

May 7, 2003

Jerry D. Upton
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Dear Mr. Upton:

This letter is in response to your appeal letter to Paul Nikolich, Chair of IEEE 802 dated April 7. Geoff Thompson, 1st Vice Chair has prepared the LMSC response to your appeal. We will address your complaint on a paragraph-by-paragraph basis of your submitted text and then provide a summary statement at the end. (Your complete original text is shown in *red italic.*)

As set forth in Section 9.0 of the IEEE Computer Society, Standards Activities Board Policy and Procedures, I am writing to appeal the March 14, 2003 decision by the LMSC Executive Committee not to affirm the duly elected leadership of IEEE 802.20. I hereby request that said election results for Chair and Vice Chairs of the 802.20 Working Group be immediately affirmed.

It is accepted that Section 9.1 (Purpose) of the IEEE Computer Society, Standards Activities Board Policy and Procedures addresses appeals regarding this matter.

Per section 9.1, a number of informal attempts to resolve this issue have been made. I proposed to you in an email March 17, 2003 that the elected officers would be willing to attend training and work with a mentor/observer in an effort to make the Executive Committee more comfortable with our experience level in 802. Given our experience levels in other standards organizations I am confident that this "training" period would be short term. On March 23, I explained my reasons for rejecting your proposal for two interim Vice Chairs (myself and Mark Klerer, who lost the Chair election) and new elections at a later date. I copied the other members of the Executive Committee on my email. I participated on another calls with you and Geoff Thompson.

It is accepted that appropriate informal attempts have been made to resolve the lack of confirmation.

As stated above, a number of informal attempts to resolve this appeal have been made without success. Therefore, this document is a written complaint under Section 9.2 of the IEEE Computer Society, Standards Activities Board Policy and Procedures.

This is accepted as the appropriate avenue of appeal.

Nature of the Objection including adverse affects:

The elections for the IEEE 802.20 Chair and Vice-Chairs were held on March 13, 2003. The Working Group elected Jerry Upton, independent consultant and recent Vice President of Standards for Motorola, Gang Wu of NTT DoCoMo and Eshwar Pittampalli of Lucent as Chair, Procedural Vice-Chair and Liaison Vice-Chair, respectively. According to your correspondence dated March 14, 2003, the Executive Committee did not affirm the election results. Your correspondence dated March 19, 2003, further explained that in your summary view the Committee did not affirm results because "...the elected chair and vice-chairs had little substantive experience in LMSC ..." The Executive Committee did not review the past experience of either the elected Vice Chairs nor were they requested to attend and answer any questions. Though no official minutes of the March 14, 2003 are published yet, I did attend the meeting as an observer and was requested to answer a number of questions. I reviewed my past experience including Vice President of Standards at Motorola, founding Chairman of the Open Mobile Alliance, and past Chairman of the WAP Forum. During the discussion, no committee member stated a requirement for prior 802 experience.

The assertions above are accepted as factual. It is noted for emphasis, however, that the "reason" noted above as the "summary view" of the Chair was his personal view and that this view did not represent any official rationale. No official rationale, either summary or compilation of individual reasoning, was generated with respect to the confirmation vote at the SEC. Therefore, the assertion that the cited reason was, in fact, the reason that the confirmation did not take place is not recognized.

You chaired the officer elections with assistance by other Executive Committee members. There were no stated violations of the election rules as presented, read and affirmed to 802.20 members, nor any stated violations of the election and balloting process.

It is not believed that there are any express assertions to the contrary by the SEC as a body.

Mark Klerer, who lost the chair election, was not only allowed to vote on the affirmation, but also allowed to make a presentation on why he thought the election was incorrect. He presented unsubstantiated and incorrect allegations regarding companies aligned as “3G companies” versus “802 companies”. For example, Motorola was portrayed as a “non- 3G” company even though an employee chairs 3GPP and is a major manufacturer of 3G equipment.

Mark Klerer was conditionally appointed and affirmed as Interim Chair of 802.20 at the November Friday SEC meeting (Ref: Agenda item 5.42). Under established 802 procedures, new officers do not take on their positions until the close of the meeting. Therefore, it was proper for Klerer to act as a full member of the SEC during the meeting.

Assuming Klerer did vote on the motion, then it is clear that removing one voter from any category (yes, no or abstain) would not make a material difference in the outcome of the vote.

None of the elected 802.20 officers were told that presentations were planned for the meeting or told that members of Executive Committee had issues before the meeting. These actions give an impression of prior bias by some Executive Committee members or at very least a lack of due process for the elected officers.

There are no cited violations of procedure alleged in the above paragraph. The alleged “lack of due process” is not substantiated by a reference to a particular “due process” in the P&P. The SEC meeting is well established as to openness and as to procedure for establishing the agenda. There is no evidence or assertion that anyone (member of the SEC or otherwise) was denied agenda time.

Not affirming the elected 802 officers has significant adverse effects. Most important, the reputation of IEEE as a fair and open venue for global standards development is seriously compromised. Members of 802.20 are de-focused versus proceeding with important work. A divisive atmosphere is promoted within the work group. Confidence in 802 as an appropriate entity for the proposed 802.20 work is eroded. Just as significantly, the reputations and standing of the elected officers within the global standards community are damaged.

The above paragraph could be considered a rationale for why the members of the SEC should vote to confirm the results of an election. The above paragraph does not assert any violation of procedure.

Procedures that are at issue:

There is no 802 or 802.20 rule requiring prior 802 experience of a Working Group officer. Furthermore, a precedent has been set to the contrary in the IEEE 802.16 in which the chair was elected with little substantive experience in 802. All the elected 802.20 officers have substantial standards experience and are supported by their respective companies. The rationale for refusing to affirm the results appears to be inappropriate and unsupportable.

The above paragraph seems to assert that (1) the reason that the confirmation was declined was lack of prior 802 experience and that (2) such a rationale “appears to be inappropriate and unsupportable.” As noted above, there is no official reason for the lack of confirmation. Further, there are no explicit criteria imposed on members of the SEC with respect to their votes for confirmation.

The election rules were reviewed line-by-line with the Working Group prior to the election, and there were no IEEE requirements for 802 experience. Each of the candidates had an opportunity to present to the Working Group prior to the election. There were no objections regarding the experience of the candidates. The officer elections followed all the rules within 802. Executive Committee members chaired and supervised the election and balloting. The rules were read and displayed line by line by you as the election chair. No objections were raised. A “name by name” review was conducted regarding voting and membership rights. No objections were raised.

As far as we know, your assertion is correct.

By adding a new requirement after the election that effectively disenfranchises 802.20 members and officer candidates, the processes and procedures set forth by 802 were not followed. Based on the foregoing, the Executive Committee's actions during the March 14, 2003 meeting appear to be arbitrary and capricious and should not stand.

There was no "new requirement" added after the election. The well established procedure specified by the 802 P&P that the election of WG Chairs and Vice Chairs is subject to confirmation was followed. There is no requirement in the 802 P&P that confirmation be granted. By its very nature, the process involves the discretion of the SEC in its decision to confirm or deny the election of officers. In this case, the SEC used its discretion in denying the slate of officers.

Specific remedial actions requested:

The 802 Executive Committee is requested to affirm the elected officers of 802.20.

Previous efforts to solve the objection and outcomes:

The second paragraph of this letter covers the previous efforts for resolution.

I urge you to correct this matter by affirming the duly elected leadership immediately.

This particular text seems to be a request for reconsideration of the motion to confirm rather than an appeal to set aside an action of the SEC. As such, the appropriate avenue for such a request (per Robert's Rules) would be to have a voter on the prevailing side make a motion to the SEC for reconsideration.

The procedure:

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5.1.2 Chair

LMSC Working Group Chairs and Vice Chairs shall be elected by the Working Group and confirmed by the LMSC Executive Committee. Terms shall end at the end of the first Plenary session of the next even numbered year.

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...clearly requires that two conditions must be satisfied in order to satisfy the requirements for office for "Working Group Chairs and Vice Chairs".

The requirements are:

- * shall be elected by the Working Group
- * confirmed by the LMSC Executive Committee

The dual requirement provides a check and balance system.

Your appeal is denied because:

The LMSC Executive Committee, by its rules, has discretion in deciding whether to confirm or deny an election of officers by the Working Group. In reviewing the process, and in the absence of any evidence that the decision was arbitrary, we have concluded that the decision will stand.

Sincerely,

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