

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

Date: August 16, 2006  
Subject: Appeal panel decision on the appeal of decisions of the IEEE 802.20  
Working Group Chair

Appeal hearing date: July 17, 2006  
Appeal hearing location: Hyatt Manchester, San Diego, CA  
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

## **1 Summary of the findings of the appeal panel**

The appeal panel has reexamined the evidence concerning the appropriate approval level for a vote on the Technology Selection Process (TSP) document including new evidence not presented to the appeal panel at the original appeal hearing. We find the following:

The original recommendation of the Appeal Panel issued by e-mail on April 20, 2006 that an approval threshold of 75% be used for a vote to approve the TSP was in error. The approval vote should use the same approval threshold as used for the first vote to approve the TSP. This threshold of approval is 50%.

## **2 Background information**

The complete background up to and including the original appeal can be found in the original Appeal Panel decision issued (Corrected) by e-mail to the IEEE LMSC Executive Committee (EC) Recording Secretary on April 11, 2006. A request for clarification was received by the Appeal Panel from Jim Mollenauer on behalf of the Appellants by e-mail on April 14, 2006. A clarification was issued by e-mail to the EC Recording Secretary and interested parties by the Appeal Panel on April 20, 2006. A request for a rehearing was received by the EC Recording Secretary from the Appellee dated May 2nd, 2006. The Appeal Panel rehearing response was also delivered to the EC Recording Secretary dated May 31st 2006. On July 17, 2006 the EC met at the LMCS plenary session. At that meeting the EC decided that a full rehearing should not be granted, but rather that a rehearing of limited scope as described in the Appeal Panel rehearing response should be granted.

Accordingly, on July 17, 2006 at 12:05 PM the Appeal Panel convened a rehearing to reconsider the Appeal as limited in scope by the Appeal Panel rehearing response. Accordingly the rehearing was limited to evidence and consideration concerning the appropriate approval threshold for the 'TSP' document as identified in the various documents submitted concerning this matter. The rehearing was open to the public and was well attended. The format followed for the rehearing was as follows:

- 1) Appellants' statements 15min
- 2) Appellee's statements 15min
- 3) Appellants' summary and responses 5 min
- 4) Appellee's summary and responses 5 min
- 3) Panel Q&A 20 min
- 4) Panel deliberation 30 min (closed to public)

Additional deliberations by the appeal panel have been held privately as needed since the hearing.

### **3 Appeal panel responsibility**

LMSC Policies and Procedures Clause 7.1.6, reproduced below in part, describes the Appeal panel responsibilities

Clause 7.1.6.6 states that "The appeals panel shall render its decision in writing within 30 days of the hearing, stating findings of fact and conclusions, with reasons there for, based on a preponderance of the evidence."

### **4 Relevant facts from Appellant's basis of appeal**

For this decision, only the facts relevant to the limited scope of the rehearing are considered. The full basis of appeal can be found in the Appeal Panel decision as previously referenced. In that decision, the Appeal Panel recommends the following as part of the remedy:

*The procedural error on the vote on the TSP will be remedied by a WG motion to retroactively accept the TSP. This motion shall be taken up at the opening plenary meeting of 802.20.*

In the e-mail from Jim Mollenauer dated May 2nd, 2006 on behalf of the Appellants the following question is asked:

*In the decision of the appeal panel, the 802.20 working group is directed to revote on the acceptance of the Technology Selection Process document. (Item 4 on page 11.) However, it is not made clear whether this vote is intended to be one requiring 50% or 75% to pass. The 802.20 minutes do not specify which type of vote was held originally, and the margin in that vote was sufficient to pass either way. We would be grateful if you could clarify your intent in this matter.*

In their April 20, 2006 e-mail the Appeal Panel responded that:

*After consulting with the panel we have unanimously concluded that the vote should be 75% based on the fact that it is the approval of a technical document.*

*We believe that this is supported by the 802.20 minutes given that the practice appears to be marking the required threshold only if it wasn't 75%.*

During the hearing Jim Mollenauer maintained on behalf of the Appellants that the threshold level should be 75% since the TSP is a technical document.

## **5 Relevant facts from Appellee's request for rehearing**

For this decision, only the facts from the Appellee's rehearing request relevant to the limited scope of the rehearing are considered. In the Appellee's request for the rehearing the Appellee makes the following statements:

*This conclusion seems to assume the TSP was approved by a technical vote of 75%. The Technology Selection Process (TSP) document was approved as a procedural document requiring only a 50% approval. Per the TSP, section 5.0, the Working Group can modify the document with a two-thirds vote. Though not stated in the decision document, this conclusion references a motion taken at the November 802.20 plenary session. If passed, this November motion would have modified the TSP. At the appeal hearing, the 802.20 Chair stated the TSP could be modified anytime by a two-thirds vote. However, a paraphrase of this statement does not appear in the decision document. As stated earlier, the Chair fully reviewed the document and made revisions in the session.*

The Appellee's rehearing request also states:

*The first Appeal Panel Decision stated the Working Group by motion shall retroactively vote to accept the TSP document. Under the 802 P&P, the Working Chair decides whether the vote is procedural or technical. To ensure accuracy and as a basic principle of fairness, the Working Group Chair should have been asked for a set of facts regarding the September vote before any ruling based on the Mollenaur request was issued.*

*A further review of this matter would show that the Chair's Opening Slides for September session stated the Technology Selection Process document was a procedural document and only required a 50% approval. Please refer to slide 11 in the Chair's Opening Slides posted as C802.20-05/56 (<http://www.ieee802.org/20/Contribs/C802.20-05-56.ppt>) as a contribution and as included in the approved September minutes. The slide is also show in Appendix C.*

During the hearing The Appellee maintained these facts.

## **6 Appeal Panel Findings of Fact and Conclusions**

### **Findings of fact:**

The Appeal Panel agrees with the Appellee that the decision of whether a matter is procedural or technical resides with the chair. The Appeal Panel also notes that in their experience approval votes on documents such as the TSP have been ruled technical and procedural depending on the group and the chair. There is no consistent practice within IEEE 802 in this regard to the Appeal Panel's knowledge. While the minutes do not expressly note the approval threshold required, it is clear from the documents highlighted by the chair that indeed the approval vote for the document was identified as a procedural vote. The determination that the vote was procedural (not technical) was never identified in the original brief by the Appellants as a basis for their appeal. While a vote to modify the TSP document is identified by the Appellee as requiring a two-thirds vote, the intent of the Appeal Panel's remedy was to roll back the approval of the TSP document to the first vote, and not to consider changes or amendments to the TSP document.

**Panel Conclusion:**

The Appeal Panel unanimously agrees that the original recommendation of the Appeal Panel issued by e-mail on April 20, 2006 that an approval threshold of 75% be used for a vote to approve the TSP was in error. The approval vote should use the same approval threshold as used for the first vote to approve the TSP. This threshold of approval is 50%.

## **7 Consideration of a Remedy**

**Findings of fact:**

The Appeal panel maintains all their findings of facts from the original appeal decision except for the issued clarification that the vote on the TSP document requires a 75% approval threshold. It now determines that the proper approval threshold is 50%.

**Panel Conclusion:**

The Appeal Panel maintains their conclusions from the original Appeal Panel decision except that the recommended procedure for the remedy be modified to the procedure below. Note that due to the suspension of the 802.20 WG, the procedure has been modified to schedule the remedy at the next WG Plenary meeting (which is expected to be in Dallas, November 13-17, 2006). Should the IEEE-SA Standards Board take any action that extends the suspension, the remedy shall be delayed until the WG resumes operation.

1. If the suspension is lifted and no contrary provision is made by the IEEE-SA Standards Board, the balloting process for the current IEEE 802.20 draft may continue pending the outcome of any motions made as a result of this appeal.
2. The motions made as required by this decision, shall be performed as a roll call vote.
3. All actions specified in this remedy will take place at the first 802.20 plenary session following the end of the suspension of the WG, unless a contrary provision is made by the IEEE-SA Standards Board.. All voting members of 802.20 are eligible to vote on these motions.

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4. The procedural error on the vote on the TSP will be remedied by a WG motion to retroactively accept the TSP. The approval threshold required shall be the same as that for the original vote on the TSP document – 50%. This motion shall be taken up at the opening plenary meeting of 802.20 (as described in paragraph 3 above). If this motion fails, the current draft and ballot will become invalid and the process will reset to September 2005. If this motion passes, the current draft and ballot will progress following the remedy given in paragraphs 5 and 6 below. Note: the continuation of the current draft and ballot may change pending the results of other appeals. This decision in no way rules on any other appeals in progress.
5. The appellants will be granted the right to submit a complete proposal (as defined by the TSP) at the 802.20 opening plenary meeting. The complete proposal shall be made available to the chair for posting on the Sunday 2 weeks before the start of the session.
6. The appellants are granted the right to make working group motions during the 802.20 plenary session to alter the existing draft to include content from such a proposal. The appellants shall request agenda time for the motions from the chair (in accordance with any 802.20 rules), and the session cannot be adjourned prior to the consideration of these motions.

**The appeal panel members are unanimous in their approval of the foregoing findings of fact, conclusions, and remedial actions granted or denied.**

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

Issued on behalf of the panel by: Matthew Sherman  
Dated : August 16, 2006