Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

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Introduction

In ICANN's new gTLD program, the At-Large Advisory Committee (ALAC) has been given the opportunity to obtain funding from ICANN to file an objection to a gTLD application.

Under Section 3.3.2 Objection Filing Fees" on page 159 of the gTLD Applicant Guidebook (AGB):

"Funding from ICANN for objection filing fees, as well as for advance payment of costs...is available to the At-Large Advisory Committee (ALAC)."

"Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require:

- *bottom-up development of potential objections,*
- *discussion and approval of objections at the Regional At-Large Organization (RALO) level, and*
- *a process for consideration and approval of the objection by the At-Large Advisory Committee."*

The At-Large New gTLD Working Group (New gTLD WG) was mandated to look at this and come with such a process for considering and making objections during the 7 month Objection Period.

A review of the gTLD Application Process showed an opportunity for At-Large and ALAC to submit public comments on gTLD applications during the 60 day Application Comment Period (ACP).

Thus, this draft proposal outlines how At-Large and ALAC could discuss and consider the submission of public comments to gTLD applications during the ACP and to consider and make objections to gTLD Applications during the 7 month Objection Period.

Overview/Summary

When ICANN posts all gTLD strings that have been applied for and who applied for each (tentatively May 1 2012) at http://newgtlds.icann.org/en/program-status/application-results, this will mark the beginning of two key activities:

- Application Comment Process. Anyone interested may submit comments to express any points to be considered by the independent evaluation panels (String Similarity, DNS Stability, Geographic Names, Technical & Operational Capability, Financial Capability, Registry Services, Community Priority) while evaluating any of the new gTLD applications. The Application Comment Period (ACP) is approximately 8 weeks and ends 30 June 2012.

- Objection Period. Anyone with grounds to do so may submit a formal objection to any of the new gTLD applications. There's approximately a 7-month window to file a formal objection to any of the applications received.

The ALAC has standing to object to a gTLD application on "Limited Public Interest Objection" grounds and "community" grounds. Refer to Appendix Sections “Grounds for Objection” and “Who can file an Objection to a gTLD Application” for more information.

With respect to “community” grounds, discussion is ongoing as to the scope of ALAC’s standing to object given that the ALAC is responsible for considering and providing advice on ICANN activities as they relate to the interests of individual Internet users (the “At-Large” community).

It is envisioned that At Large/ALAC could submit comments on a gTLD application for an evaluation panel’s consideration (String Similarity, DNS Stability, Geographic Names, Technical & Operational Capability, Financial Capability, Registry Services, Community Priority) or comments on objection grounds during the ACP.

Comments on objection grounds submitted during the ACP can be acted upon by the Independent Objector as mentioned under Section 3.2.5 on page 156 of the AGB. Also, comments may be submitted on any application for viewing by dispute resolution service providers on the basis of one of the four objection grounds (string confusion, legal rights, limited public interest, community).

For the Application Comment Period (ACP), comments are received by At-Large, then the new gTLD WG decides whether a formal comment should be drafted for possible ALAC’s approval to submit the comment as policy advice from the ALAC. Persons are assigned to prepare a 1st draft comment, receives comments from At-Large and then publishes a final comment. ALAC then votes on each comment and for those comments approved by ALAC are submitted to ICANN as formal comments from ALAC. RALOs and ALSes are able to submit comments on applied for gTLD strings directly for those statements or comments not considered by ALAC.

For the remainder of the Objection Period after the ACP (5 months), comments on objection grounds are received by At-Large, then the new gTLD WG reviews those comments for each gTLD application and decides whether to draft a formal objection statement to gTLD application

for RALO's approval to give advice to ALAC. An ad hoc WG is assigned to draft a formal objection statement to a gTLD application, publishes a first draft, receives comments/suggestions from At-Large, and then the ad hoc WG submits a final objection statement in a format ready to submit to a Dispute Resolution Service Provider.

Each of the RALOs then votes on all objection statements to gTLD applications . If 3 or more RALOs approve an objection statement, the ALAC then votes on whether to accept the advice by the 3 or more RALOs. If the ALAC vote is yes to accept the regional advice, then ICANN is notified on ALAC's intention to file the objection and ALAC, in coordination with ICANN to pay the objection fees files the objection to the appropriate Dispute Resolution Service Provider.

A flowchart Figures 1 to 9 is included to illustrate the proposal and appended to the end of this document. The following sections gives Explanatory Notes to each Figure of the Flowchart

Explanatory Notes describing each Figure of Flowchart

Figure 1

Before the start of the ACP

There is a call for participants from all RALOs to join an At-Large new gTLD Review Group (gTLD RG).

The gTLD RG is tasked with

- receiving the comments from At-Large either directly via email or via RALO conference calls.
- creating/updating the gTLD wiki comment pages.
- giving status updates of which gTLD application received comments each week to the ALAC, At-Large and RALO lists and at RALO conference calls.
- informing RALOs of deadlines for comments to be drafted during the ACP, and for objection statements during the 7 month objection period.

At start of the ACP

gTLD RG notifies all RALOs when ICANN's publishes all applied for gTLD strings and applications.

Within 1st week of ACP

The gTLD RG ensures all the applied for gTLD strings and links to the applications from ICANN's website is imported into At-Large new gTLD Applications Dashboard

The At-Large new gTLD Applications Dashboard (hereafter referred to as gTLD Dashboard) is a website which captures all comments on gTLD strings and their applications and any possible drafting of formal comments for approval to submit by ALAC for evaluation panels' consideration or objection grounds within the ACP and for drafting a formal objection for RALO's consideration

during the objection period.

It is recommended to use the At-Large wiki for the gTLD Dashboard because of its' familiarity with At-Large, the ease of updating and commenting on a wiki page, and the scripting capabilities of the Confluence platform to help automate reporting on the gTLD Dashboard.

A prototype gTLD Dashboard can be found at https://community.icann.org/x/yZHbAQ
It is suggested that there would be two wiki spaces, one space for the comments on gTLD applications for evaluation panels' consideration and one wiki space for gTLD comments on objection grounds. The latter wiki space can then also be used for drafting a formal objection statement for RALO's consideration.

Figure 2

Up to Week 4 within the ACP

Each week, the gTLD RG updates RALOs of changes to the gTLD Dashboard and creates a gTLD comment page if it receives a comment from At-Large via email or by attending RALO conference calls. Subsequent comments can be added by At-Large directly to the wiki comment page. All commenters or watchers on that wiki space will be notified of such updates automatically.

By the end of week 4, the gTLD RG notifies all RALOs of upcoming new gTLD WG meeting soon after if not at the start of week 5 of the ACP to review submitted comments and to assign persons or to draft formal At-Large comments for possible submission to ICANN's Application Comments.

Figure 3

Week 5 of the ACP

The gTLD RG gives status update to RALOs on changes to gTLD Dashboard, continues to receive comments and creates/updates wiki pages accordingly.

At the beginning of the week, a conference call by the new gTLD WG and gTLD RG is held to review the comments on applied for gTLD strings via the gTLD Dashboard.

For each applied for gTLD string that has a comment page for evaluation panels' consideration or on objection grounds:

- a decision is taken whether to draft a formal comment for possible ALAC's approval to submit the comment as policy advice from the ALAC.
    - if yes, person or persons are assigned to hold the pen to draft a formal comment
- gTLD RG updates the status of the decision made on the gTLD Dashboard.

Figure 4

Week 6,7 of the ACP

The gTLD RG gives status update to RALOs on changes to gTLD Dashboard, continues to receive comments and creates/updates wiki pages accordingly.

The persons responsible for drafting formal comments will update the appropriate wiki page (either the wiki page comments for evaluation panels' consideration or wiki page comments on objection grounds) with a draft formal statement. All commenters or watchers on that wiki space will be notified of such updates automatically

Figure 5

Week 8 of the ACP

The last week of the ACP, the persons responsible for drafting formal comments should update the appropriate wiki page with a final draft statement for ALAC to review and vote on whether to submit the comment as a comment from the ALAC on the applied for gTLD string.

The ALAC could either call a 5 day vote and vote online or have a conference call to vote on the final statements on applied for gTLDs.

For those statements accepted by ALAC, ALAC (via ICANN At-Large staff) submits to ICANN's new gTLD Public Comment Forum its approved comments on gTLD Applications for evaluations panels' consideration and objection grounds.

RALOs and ALSes are able to submit comments on applied for gTLD strings directly, even for those statements or comments not considered by ALAC.

Figure 6

3rd and 4th month of the Objection Period

There are 5 months remaining for filing of an objection to a gTLD application.

The gTLD RG gives status update to RALOs on changes to gTLD Dashboard, continues to receive comments on objection grounds and creates/updates wiki pages accordingly.

Figure 7

5th month of the Objection Period

There are 3 months remaining for filing of an objection to a gTLD application.

At the beginning of the week a conference call is held with the new gTLD WG and gTLD RG reviewing the objection comments on applied for gTLD strings via the gTLD Dashboard.

For each applied for gTLD string that has a comment page on objection grounds:

- a decision is taken whether to draft a formal objection statement for RALO's approval to give advice to ALAC.
- ad hoc WG assigned to draft the objection statement for each gTLD string

Figure 8

6th month of the Objection Period

There are 2 months remaining for filing of an objection to a gTLD application.

Ad hoc WGs publishes 1st draft of objection statement to gTLD string/application for comments/ suggestions by At-Large

By end of 6th month, ad hoc WGs publishes final objection statement ready for RALOs to review and approve

Figure 9

7th month of the Objection Period

The last month for filing of an objection to a gTLD application.

At beginning of 7th month, each of the RALOs votes on all completed objection statements to gTLDs strings/applications.

By mid month, the results would show which objection statements received the support of 3 or more RALOs.

The ALAC then votes whether to accept the advice for each gTLD string/application by 3 or more RALOs.

If ALAC votes yes to accept the advice, then in co-ordination with ICANN, files the objection statement to the appropriate DRSP.

Flowcharts

The flowchart to illustrate the draft proposal for the ALAC to submit public comments on, and file possible objections to, new gTLD applications is appended to this interim report.

Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 1

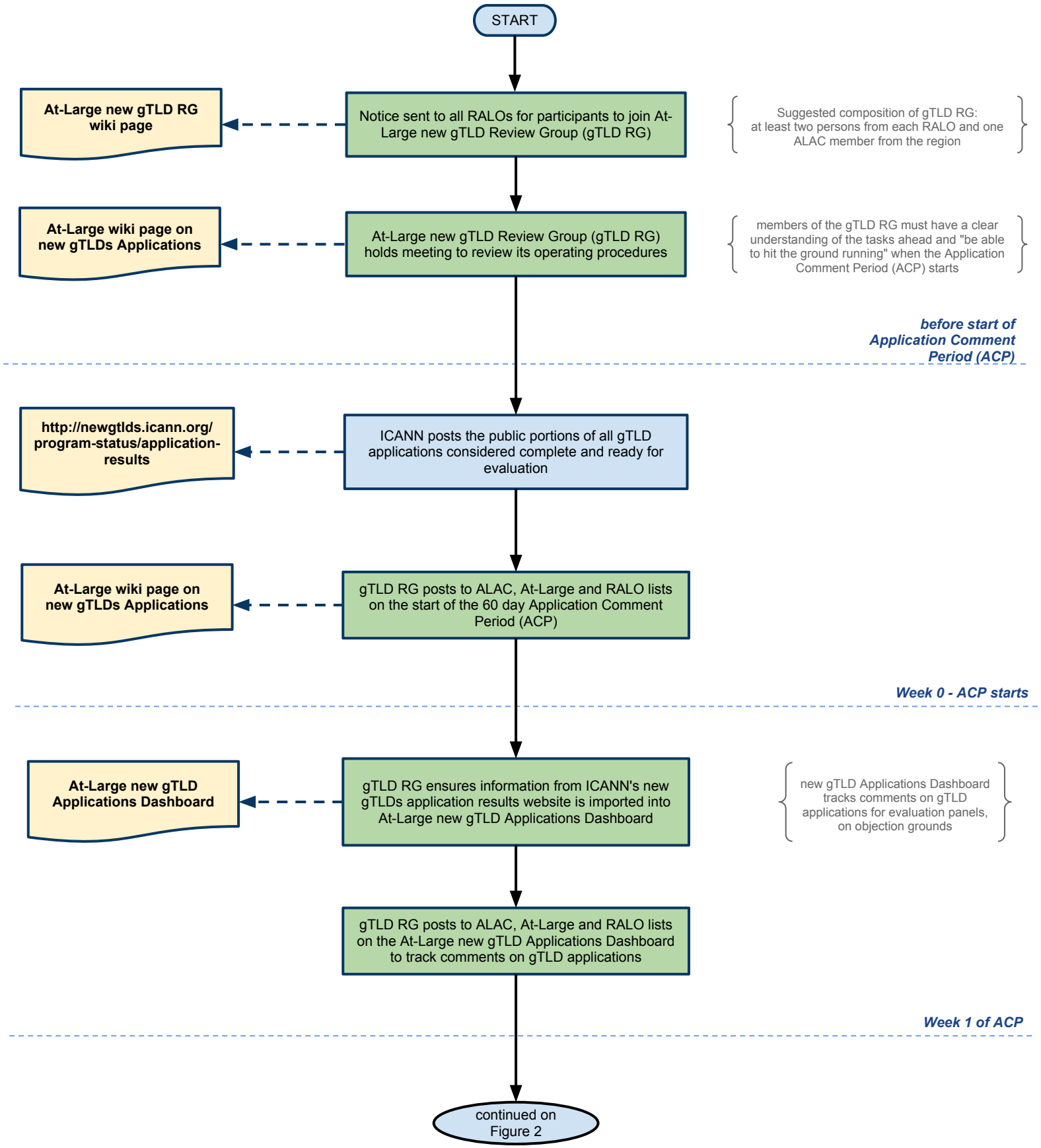
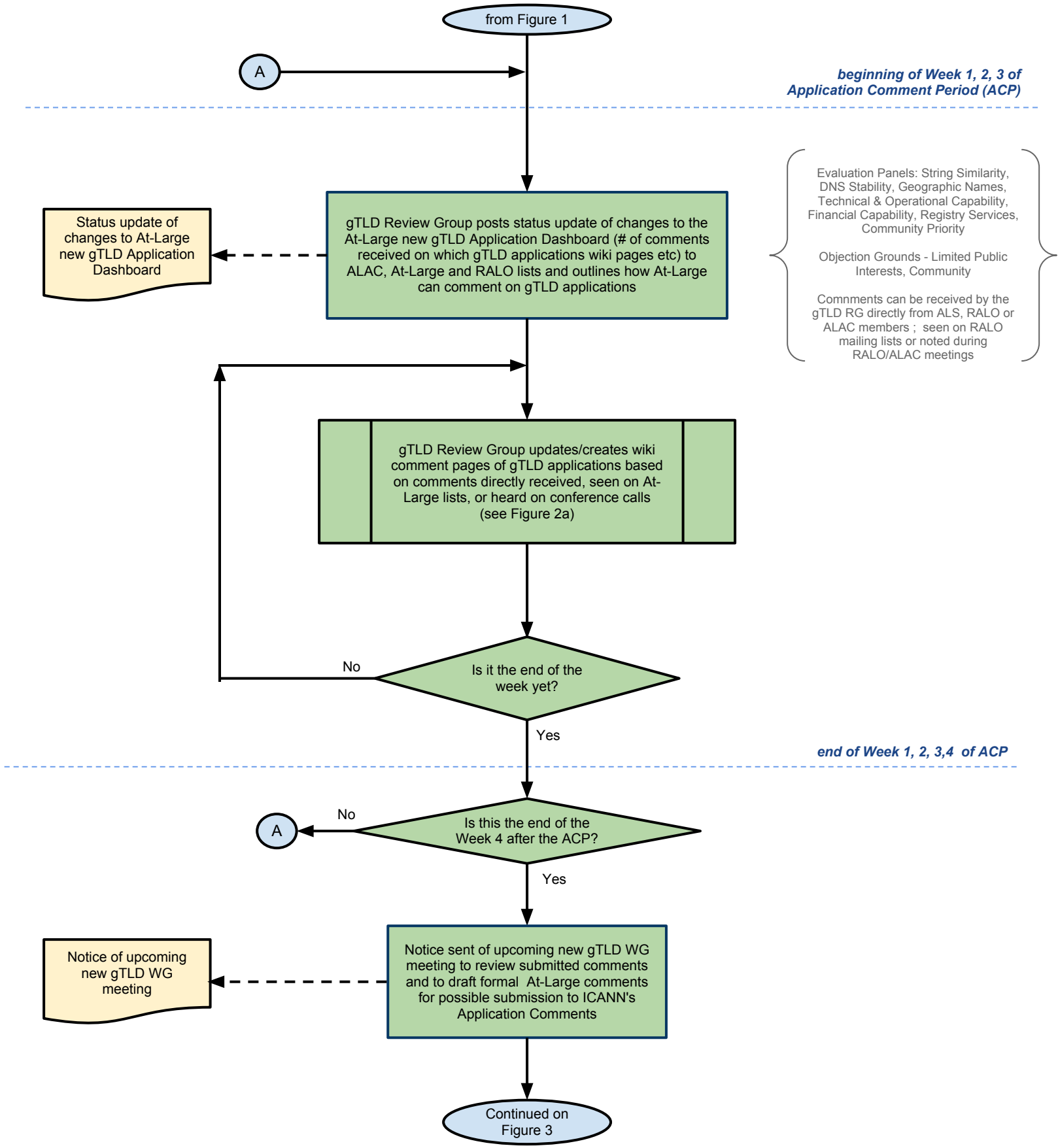
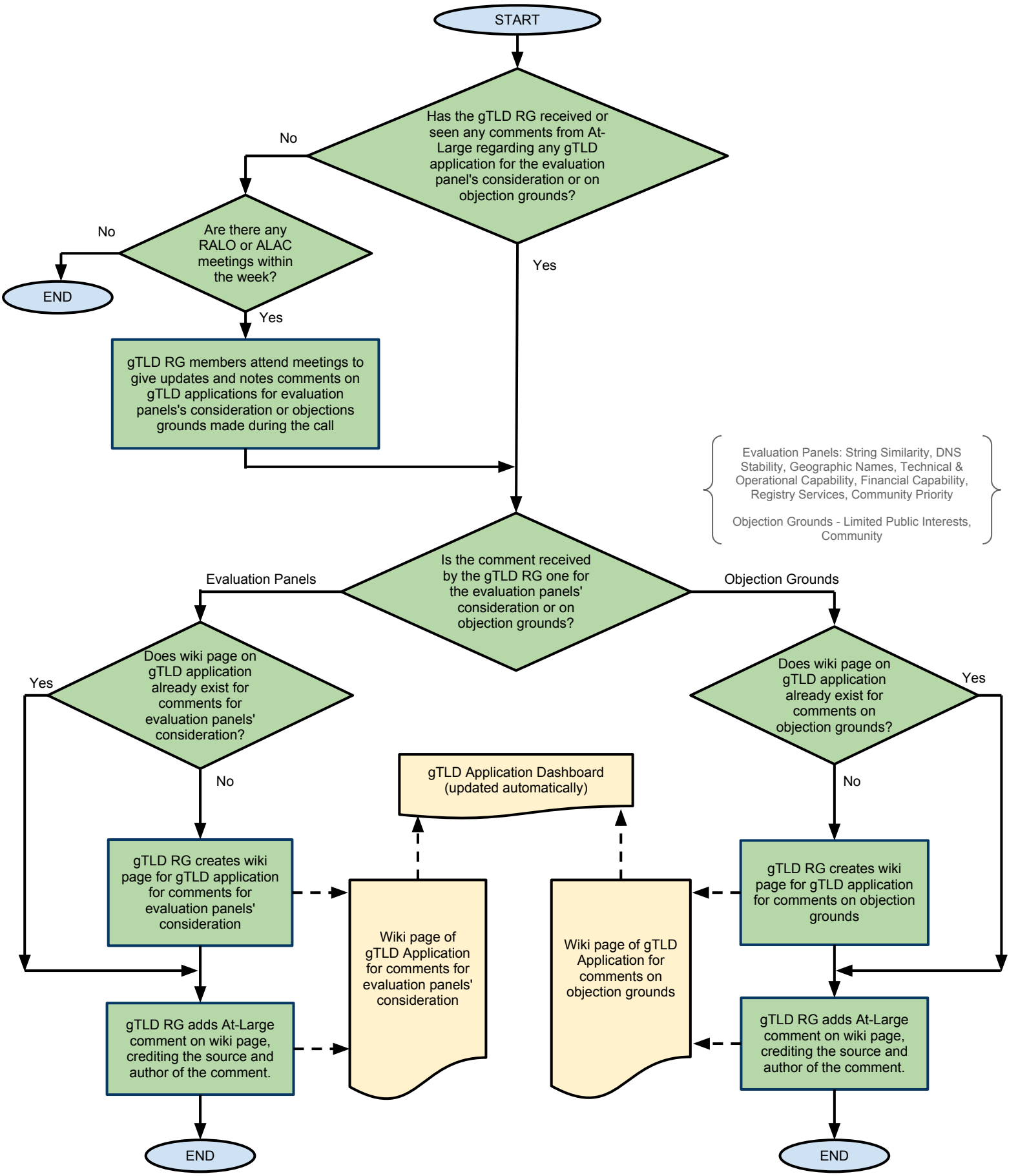


Figure 2 - up to Week 4 of the Application Comment Period (ACP)



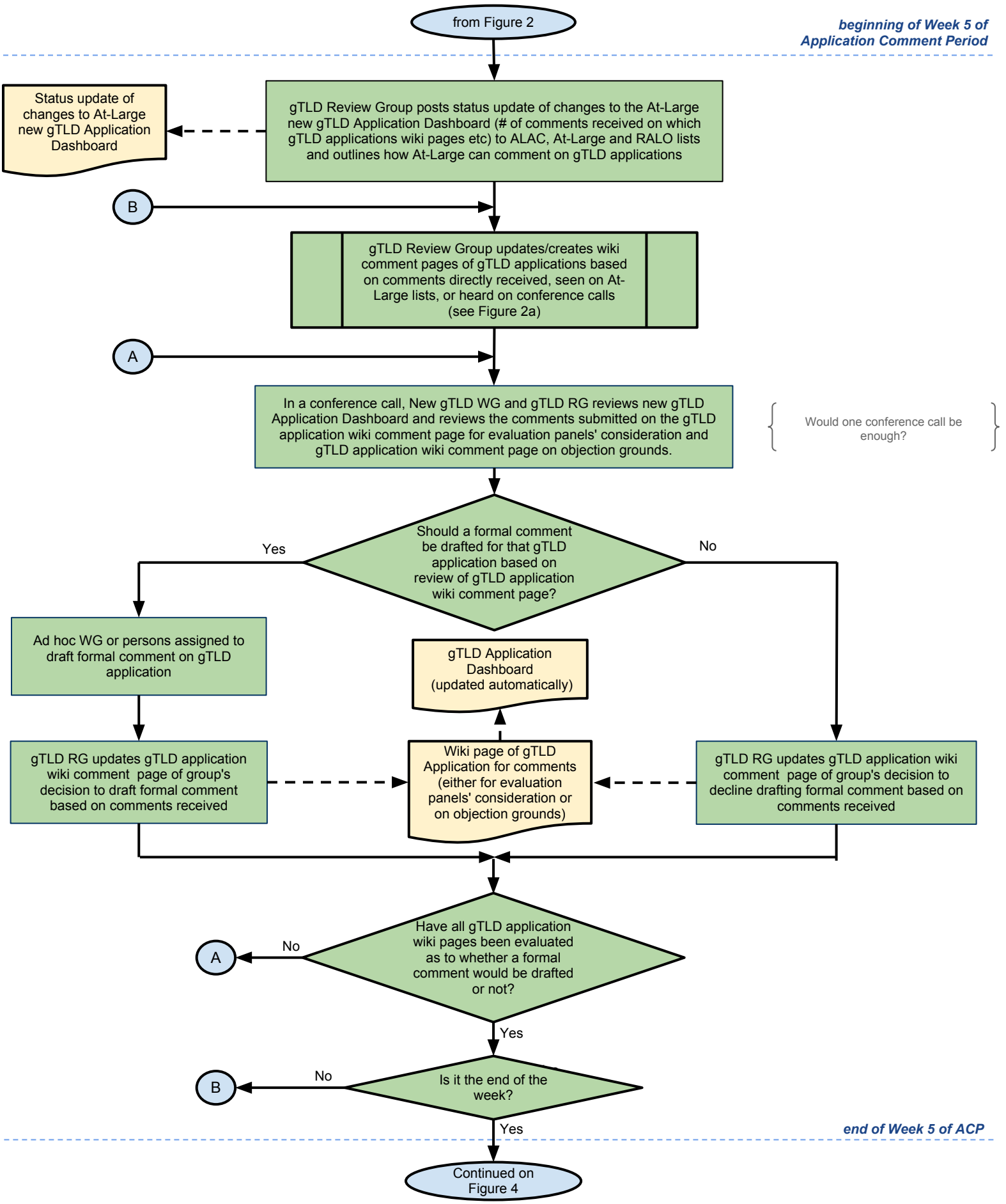
Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 2a - gTLD RG updates/creates wiki comment pages of gTLD applications based on comments directly received, seen on At-Large lists, or heard on conference calls



Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 3 - Week 5 of the Application Comment Period (ACP)



Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 4 - Week 6,7 of Application Comment Period (ACP)

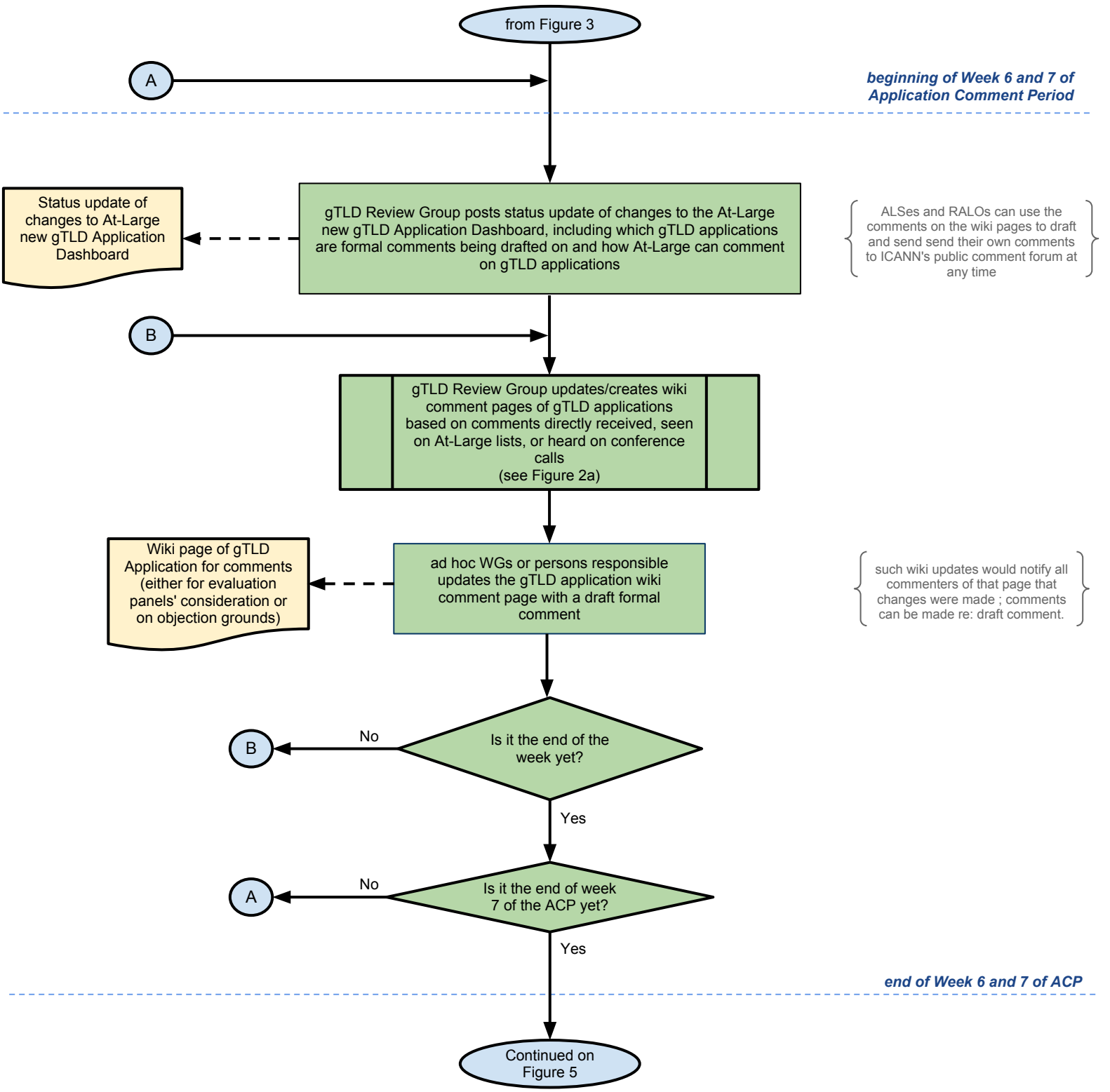
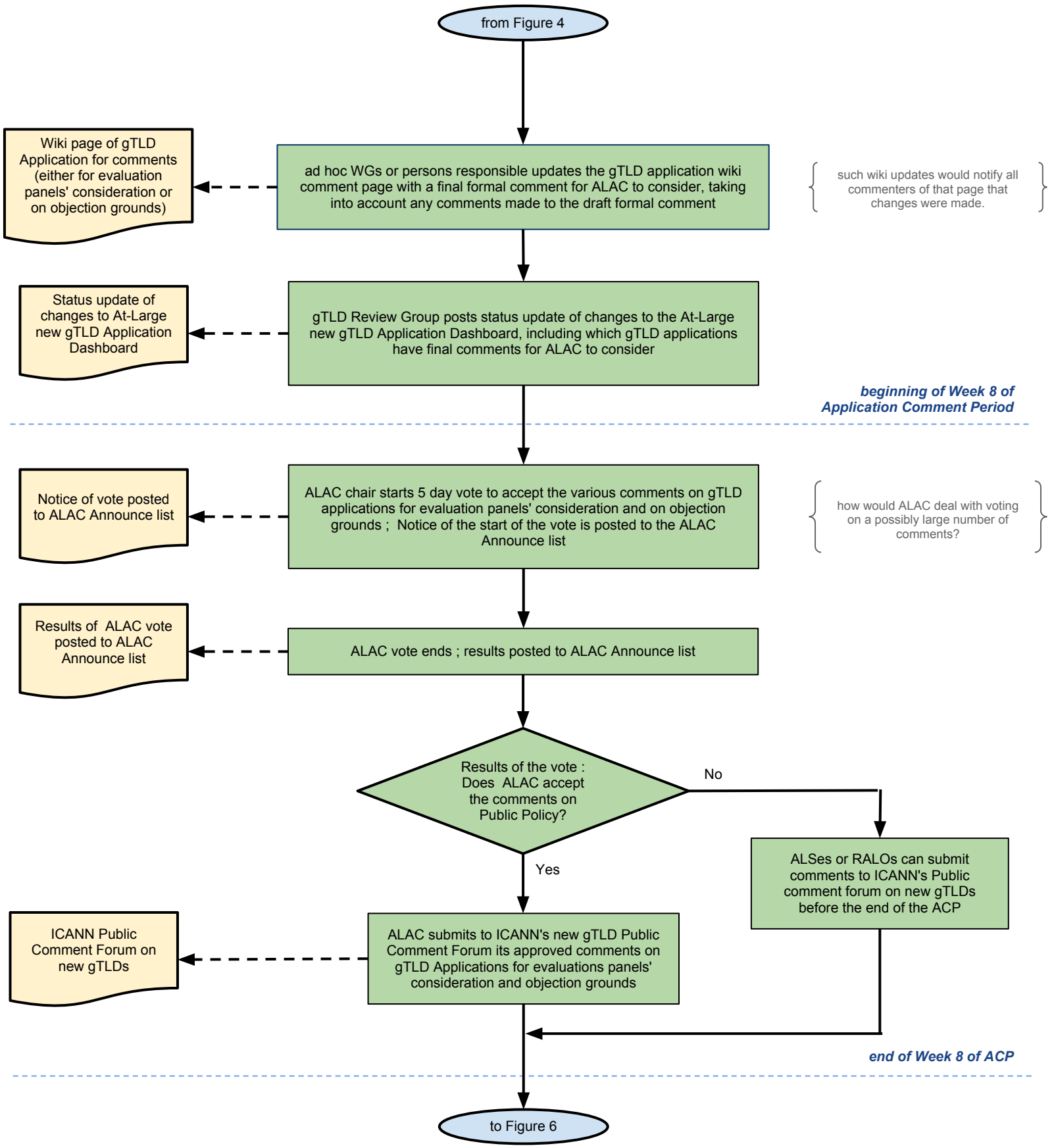


Figure 5 - Week 8 of Application Comment Period (ACP)



Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 6 - 3rd and 4th month of the Objection Period

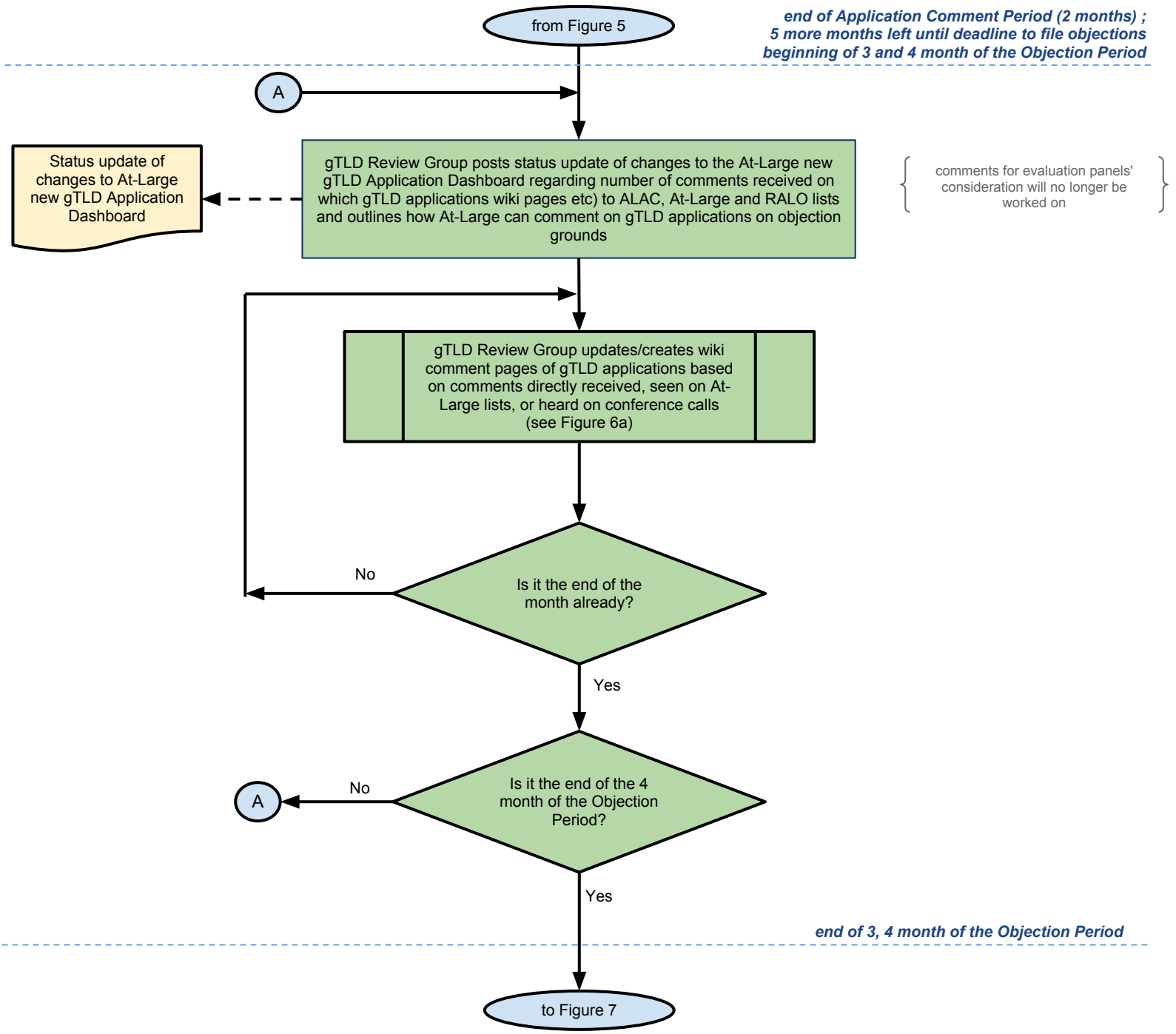


Figure 6a - gTLD RG updates/creates wiki comment pages of gTLD applications based on comments directly received, seen on At-Large lists, or heard on conference calls

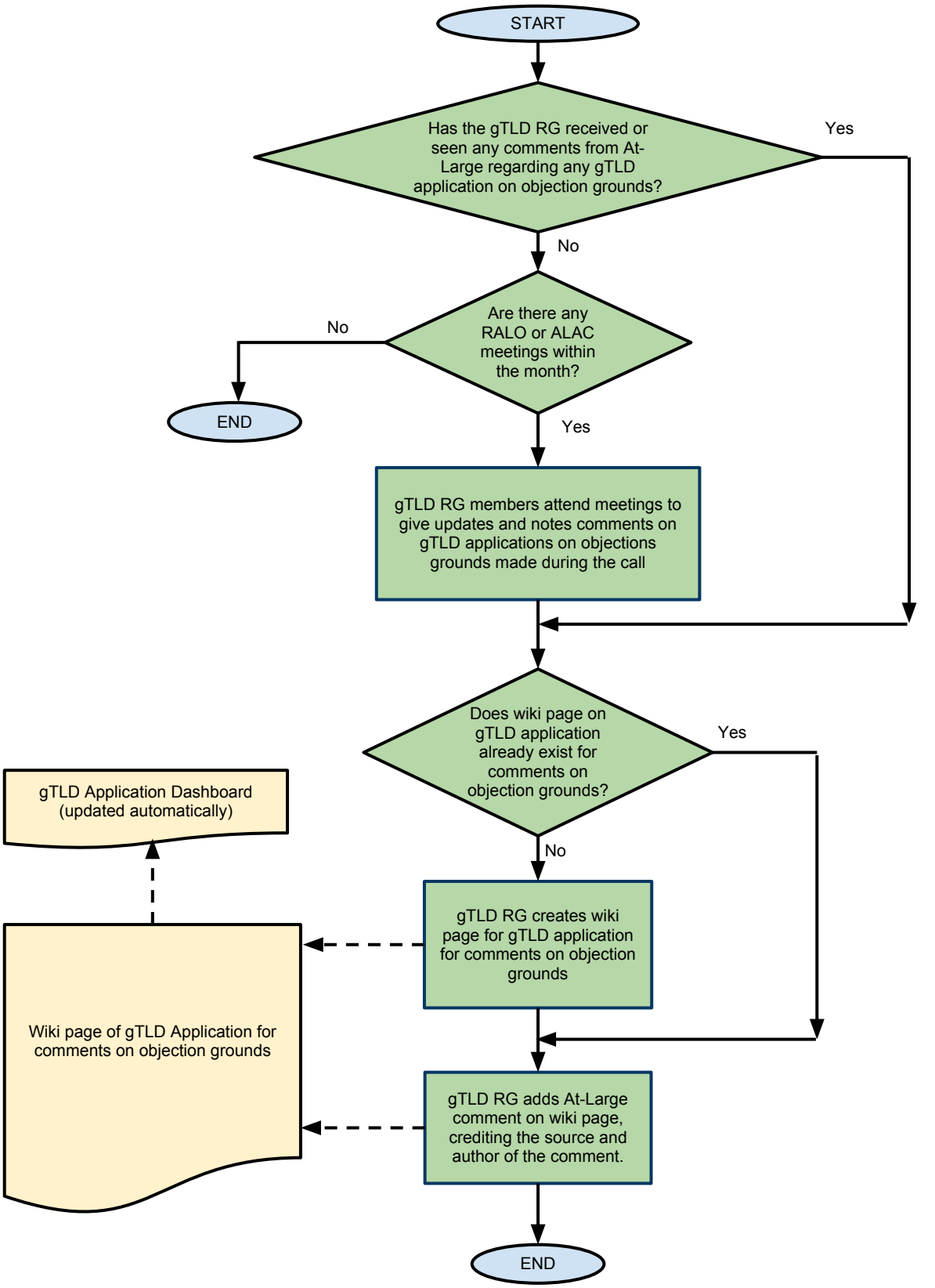


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Figure 7 - 5 month of the Objection Period

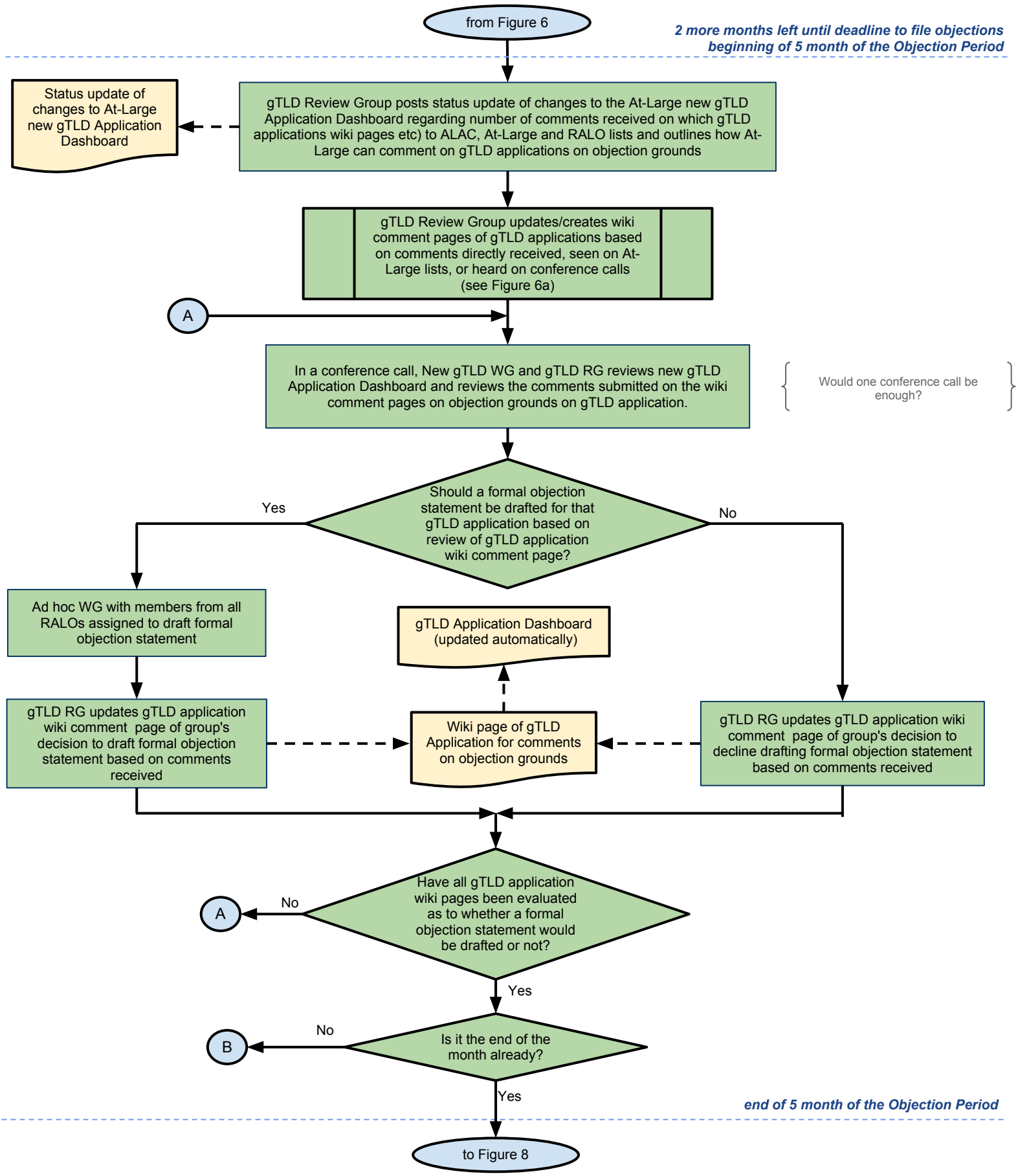

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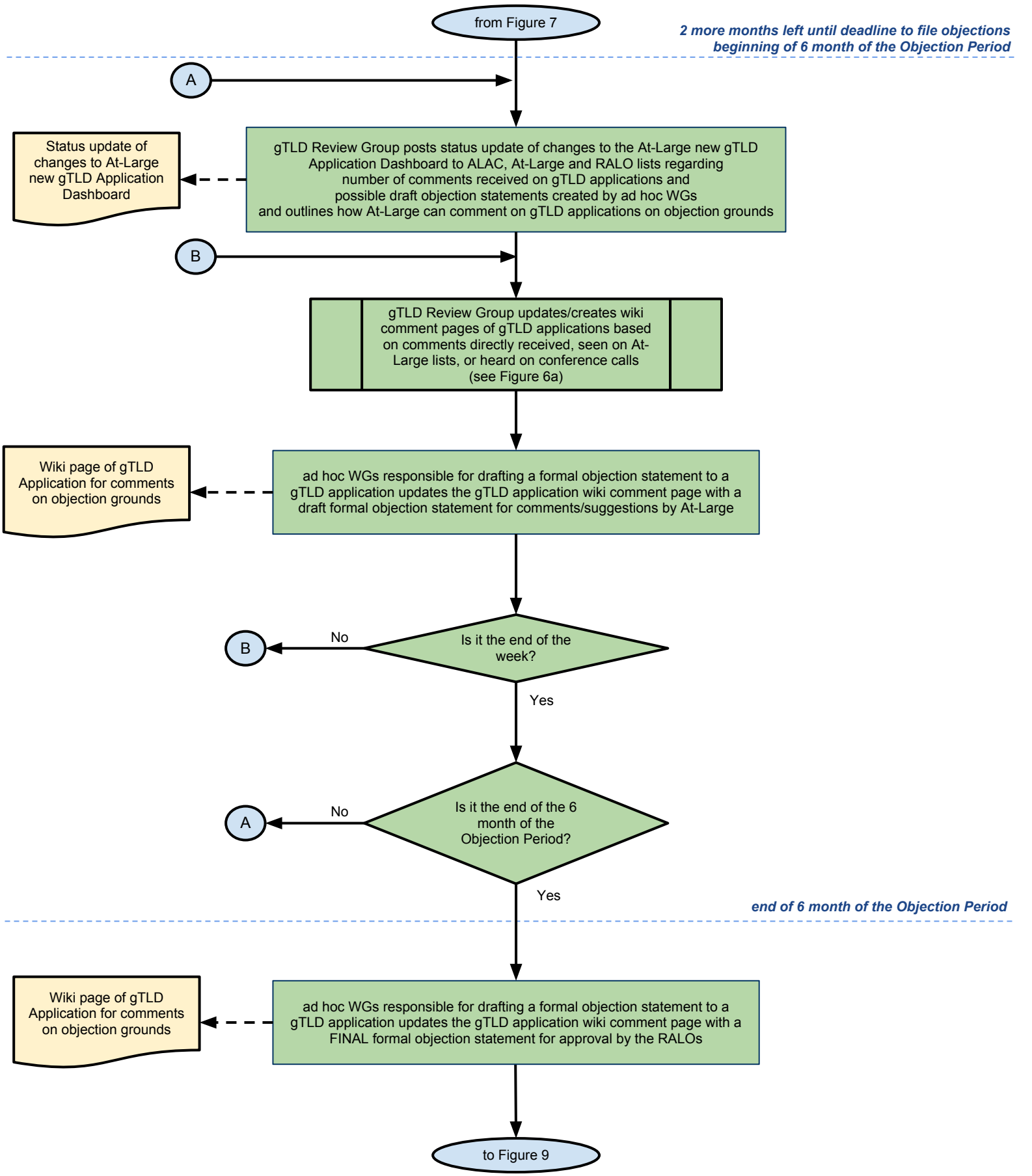
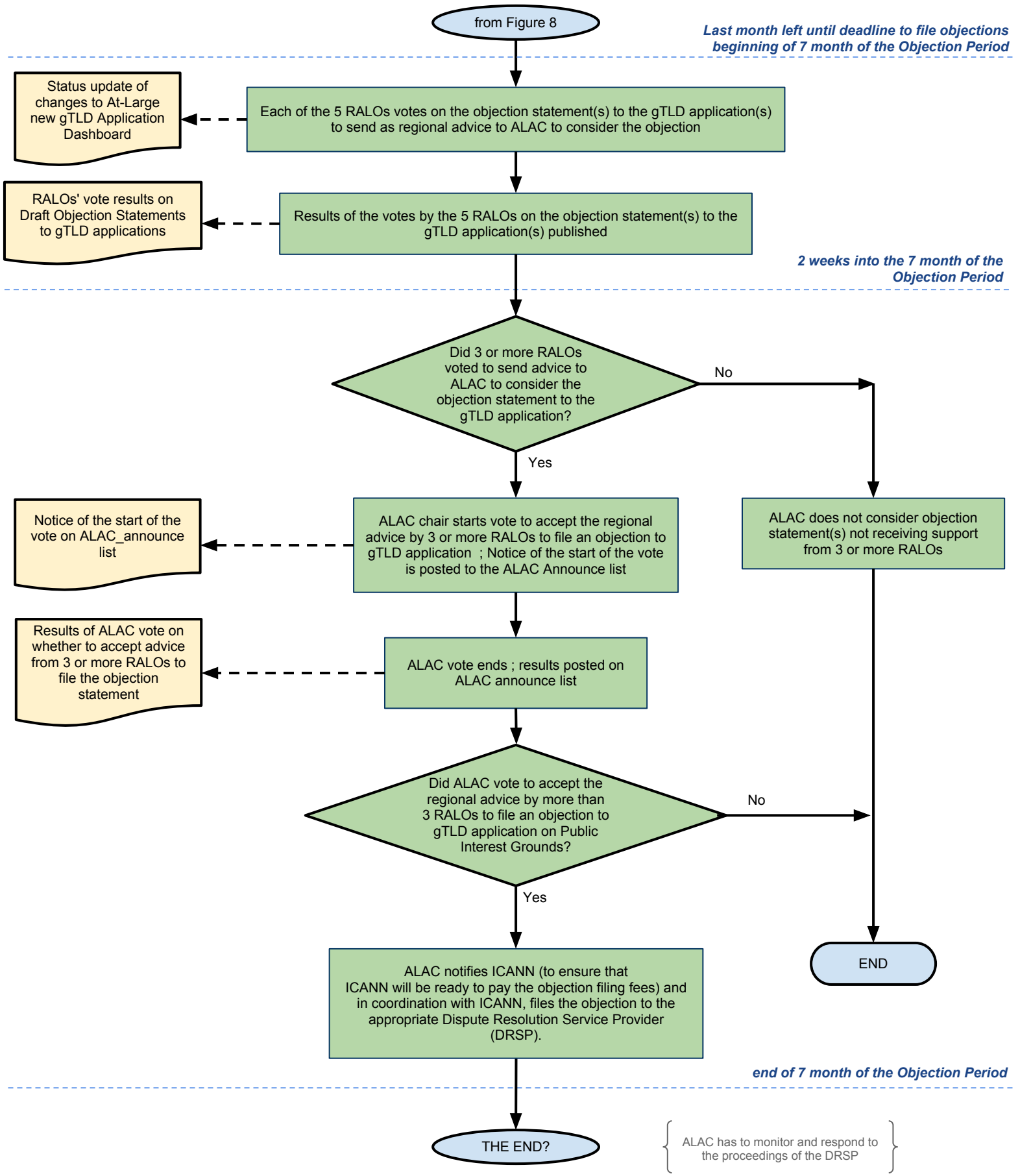
Figure 8 - 6 month of the Objection Period



Draft proposal for the ALAC to submit public comments on, and file objections to new gTLD applications

Figure 9 - 7 month of the Objection Period



Appendix

Grounds for Objection

(Source : Section 3.2.1, Page 3-4, Page 150 of 349 of AGB)

A formal objection to a gTLD application may be filed on any one of the following four grounds:

- String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string in the same round of applications.
- Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.
- Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.
- Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

Who can file an objection to a gTLD application?

As summarised in the Objection Dispute Resolution Face Sheet at http://www.icann.org/en/topics/new-gtlds/objection-dispute-resolution-fact-sheet-14dec11-en.pdf

- For String Confusion Objections, the objector must be an existing TLD operator or a gTLD applicant in the current same application round.
- For Legal Rights Objections, the objector must be a rightsholder whose rights are being infringed.
- For Limited Public Interest Objections, anyone can file an objection; however the objection is subject to a “quick look” review designed to filter out frivolous and/or abusive objections.
- For Community Objections, the objector must be an established institution associated with a clearly defined community.”

Extracts from AGB re: Limited Public Interest Objections

(Excerpted from Section 3.5.3, Page 3-20, Page 167 of 352 of AGB)

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, colour, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

Extract from AGB re: Community Objections

Section 3.5.4 mentions four tests that will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted.

For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.