these requests.

Yours sincerely,



Fahad Al Shirawi
Chief Executive Officer
GCCIX WLL
Bahrain



The Internet Corporation for Assigned Names and Numbers

5 September 2013

Mr. Fahad Al Shirawi
Chief Executive Officer
GCCIX WLL

Re: ICANN Board Action following the GAC's Advice on our application for Dot GCC

Dear Mr. Fahad Al Shirawi:

We received your letter dated 19 June 2013 providing an update on the New gTLD Program application for .GCC. I apologize for the delayed nature of this response.

As you are aware, the ICANN Board New gTLD Program Committee (NGPC) took action to accept the GAC's advice on the .GCC application at its 4 June 2013 meeting <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>>. The GAC's advice created a strong presumption for the NGPC that your application should not be approved. At that time, the NGPC directed staff that pursuant to the GAC advice and Section 2.1 of the Applicant Guidebook (AGB) the application for .GCC (Application ID 1-1936-2101) will not be approved.

With regard to your concerns about the NGPC not providing a rationale for its decision, you should consider that the NGPC reviewed applicant comments on the GAC's advice, including your response dated 18 April 2013. The NGPC provided a rationale for accepting the GAC's advice <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>>, and made available to the community the briefing documents it reviewed when considering its decision <<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>> to provide transparency in the process. The documents are available for your review at any time on ICANN's website.

Regarding the Legal Rights Objection filed by CCASG

Module 3 of the AGB provides the objection procedures for applications, and provides for two types of mechanisms that may affect an application's ability to continue to move forward: (1) GAC advice, and (2) the dispute resolution procedure. Applicants are on notice that the GAC may provide advice directly to the ICANN Board on any application as provided in the AGB. The GAC's objection to your application is separate and distinct from the Legal Rights Objection filed by CCASG. While I acknowledge your concern about the Legal Rights Objection to your application, the NGPC had an obligation to consider the GAC's advice and decided not to act inconsistently with the advice. Please be advised that the WIPO proceeding for the Legal Rights Objection is not moving forward based on the NGPC's action on 4 June 2013.

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Regarding Protections for IGO Acronyms

As to your concerns about the GAC's advice against .GCC undermining the ongoing work in the community on the protection of IGO names and acronyms, you should note that the NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC's IGO List dated 22/03/2013 while the GAC and NGPC work through implementation issues. This list previously established by the GAC includes the name "Cooperation Council for the Arab States of the Gulf," and its acronym "GCC"

<<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>>. The process is not undermined because the NGPC's action respects the ongoing work in the community on the issue and the continuing dialogue it will have with the GAC on protection of IGO identifiers.

Please use the New gTLD Customer Service Center Portal <myicann.secure.force.com> for any further communications to ICANN concerning the New gTLD Program. Applicants can use the portal to view and correspond with the New gTLD Customer Service Center on currently open cases, and submit new cases.

You are reminded that you can withdraw the application for .GCC pursuant to AGB § 1.5.1, or seek relief according to ICANN's accountability mechanisms in the ICANN Bylaws, Articles IV and V, subject to the appropriate standing and procedural requirements.

Thank you again for your participation in the New gTLD Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine A. Willett".

Christine A. Willett
Vice President, gTLD Operations



September 25, 2013

Ms. Christine A. Willett
ICANN -- Vice President, gTLD Operations
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Via Salesforce CRM and Email

Re: GCCIX response to ICANN letter dated September 5, 2013, re rejection of .GCC.

Ms. Willett,

This firm represents GCCIX, W.L.L., applicant for the .GCC new gTLD. Thank you for your letter dated September 5, 2013, purportedly in response to GCCIX' letter dated June 19, 2013. Unfortunately, despite the ten weeks taken to prepare and forward a response, ICANN still has not addressed in any meaningful way GCCIX' direct questions about ICANN's purported rejection of the .GCC new gTLD application.

No rationale for GAC and NGPC rejection of .GCC application.

We have carefully reviewed the documents linked within your letter, which you claim to provide rationale for ICANN's purported rejection of the application -- specifically the two documents at these links:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>
<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en>

The Briefing Materials provide no rationale from the GAC or ICANN Board, but only include GCCIX' response to the GAC Advice. The NGPC resolution makes no mention of the .GCC application whatsoever, nor any effort to explain its rejection. The NGPC resolution adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to the Resolution. That document, in turn, states only the following with respect to the .GCC application:

Summary of GAC Advice: The GAC Advises the ICANN Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of



the Applicant Guidebook on the following application: .gcc (application number 1-1936-2101).

NGPC Response: The NGPC accepts this advice. The AGB provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (AGB § 3.1) The NGPC directs staff that pursuant to the GAC Advice and Section 3.1, of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw ... or seek relief according to ICANN’s accountability mechanisms

In turn, the GAC Advice stated within the Beijing Communique dated April 11, 2013, simply stated that the GAC had reached consensus to reject the .GCC application, without any explanation whatsoever. The GAC meetings in Beijing were closed to the public and to GCCIX, and the GAC made no public effort to explain its decision as to .GCC.

Clearly, GCCIX has not been provided any rationale whatsoever for the GAC’s or the NGPC’s purported rejection of the .GCC application. GCCIX knew this in June, when it specifically asked ICANN for such rationale. ICANN still has failed to provide it, some ten weeks later. We again reiterate the request for written documentation of the rationale for this critical decision, which if ultimately implemented will cost GCCIX hundreds of thousands of dollars in lost investment, and millions of dollars in lost business opportunity.

No rationale for disregarding Legal Rights Objection process.

ICANN has also failed to provide any rationale for stopping the Legal Rights Objection process initiated with respect to the .GCC application, even though that Objection was fully briefed by the Objector and the Applicant, and fees paid to the ICDR to adjudicate the dispute. The Applicant Guidebook, §3.1 re GAC Advice, specifically provides: “The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.”

ICANN has not provided any rationale for failing to allow the independent expert to hear the Legal Rights Objection, even though the issues raised in the GAC advice appear to be pertinent to that Objection. Of course it is hard to determine whether it is pertinent, as the GAC has not provided any rationale for its decision. But GCCIX has been informed



by GAC members that the Objector, Cooperation Council for the Arab States of the Gulf (“CCASG”), was the prime instigator of the GAC advice to reject the .GCC application. Any reasoning of the GAC, if any, remains a closely guarded secret within the GAC and ICANN. But the CCASG’s public Objection indicates that its opposition to the application is based upon CCASG’s purported legal rights to the GCC acronym.

So, it defies common sense that the ICANN Board would fail to allow an independent expert to provide its opinion on the application; particularly when the governmental entity behind the GAC advice has participated in the Objection process, and the applicant has invested heavily in its Response. The ICANN Board cannot reasonably address whether it should disregard the “strong presumption” to accept GAC advice, if it fails to consider the expert determination on the issue which is specifically contemplated in §3.1 of the Applicant Guidebook. Therefore, GCCIX reiterates its request that ICANN direct the ICDR to continue to decide the Objection, and that the ICANN Board consider the decision of the independent ICDR expert.

No rationale for disregarding GNSO input re protection of IGO identifiers.

You state that:

[T]he NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC’s IGO List dated 22/03/2013 while the GAC and NGPC work through the implementation issues. This list previously established by the GAC includes the name “Cooperation Council for the Arab States of the Gulf,” and its acronym “GCC”. <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>

However, the NGPC resolution only addresses acronym protection at the second level of new gTLDs. This is clear from your letter, referring to a requirement of registry operators, and from the resolution itself which refers to Specification 5 of the draft Registry Agreement. The NGPC resolution does not address IGO acronym protection at the top level. Furthermore, the GAC List provides no rationale for including GCC as the purported acronym of the CCASG.

The GNSO Working Group on Protection of IGO Names is about to issue its Final Report to the GNSO Council. The undersigned counsel participates as a member of that Working Group. That Working Group has reached broad consensus – of all stakeholders other than IGO representatives – that IGO acronyms shall not be protected at the top-level. Given the level of consensus within the Working Group, it is likely that a Supermajority of the GNSO Council will approve this recommendation, which per the



ICANN Bylaws (§3.9.i and Annex A, §9.a) “shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

ICANN has given no rationale for disregarding the pending final recommendation of this Working Group, or for circumventing the GNSO PDP process and ICANN Bylaws provisions which likely will require the Board to approve that recommendation. At minimum, ICANN should allow the GNSO process to complete, and the Board to act on the GNSO Council recommendations, before rejecting the .GCC application on the purported ground that GCC is an acronym of the CCASG. Such rejection would run directly counter to the GNSO PDP recommendation on this point.

Conclusion.

GCCIX once again requests that ICANN provide rationale as to the NGPC decisions referenced above, and then further considers the ICDR independent expert’s determination of the Legal Rights Objection and the GNSO Council recommendation not to protect IGO acronyms at the top-level. If ICANN is unable or unwilling to provide any further rationale, or to suspend its decision until those ancillary processes are complete, then GCCIX requests prompt initiation of the Reconsideration Request process described in ICANN’s Bylaws, Art. IV, including “cooperative engagement” with GCCIX as soon as possible. We respectfully request a prompt response to these requests.

Kind regards,

By: 
Mike Rodenbaugh
RODENBAUGH LAW

Attorneys for GCCIX, W.L.L.

Cc: John Jeffrey, Esq.
Dr. Steve Crocker
Mr. Fahad Al Shirawi