

In the Matter of the appeal of  
Mollenauer, Oprescu, and Wieczorek  
Concerning  
Decisions of the IEEE 802.20 Working Group Chair

Date: October 17, 2006

To: IEEE Standards Association Standards Board

Subject: Appeal of Appeal panel decision on decisions of the IEEE 802.20 Working Group Chair

Appeal hearing date: March 8, 2006  
Appeal hearing location: Hyatt Regency Convention Center, Denver, CO  
Appellants: James F. Mollenauer, Val Oprescu, and Al Wieczorek  
Appellee: Jerry Upton – Chair, IEEE 802.20 Working Group

Appeal Panel members:  
Chair: Matthew Sherman  
Member: Pat Thaler  
Member: Mike Takefman

This letter is the response of the IEEE 802 Executive Committee Appeal Panel in the matter of Mollenaure (et al) vs. Upton to the appeal of the decision to the SASB.

Mr. Upton has previously requested the IEEE 802 Executive Committee to hold a rehearing of the Appeal Panel during the July 2006 802 Plenary session. The Appeal Panel had requested the 802 EC to authorize a limited rehearing on a specific portion of Mr. Upton's request. During the opening EC meeting, the 802 EC denied Mr. Upton a full rehearing (with a vote of 5/9/1) and granted a limited rehearing (with a vote of 14/1/0) on the question of the appropriate threshold of the revote on the adoption of the Technology Selection Process document. The Panel reconvened at noon on Monday July 17, 2006 and issued a response (Aug 16,2006) that modified the required threshold to 50% from 75%.

Aside from the change in the voting threshold for the TSP, the Appeal Panel stands by its decision and believes the continued appeal of the decision is without merit.

To rebut the majority of Mr. Upton's submission to the SASB, the appeal panel has attached the following documents:

1. The panel's response to Mr. Upton's request to the 802 EC for a rehearing, which rebuts the majority of his points.
2. The panel's original decision.
3. The response to the interpretation request.
4. The section of the 802.20 P&P dealing with the "four hour" rule.

5. A Microsoft word comparison between the TSP submitted by Mr. Klerer and the TSP submitted by Mr. Upton.

With regard to item 4) **The 802 Appeal Panel ruling for a re-vote of the TSP would appear to support the plan of a group of companies from 802.16 WiMAX whose goal may be the disrupting of 802.20.** The appeal panel believes the SASB Report of Actions on IEEE 802.20 issued 19 September 2006 resolves the question of dominating behavior.

The Appeal Panel respectfully requests that the SASB provide direction as to whether the newly reconstituted 802.20 Working Group is still bound by technical and procedural decisions regarding the Technology Selection Process made under the previous chair and whether the remedy provided in this appeal is still relevant.

Respectfully,

Mathew Sherman:	Chair, Appeal Panel
Pat Thaler:	Member, Appeal Panel
Mike Takefman:	Member, Appeal Panel

Re-issued on behalf of the panel by: : Michael Takefman  
Dated : 10/17/2006

Appendix A: Appeal panel response to request to the 802 EC for a rehearing

Appendix B: Original Panel Decision

Appendix C: Interpretation Response

Appendix D: 802.20 P&P portion dealing with the 4-hour rule

Appendix E: Microsoft Word comparison of TSP documents

Please note that text in black is common, coloured text was added by Mr. Upton. Editing notes along the side show other text that was deleted or otherwise changed.