

May 27, 2003

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Paul Nikolich
Chair, IEEE 802 LAN/MAN Standards Committee
18 Bishops Lane
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Dear Mr. Nikolich:

As set forth in Section 9.4 of the IEEE Computer Society, Standards Activities Board Policy and Procedures, I am requesting an appeals panel hearing on my complaint of the March 14, 2003 decision by the LMSC Executive Committee not to confirm the duly elected IEEE 802.20 Working Group officers.

The Response to my complaint, as prepared by Geoff Thompson and dated May 7, 2003, states a faulty rationale for denying my appeal. The IEEE LMSC Executive Committee decision was arbitrary and should not stand, and my election should be confirmed.

The reasons for a further level of adjudication are:

1. There is no stated rationale for the decision. To my knowledge, a duly elected Working Group Chair has never been denied his duties. Only a very small minority, 4 of 14 members, of the Executive committee voted "No" for confirmation. Given that the majority (8 of 14) of the committee abstained from this important vote, I believe members lacked appropriate knowledge of the election process and the elected officers, or were too surprised by the results to address the vote in the short time provided for its consideration. Therefore an appeals panel with adequate time for review should address the arbitrary and unsubstantiated decision.
2. The leadership (Chair and 1st Vice Chair) of the Executive Committee provided the Response and were the same people who personally supervised the officers' election, and therefore had a stake in the outcome. Therefore, an appeal panel with no direct involvement, no stake in the decision or actions leading to the decision, should address the complaint.
3. The Operating Rules of LMSC are subject to interpretation regarding the Executive Committee's right to deny a duly elected Working Group Chair his responsibilities and duties within the Working Group.

The Decision Was Arbitrary and Should Not Stand:

Your response dated May 7, 2003 stated: *"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."*

Webster's Dictionary, ninth edition, defines "arbitrary" as follows:

"1: depending on individual discretion and not fixed by law, 2a: not restrained or limited by exercise of power; ruling by absolute authority, 2b: marked by or resulting from the unrestrained and often tyrannical exercise of power, 3a: based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something, 3b: existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will."

Your "Response" clearly states there is no official rationale for the vote and decision.

"No official rationale, either summary or compilation of individual reasoning, was generated with respect to the confirmation vote at the SEC." (5th paragraph)

"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." (1st paragraph)

Given no overall rationale or explicit criteria for the votes of the executive committee members, I assert the members depended on their individual discretion, or determined their votes by individual preference or to perhaps favor a particular company's competitive position. Therefore, using the Webster's definitions "1 and 3a", the decision was arbitrary.

Interpretation of the Operating Rules of IEEE Project 802 LAN MAN Committee:

My interpretation of the Operating Rules is Working Group members elect their Chair and the LMSC Executive Committee confirms for membership in their committee. To my knowledge, the LMSC Executive Committee has never denied a duly elected Working Group Chair his duties.

The Functions of the Executive Committee of LMSC are stated in Section 3.1 of the Operating Rules. Section 3.1.b states:

“ Appoint the initial Chairs of the Working Groups and Technical Advisory Groups. (The Chairs of the Working Groups and the Technical Advisory Groups are confirmed or elected by the Working Group and Technical Advisory Group members themselves.)”

It is not within the Function of the Executive Committee to deny Working Group Chairs their duties through an Executive Committee membership confirmation process.

Section 3.2 Membership states the rules for membership within the Executive Committee.

“Executive Committee membership, including all rights and responsibilities thereof, is acquired by Working Group/Technical Advisory Group Chairs upon appointment to the position of Chair of a Working Group/Technical Advisory Group, and confirmed by the members of the Working Group/Technical Advisory Committee, and by all other Executive Committee members when confirmed by the Executive Committee.”

The Executive Committee has the right to appoint or confirm members of their committee. If the Executive Committee does not confirm an elected Working Group Chair for the membership, the committee could appoint another person and then ask for Working Group confirmation. Work Group Chairs can continue functioning within their own Working Group without Executive Committee membership.

Invalid Motion to Confirm

Though not addressed it may original appeal, the motion made by Mr. Klerer for the confirmation of the 802.20 officers was not valid and the vote should be set aside. Though Section 5.1.2 of LMSC Operating Rules states initial appointment of Working Groups Chairs may be made by the LMSC Chair, the Executive Committee Membership rules in Section 3.2 states a requirement for confirmation by the members of the Working Group. Though Mr. Klerer was appointed as initial Working Group Chair, he should not have been a voting member of the Executive Committee without confirmation by the 802.20 Working Group members.

Points of Agreement based upon your Response dated May 7, 2003:

1. The Response does not dispute my assertion that the 802.20 officers election was conducted without any objections from any 802.20 Working Group member or from any supervising Executive Committee member. Additionally no express assertions by the Executive Committee, as a body, have been made that there were any violations of the election and balloting process.
2. I accept your position there is no explicit criteria for prior IEEE 802 experience. Of course if past standards experience was a consideration for Working Group Chair, my many years of experience as a Motorola Vice President of Standards and Chairman of Open Mobile Alliance shows clear qualification.
2. Though not covered in your Response, the minutes of the March 14th meeting stated there were questions regarding the interpretation of rules for obtaining membership in new working groups. The recent rules interpretation approved by the Executive Committee is consistent with the initial membership granted within 802.20 for the officers' election.

Adverse Effects and Damages:

Not setting aside the decision of the Executive Committee has significant adverse effects and damages.

1. My personal reputation is damaged in the global standards community. Without an official reason for the lack of confirmation, I have no official basis for answering any allegations or statements from third parties regarding (a) my capability to serve as a Working Group Chair within IEEE or within other organizations and (b) my personal credibility and conduct within IEEE. The only official statement by any Executive Committee member was by the Chair that in his personal view I had little substantive experience in LMSC which, as noted above, is not even a criteria for election in accordance with the LMSC rules.

2. The reputation of IEEE as a fair and open venue for global standards development is seriously compromised. The arbitrary and possibly competitively biased decision of the LMSC Executive Committee sets a precedent for future such decisions within 802 and possibly within IEEE overall. Interfacing with or creating liaisons with other global standards organizations will be adversely effected.

3. Given the questionable actions by the LMSC Executive Committee, confidence in IEEE 802 as an appropriate entity for the proposed 802.20 specifications work is damaged.

4. The uncertainty of leadership defocuses members of 802.20 from important work. The Executive Committee statements regarding new officer elections promote a divisive atmosphere.

Specific Remedial Actions Requested:

The action taken by the LMSC Executive Committee on March 14, 2003 not to confirm me as the 802.20 Working Group Chair and as a member of the Executive Committee should be set aside. I should be allowed to perform my duties per the stated wishes, through a valid election process, of the majority of the members of the 802.20 Working Group. The LMSC Executive Committee should rescind all statements regarding a new officers election, the appointment of interim Vice Chairs and allow the Working Group to move forward with its elected Chair and other officers as the leadership of 802.20.

Efforts to Resolve the Written Complaint:

Informal attempts to resolve my complaint were stated and acknowledged in your Response dated May 7, 2003. Though the LMSC Executive Committee could, through individual members actions and per Roberts Rules of Order, reconsider the motion to confirm the elected officers based upon additional facts and information, no action has been initiated towards this potential avenue of resolution.

As stated initially, I respectfully request a hearing with an appeals panel as soon as reasonably possible.

Sincerely,

Jerry D. Upton

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