

To:

Steve M. Mills, Standards Board Chair
Judith Gorman, Secretary, IEEE Standards Association Board
Paul Nikolich, Chair, IEEE 802 LMSC

From:

Jerry Upton, Chair 802.20 Working Group

Dated: July 25, 2006

This is an Appeal of the 802 Executive Committee Appeal Panel Decision dated April 6, 2006, regarding of the Appeal of Mollenauer, Oprescu, and Wieczorek Concerning Decisions of the IEEE 802.20 Working Group Chair

Special Request for this Appeal:

If possible, it is requested to have an appeal hearing on this matter during the week of the September SASB meeting. Having the hearing at that time supports the objective of clearing as many obstacles as possible before the 802.20 Working Group resumes work. Its work was been suspended by an earlier SASB action. It is noted that if a September appeal hearing is to happen, then an appeal hearing notice must be given to the appellee before July 29, 2006, to allow the required 45 days for a response.

APPEAL INTRODUCTION:

I respectfully request an appeal hearing of the SASB to address the 802 Appeal Panel decision dated April 6, 2006, regarding of the appeal of Mollenauer, Oprescu, and Wieczorek concerning decisions of the IEEE 802.20 Working Group Chair. On July 19, 2006, the 802 Executive Committee voted against a full re-hearing of the April 6, 2006 802 Appeal Panel decision. This appeal is made per the IEEE 802 Policies and Procedures, section 7.1.6.7, entitled Request for Re-hearing, and section 7.1.6.8, entitled Further Appeals.

The 802 Executive Committee granted a very limited re-hearing of one of the original panel's findings, and this limited re-hearing was held July 17, 2006. The 802 appeal panel re-hearing addressed only percentages desired for a re-voting of the Technology Selection Process (TSP) document. It did not address the fundamental flaws in the original 802 Appeal Panel findings and remedies.

Appeal Rationale:

1. The 802 Appeal Panel ruled in error when it granted the appellants a right to submit a very late complete technology proposal given the appellants lack of diligence and the panels' own stated conclusions.

- In the decision and findings prepared by the 802 Appeal Panel, the panel ruled the against appellants' requested remedies and against the core basis of their complaint. The 802 Appeal Panel supported the appellee's position that the Working Group's expectation was that participants should be ready to submit a technology proposal when it was formally requested. It also found without merit the Appellants' objection to the Work Plan and its proposal submission schedule. The relevant extract follows from page 11 of the 802 Appeal Panel decision document under Panel Conclusion paragraphs 3 and 4. "The appellants described the pace of development of IEEE 802.20 to be leisurely at best.

The appellants did not claim that there were major changes to the TSP. Therefore, it is reasonable to expect that all participants of IEEE 802.20 should have been working towards having submissions ready. While the appellants might have been caught by the change to the schedule, the appellants have not done a reasonable amount of work between September 2005 and March 2006 to lead the panel to believe that they have tried to mitigate the damage to them [themselves] and preserve a reasonable schedule for the project.”

The above 802 Appeal Panel conclusion is not consistent with the remedy granted by the panel. The conclusion suggests that the appellants are not serious about preparing a technology proposal. With evidence noted later in this document, it also suggests that this appeal is possibly a disruptive tactic to slow the standards development within 802.20.

- The Appellants did not request the 802.20 Chair to grant an extension for a technology proposal submission based on the Florida hurricane in Ft. Lauderdale that disrupted their communications for a couple of days. The Appellants did not make a specific request of the Working Group to accept a late technology proposal submission from them at the November Plenary, again based on their Ft. Lauderdale hardship. The 802 Appeal Panel decision document quotes the testimony of the appellants at length on this matter, thereby verifying this argument.

- The appellants did not continue to work on their proposal so that it would be ready at a subsequent meeting. The appellants stated at their appeal hearing that they still do not have a technology proposal ready to submit almost 5 months after the call for technology proposals by the working group.

- It is unfortunate that the appellants chose not to submit any of their technical ideas and proposals during the first two Working Group ballots. This absence of ballot comments proposing new technical content shows a lack of diligence for providing technology proposals for improving the standard. The appellants’ ballot comments only addressed areas of the draft that they requested be removed. No ballot comments on technical additions or changes in sections beyond removal comments were received.

2. The 802 Appeal Panel ruled in error by requiring a re-vote of a fully discussed and approved Technology Selection Process (TSP) document. The appellants specifically stated the document’s approval was not part of their appeal; the appellants never objected to the document’s approval; the panel misunderstood the Working Group Policies and Procedures; and the panel erred in reading correctly the Sept. 2005 session minutes.

- Appellants did not request the re-vote of the TSP in their appeal. The Appellants did not object to the approval of the TSP in the session in which it was approved or in later sessions. The Appellants clearly stated in their Appeal, dated October 21, 2005, that their appeal did not address the TSP’s approval. Specifically, the Appellants stated in their appeal: “In addition to scheduling changes, the Chair has made unilateral changes to the Technology Selection Process document. These are the subject of a separate objection made by Kyocera members. While these appeals address different problems, we are in agreement with Kyocera and strongly support their request.” The Kyocera appeal noted in the above text was satisfied and withdrawn subsequently without any modifications to the TSP document.

- The 802 Appeal Panel stated in their rehearing request reply that they have a right to choose any remedy and the remedy need not relate in any way to the requested remedy. Unfortunately, this new and un-requested remedy created by the panel is in error and based on a finding that is unreasonable in the context of the Working Group P&P, its normal practices and the 802 P&P.

- The 802 Appeal Panel finding is made on a faulty interpretation of an 802.20 Working Group rule. The panel's cited "4 hour rule" in the WG P&P does not apply to the TSP document per working group's normal and documented practices. The "4 hour rule" only applies to technical changes of a draft standard because of the importance of modifying a future standard. The full text of the relevant 802.20 Working Group rule the panel cited follows.

"2.6 Motions

A motion may be made at any time during the meetings. However, a motion that changes a draft shall be presented in a submission that has been;

Accepted by document control

Available electronically (via flash card or on the server).

A motion can only be voted on when its submission has been available to all voters who are participating in the session for a time not less than four WG session hours before the vote. Motions to adjourn a session per the approved agenda are the exception."

The above rule does not apply to procedural issues and procedural documents.

- The Working Group's normal and documented practices support the understanding that the "4 hour rule" only applies to a draft standard. The Appellants did not object to this normal practice in their appeal nor has any working group member objected since the WG P&P was established in January 2004, two and a half years ago. The word "draft" is understood to mean a "draft standard". The IEEE 802 Policies and Procedures and the SASB Operations Manual both use the term "draft" and "draft standard" interchangeably. Appendix A shows examples of the use of these terms interchangeably.

- The approval of a procedural document clearly is not subject to the "4 hour rule" cited by the 802 Appeal Panel. A procedural document cannot be a draft. Per the 802 P&P, a procedural document does not need a vote unless the Chair states the need for a procedural vote. In the case of the TSP document because of its importance, the Chair ruled the members would approve it by a 50% vote as stated in the Sept. 2005 session minutes.

- Additionally, per the Technology Selection Process document, section 5.0, the Working Group can modify the document with a two-thirds vote. No technical document approved by a 75% vote can be modified by a less than a 75% vote per the 802 P&P.

3. The 802 Appeal Panel ruled in error based on their lack of a thorough review of the written evidence and based on the use out of context or incorrectly interpreted oral statements.

- The 802 Appeal Panel based its rulings that the (1) TSP vote should have followed the "4 hour rule", and (2) should be re-voted with a 75% approval, on the false assumption that the TSP was approved by a technical vote. On April 20, 2006, the Chair

of the 802 Appeal Panel issued the following second ruling as a clarification regarding re-voting the Technology Selection Process document. "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."

- The above clarification ruling is not correct. The September 2005 session minutes shows the Chair stated in his opening slides that the TSP was a procedural document requiring only a 50 % approval. Appendix B shows the relevant slide included in the minutes. The TSP has a section stating it can be modified with a two-thirds vote and therefore cannot be a technical document requiring a 75% approval. These are just two examples of the lack of a thorough review of the evidence by the 802 appeal panel.

- The 802 Appeal Panel acknowledged the TSP document was reviewed and revised by the participants in the September session before its approval. Therefore, the appellants had an opportunity to propose changes and vote on a revised document. The TSP document is only 7 pages long without the annexes, and it therefore is not difficult to review. Additionally, the Working Group voted to review the Chair's TSP proposal at the session. All of these actions demonstrate due process for the appellants.

- The 802.20 Working Group has held votes to modify the TSP, after its initial approval in September 2005. These occurred at the November 2005 plenary session. A motion was made on whether to modify the TSP in order to extend the selection process and allow additional technology proposals at later sessions. This motion only needed a two-thirds vote for approval. This motion failed in that it only received 26.8% of the vote. This fact is acknowledged by the 802 Appeal Panel, but it apparently was not taken into consideration in their crafting of the remedies. The 802 Appeal Panel discounted this vote based on their mistaken belief that the TSP was approved as a technical document with a 75% vote. The panel stated in their Panel Conclusion, page 9, paragraph 4, that "The vote to extend the selection process to allow further submissions failed with 26.8%, it is therefore not clear that an informed vote to adopt the schedule provisions of the TSP would have passed by 75%. Thus, it appears that the Working Group made the decisions to accept and vote on the late contribution based on misleading information." A thorough review of the evidence shows the appellants already had their due process as the Working Group in Plenary session considered the matter of the correctness of the TSP.

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 Panel ruling for a re-vote of the Technology Selection Process is a disproportionate remedy because it would effectively end 802.20, is inconsistent with the IEEE 802 and IEEE goal of completing the 802.20 standard, and supports the plans of a group of attendees from certain companies who support 802.16/WiMAX whose goal may be stopping 802.20 from completing a standard. Specifically, Motorola and certain other 802.16-focused companies changed the voter mix in 802.20 to dominate the voting over a 5-month period, the same period during which this appeal by Motorola affiliated members has been in process. The net result of this voter mix change is that a re-vote of the TSP that would have easily been successfully re-voted now is likely not to even obtain a simple 50% majority necessary to pass.

- The actions of these companies appear coordinated based on motions made in the sessions, ballot comments and joint contributions. They have attempted to dominate and disrupt the 802.20 sessions. They have held meetings to discuss 802.20 before several of the 802.20 sessions. Invited to these pre-planning meetings were the key leaders from 802.16e-advocate companies, leaders of the disruptions, the filers of the appeals and the head of the WiMAX Forum. These meetings started before the November Plenary and have been organized by Motorola with a name – “802.20 Next Steps”

- Further evidence, voting data and other detailed information are provided in the July 13, 2006 Appeal to the Standards Board of Governors regarding the SASB suspension of the 802.20 Working Group. This appeal is listed as referenced document number 6.

In summary, the Appeal Panel decision was not based on a preponderance of the evidence as required by the 802 P&P section 7.1.6.6. A thorough of the evidence will support a revised set of findings. A review of the evidence will show that the 802 Executive Committee was in error when approving a limited rehearing of the Panel findings.

Remedies Requested:

I do not request a full re-hearing by the 802 Appeal panel nor do I request a re-vote of the 802 Executive Committee decision not granting a full re-hearing. This will only delay the adjudication of the matter. However, I do request the below listed remedies.

1. The SASB appeals panel should find that no re-vote of the 802.20 Technology Selection Process document is required.
2. The SASB appeals panel should find that the ruling allowing the appellants to submit a late technology proposal to the Working Group was in error.

Sincerely,
 Jerry Upton
 Chair, 802.20
jerry.upton@ieee.org

Referenced documents:

1. The original appeal document title "EC appeal"
2. Jerry Upton's response to the appeal - - document title "Appeal Response to Motorola"
3. The 802 Appeal Panel decision as revised - - document title "IDecisionMollenaur Opreescu Wiczorekvs802.20-final r2"
4. Jerry Upton's request for a rehearing - - document titled "Request to 802EC for Appeal Re-hearing JUpton"
5. The 802 Appeal Panel response to the Rehearing request - - document titled "Response to rehearing request 060531"
6. Jerry Upton's appeal to the Standard Board of Governors - - document titled "UPTONAPPEALofSABActions-filedJuly132006"
7. IEEE 802 Executive Committee meeting of July 19, 2006 (not yet available)
8. 802 Appeal Panel decision from limited re-hearing held July 19, 2006 (not yet available)

Appendix A: References of “draft” and “draft standard” being used interchangeably

The 802 Appeal Panel assumption is incorrect that the word “draft” does not mean “draft standard” in the 802.20 Working Group P&P. The words “draft” and “draft standard” are used interchangeably. Illustrated below are examples in the 802 P&P dated Sept. 14, 2005 with words “draft” and “draft standard” highlighted in **RED**. Additionally the IEEE-SA Standards Board Operation Manual uses the words “draft” and “draft standard” interchangeably as shown in an example below.

IEEE 802 P&P page 39, Section 17.5.6 Withdrawn PARs

“Occasionally a PAR is withdrawn. When a PAR is to be withdrawn, the responsible WG chair in consultation with the WG shall consider whether the most current **draft** has content that should be archived. If so, the WG chair shall ensure the most current **draft** of the proposed standard is placed on the IEEE Document Distribution Service list. The WG chair shall add a cover page to the **draft** alerting the reader that the PAR has been withdrawn for this work, giving the specific date of the withdrawal and the rationale for the withdrawal.

The withdrawn **draft** shall be maintained on the IEEE Document Distribution Service list for a period of 3 years after the time of withdrawal, after which it shall be removed from the list.”

IEEE 802 P&P Page 41, Section 21 Procedure for Coexistence Assurance

“If indicated in the five criteria, the wireless working group shall produce a coexistence assurance (CA) document in the process of preparing for working group letter ballot and Sponsor ballot. The CA document shall accompany the **draft** on all wireless working group letter ballots.”

IEEE-SASB Operation Manual page 38, section 8.2 Publication of **drafts**

“**Drafts** of standards under development are normally distributed to members of the group involved in their generation (working group, subcommittee, etc.) for comment and letter ballot. The normal method for generating valid comments is to conduct a letter ballot of the working group or subcommittee.

All **drafts**, no matter how broad their circulation, shall be marked on the cover and elsewhere with the appropriate copyright and legal statements. See subclause 4.2 of the *IEEE Standards Style Manual*.

When using the approved IEEE standards designation on a **draft standard**, the designation shall be structured, at a minimum, as “IEEE P_{xxx}/D_{xx},” where “xxx” represents the specific designation and “XX” represents the specific **draft** version of that document. The date of the **draft** shall also be included. Any additional information (such as the **draft** chapters) may be included at the discretion of the working group. The **draft** designation shall appear on each page of the **draft** in the same location for the sake of continuity (for example, the upper right corner, the bottom right corner, etc.).

In projects of broad interest, it is sometimes useful to collect a broader spectrum of comments than that available within the working entity involved in the development of the **draft**. Although the practice is deprecated by the IEEE-SA Standards Board, a small number of IEEE committees publish such **drafts** for distribution either as separate documents or in Society Transactions. Publication, including electronic, hard copy, or other forms of distribution, shall be carefully controlled to avoid misunderstandings

regarding the status of and legal responsibility for such documents (N.B. these documents must not be mistakenly regarded as IEEE standards).”

Appendix B: Chair’s Opening slides from the September 2005 session that are included in the session approved minutes. There are embedded PowerPoint slides in the minutes.

802.20-05/56

802.20 Opening Sept. 2005 Interim Session #16

Jerry Upton- Chair

jerry.upton@ieee.org

Gang Wu – Procedural Vice Chair

Eshwar Pittampalli – Liaison Vice Chair

Rao Yallapragada – Recording Secretary

Sept.19, 2005

Chair, IEEE 802.20

Evaluation Criteria Document Closure Process

Process for this meeting:

- 1. Review Status of the Document**
- 2. Take New Contributions related to the Document**
- 3. Review each Section of the Document - - reach consensus and approval - - refer back to previous Contributions relevant to the section**
- 4. Seek drafting Ad-Hocs if needed**
- 5. Sections with Options will be voted via Straw Polls and then Motions.**
- 6. Sections need 75% approval. Overall Document needs 75% approval.**

Technology Selection Process Document

This is a procedural document and only need a 50% approval.

Sept.19, 2005

Chair, IEEE 802.20

802.20-05/56