

In the Matter of the  
Appeal of Dr. David V. James  
Concerning the  
Resolution of Sponsor Ballot Comments on the Revision of IEEE Std 802.3

Date: August 10, 2005  
Subject: Appeal panel decision on the appeal of the resolution of sponsor ballot comments on the revision of IEEE Std 802.3  
Appellant: Dr. David V. James  
Appellees: Robert Grow – 802.3 Chairman, David Law – 802.3 Vice Chairman  
Appeal hearing date: July 20, 2005  
Appeal hearing location: Hyatt Regency Embarcadero, San Francisco, CA

Attendees:

Appeal Panel members:

Chair: Bob O'Hara  
Member: John Hawkins  
Member: Mathew Sherman

Appellant: Dr. David V. James  
Appellees: Robert Grow – 802.3 Chairman, David Law – 802.3 Vice Chairman

IEEE-SA Staff: Karen Kenney  
Others: Paul Nikolich – LMSC Chairman, Pat Thaler – LMSC Vice Chairman, Geoff Thompson – LMSC Member Emeritus, Roger Marks – 802.16 Chairman, Stuart Kerry – 802.11 Chairman, Bob Heile – 802.15 chariman, Mike Takefman – 802.17 Chairman, Tom Dineen, Glen Parsons, Shimon Muller, John Lemon

## **1 Background information**

The LAN/MAN Standards Committee (LMSC) conducted a sponsor ballot on the revision of IEEE standard 802.3. Paul Nikolich, Chairman of the LMSC delegated responsibility to the 802.3 working group to be the ballot resolution committee. The 802.3 working group held a comment resolution meeting. Dr. David V. James subsequently appealed the resolution of a number of sponsor ballot comments and the procedures used for comment resolution to the LMSC, alleging that the Sponsor did not follow IEEE- SA due process in proper consideration of comments submitted with his negative ballot.

The LMSC Chair formed an appeal panel to hear the appeal and determine if IEEE-SA procedures were followed.

The appeal panel held a hearing to provide an opportunity for oral testimony from both parties as well as an opportunity for the appeal panel to inquire further into the nature of the appeal and the facts

surrounding the claims. Dr. David V. James submitted a brief appealing the resolution of comments and Robert Grow submitted a response in reply. Copies of these documents were provided to the appeal panel.

## **2 The appeal agenda**

The following agenda and schedule was established for the hearing.

- 1) Appellant statement 15min
- 2) Appellee statement 15min
- 3) Panel Q&A 30min
- 4) Panel deliberation and appeal resolution/conclusion preparation (executive session--only the panel members can participate) 30min

## **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 therefore, based on a preponderance of the evidence.”

## **4 Appellant’s basis of appeal**

The Appellant has raised the following three objections with the remedial action requested by the Appellant listed below each objection. These objections and remedial actions were listed by the Appellant in his brief dated March 24, 2005, sent to LMSC Chairman Paul Nikolich.

In the words of the Appellant, the objections identified are the following.

- 1) Obscure responses. Responsive responses to rejected comments were not provided.
- 2) Content violations. Document content and responses knowingly violate the IEEE Style Manual.
- 3) Procedure violations. No attempts were made to reconcile rejections; the commenter was effectively excluded from key comment-resolution discussions.

The specific remedial actions requested are the following.

- 1) Specify specific wording to be used in all “principle” resolutions, not plans of action.
- 2) Incorporate all such changes and recirculate the draft with all pages (not just changed pages).
- 3) Replace the Pascal code with normative C code, that all can understand.
- 4) Accept all valid comments, independent of anecdotal evidence.
- 5) Submit all OUI related text to the IEEE/RAC for approval and incorporate their suggestions.

## **5 Sequence of events**

- Dr. James submitted comments on the sponsor ballot of the revision of IEEE Std 802.3, that concluded on January 13, 2005.

- Dr. James was notified (along with the rest of the sponsor ballot group) that the comments would be considered at a comment resolution group meeting to be conducted on January 26, 2005.
- In an email dated January 21, 2005 to the Vice Chair of 802.3, Dr. James indicated that he would not be able to attend the comment resolution group meeting.
- A recirculation ballot of the revision of IEEE Std 802.3 was announced on March 1, 2005 through the IEEE-SA myBallot system.
- On March 2, 2005, Dr. James notified the Chair of the LMSC of his intent to appeal the result of the sponsor ballot process.
- In an email dated March 2, 2005, Paul Nikolich, LMSC Chair, requested that an informal meeting to address Dr. James' concerns be held, prior to filing a formal appeal.
- Dr. James attended the comment resolution group meeting and 802.3 working group meeting during the week of March 15, 2005.
- The informal meeting with Dr. James is held on March 16, 2005.
- Dr. James filed his appeal brief on April 14, 2005.

The appeal panel convened an appeal hearing on July 20, 2005 at the Hyatt Regency Embarcadero in San Francisco, CA during the July LMSC plenary session, as required by LMSC policies and procedures.

## **6 Appeal Panel Decision**

The appeal panel carefully considered all the evidence presented to the panel and reached the following decision based on a preponderance of the evidence and a review of the applicable provisions of the operating documents governing the matters being appealed. The appeal panel concludes that proper procedure was followed by the Sponsor in handling Dr. James' negative comments and denies the appeal by the Appellant. A detailed response to each of the Appellant's concerns and the Appeal Panel's findings of fact and conclusions are included in the next section.

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

As noted in section 4, the Appellant had three specific objections in his appeal. This section addresses each of these objections, in turn.

### **7.1 Objection 1 by the Appellant: Obscure and Unresponsive Comment Responses**

**Findings of fact:** On the Appellant's complaint that comment resolution group responses were obscure and unresponsive, the evidence provided to the panel indicates the Appellant objects to several types of responses. Generalizing, among them:

- Responses pointing out that in prior practice a given criticism has not been found to be objectionable (e.g. in reference to capitalization or use of acronyms).
- Responses that indicate resolution of the issue is left to IEEE editorial staff.
- Responses indicating that the criticism was "accepted in principle" the criticism incorporated into the comment, yet the group failed to address the criticism in the subsequent resolution of the comment.

The Appellees argued that the Appellant is simply a dissatisfied commenter, and that the working group owes him due process, but does not owe him a satisfactory resolution to his comments.

The appeal panel agrees with the Appellees that while certain comment resolutions may not have been satisfactory to the Appellant, the crux of the matter is whether the Sponsor followed established process, and whether every reasonable attempt was made to address the commenter's objection. The objection, therefore is without merit unless the Sponsor violated standard process or procedure in the formulation of the comment responses or the Sponsor failed to make reasonable attempts to address Appellant's objections.

The panel *would* find it troubling that a comment was dismissed out of hand for any reason including that of prior practice (after all said prior practice may have only recently come to light as having been flawed). However, the Appellant fails to establish this was the case via the evidence in this matter. We find no reason to believe there was a lack of consideration for the criticisms provided by Appellant and we believe that each response was provided in light of the current best practices with regards to modern standards development and in accord with the appropriate procedures of the IEEE-SA.

On the matter of referring final resolution of a comment to the IEEE professional staff, evidence suggests this is indeed common practice, and that the working group is allowed further scrutiny of the resulting changes throughout the lifespan of the standard, should objectionable matter be introduced by the editors. In particular, clause 3 of the IEEE Standards Style Manual (2000 version, revised April 2002) states the following.

*The sponsor or a designated representative (usually the working group technical editor or Chair) shall serve as the liaison between the working group and the IEEE Standards Project Editor to answer questions and to review the document when it is in its final stages of production to ensure that editorial changes have not affected the technical content of the standard.*

The Style Manual clearly indicates that it is expected that the project editor will make editorial changes to the document. Mr. Grow and Mr. Law related during the hearing that they have a standing agreement with the project editor to pass along all editorial changes to the project editor for appropriate disposition. Again, we see no discontinuity in what has been long-established common practice.

For responses indicating the group "accepts" a comment "in principle" we find this practice worrying when the clear intent (as evidenced by the mandated resolution) is actually to "reject." In this case a commenter's proposed resolution is actually *not* accepted. The practice in 802.3 is to use this response when the comment resolution group agrees that the commenter has identified a problem with the balloted draft, but does not agree with the commenter's suggested remedy. The comment resolutions circulated to the sponsor ballot group clearly identify the actual resolution, as well as the suggested remedy of the commenter. It is the finding of this panel that the use of "accepted, in principle" corresponds with the authority of the comment resolution group to "revise" a comment that advocates change in the balloted draft, as described in clause 5.4.3.2 of the IEEE-SA Standards Board Operations Manual.

Furthermore, and of ultimate import in this matter, the panel must agree with the Appellee that the constituency to be convinced of and perhaps swayed by the obscurity of a comment response is the

balloting group. In this case, each comment response was published according to required procedure, and the commenter was allowed an opportunity to further object, and thereby convince members of the ballot group of his point of view. We find that the facts indicate the preponderance of voters was not swayed.

**Panel Conclusion:** The actions requested by the Appellant are denied.

## **7.2 Objection 2 by the Appellant: Violation of the IEEE Standards Style Manual**

**Findings of fact:** On the concern that the resulting document does not comply with the IEEE Standards Style Manual, the Appellant's objection is "Content violations. Document content and responses knowingly violate the IEEE Style Manual." A large number of the Appellant's comments submitted on the ballot of the 802.3 revision itemize the difference between the content of the draft standard and the requirements of the IEEE Standards Style Manual. The evidence submitted by the Appellant documents each of these differences.

The Appellant cites the following IEEE-SA documents as defining the procedures or standards that were violated and for which the Appellant asks specific remedies.

- IEEE Standards Style Manual
- IEEE Standards Companion

The Appellee's response to this complaint is that the "Differences between the StyleMan and the approved draft are not proper items for appeal as the ballot group is the body responsible for determination of consensus, not a WG Chair, Vice Chair, ballot resolution committee or working group."

The appeal panel does not find that the statement of the Appellees applies to the matter in dispute. The Appellant claims that there are procedural requirements imposed on the Sponsor when creating a draft standard and that these requirements are described in the IEEE Standards Style Manual. The ballot group is not the body having precedence in matters of procedure when developing a draft standard, only in matters of the content of that draft standard. The question the appeal panel must consider is the application of these documents to the evidence presented at the appeal hearing.

In the online version of the IEEE Standards Companion, the introduction states the following:

*The Companion is "meant to be a companion to the official rules and policies of IEEE Standards. It is not a rule book in and of itself, but something a bit more expressive, that may be able to offer some background and detail that a series of rules can't. If there's any discrepancy between this and the official rules, those rules are correct and this companion is in error."*

The Companion also explicitly lists the following information:

*Hierarchy of Documents*

*--IEEE Bylaws*

*--IEEE Standards Association Operations Manual*

--IEEE-SA Standards Board Bylaws  
--IEEE-SA Standards Board Operations Manual  
--IEEE Standards Style Manual  
--IEEE Standards Companion

Finally, the Companion also states the following:

*First, let's mention three of those overriding documents. They are the IEEE Standards Association Operations Manual, the IEEE-SA Standards Board Bylaws, and the IEEE-SA Standards Board Operations Manual. The bylaws present the rules, or policies, under which the IEEE Standards program operates. The operations manuals explain the official procedure based on those rules, and offer much of the details of standards development.*

From this information, it is clear that the IEEE Standards Companion contains no normative procedures.

The Appellant argued in his brief and during the hearing that the IEEE Standards Style Manual is normative and that his comments regarding differences between the Style Manual and the balloted draft were not dealt with as required by the Style Manual. We find that the IEEE Standards Style Manual is not normative, except in those specific clauses cited in the IEEE-SA Standards Board Operations Manual. The clauses of the IEEE Standards Style Manual that are referenced by the IEEE-SA Standards Board Operations Manual are the following:

4.1.1 Copyright Statement  
7. Trademarks  
21. Amendments and Corrigenda  
Annex C: Example Amendment

The Appellant's concerns do not reference any of the clauses identified in the IEEE-SA Standards Board Operations Manual. There is no support in the IEEE-SA Standards Board Operations Manual for the Appellant's assertion that the IEEE Standards Style Manual, in general, provides normative procedures for the development of IEEE standards.

**Panel Conclusion:** The actions requested by the Appellant are denied.

### **7.3 Objection 3 by the Appellant: failure to follow proper procedure and exclusion from the process**

On the complaint that proper procedure was not followed in the disposition of the comments provided by the Appellant, the appeal panel finds this to be the most serious objection brought forth in the appeal. The matter of process is of serious importance in protecting the right of an individual or of a minority to be heard.

The appeal panel must restrict its consideration to procedural violations, and specifically those violations asserted by the Appellant. There are two separate assertions made by the Appellant.

*'no attempts were made to reconcile rejections'*  
*'the commenter was effectively excluded from key comment-resolution discussions'*

Each of these assertions will be considered in turn.

### 7.3.1 Assertion that no attempts were made to reconcile rejections

The Appellant maintains that ‘*no attempts were made to reconcile rejections*’. There are two questions to be asked. First, did the Appellees have a duty to reconcile rejections? If the answer to the first question is yes, the second question is, were attempts made to reconcile rejections?

**Findings of fact:** Based on the testimony at the appeal hearing it is clear that when the Appellant uses the word ‘reconcile’ he means specifically, did the committee actively try to reach the Appellant to discuss alternatives so that a mutually acceptable resolution would be reached and the Appellant would remove specific comments from Appellant’s disapprove vote.

The following extracts are taken from IEEE-SA Standards Board Operations Manual dated January 2005, subclause 5.4.3.2 (starting page 22).

*The Sponsor shall make every attempt to resolve comments, objections, and negative votes that are accompanied by comments. Comments that advocate changes in the document, whether technical or editorial, may be accepted, revised, or rejected. It should be borne in mind that documents are professionally edited prior to publication.*

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*In order for a negative vote to be changed to an affirmative vote, the Sponsor shall obtain written confirmation from each voter (by letter, fax, or electronic mail) that indicates concurrence with any change of his or her vote. If the negative vote is not satisfied, either entirely or in part, the negative voter shall be informed of the reasons for the rejection and be given an opportunity either to change his or her vote to “approve” or to retain his or her negative vote during a recirculation ballot.*

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*All unresolved negative votes with comments shall be recirculated to the Sponsor balloting group. The verbatim text of each comment, the name of the negative voter, and a rebuttal by the members conducting the resolution of comments shall be included in the recirculation ballot package.*

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*Further resolution efforts, including additional recirculation ballots, shall be required if negative votes with new comments within the scope of the recirculation result. Once all required recirculations have been completed and 75% approval has been achieved, the IEEE requirements for consensus have been met. Efforts to resolve negative votes may continue for a brief period; however, should such resolution not be possible in a timely manner, the Sponsor should forward the submittal to RevCom because the IEEE has an obligation to the majority to review and publish the standard quickly.*

*Copies of all unresolved negative votes, together with the reasons given by the negative voters and the rebuttals by the Sponsor, shall be included with the ballot results submitted to*

*RevCom. Copies of the written confirmations from voters that indicate concurrence with the change of their votes from negative to affirmative shall be included in the submittal to RevCom.*

Subclause 8.1 (Page 35)

*Upon approval by the IEEE-SA Standards Board, the standard shall be published as an IEEE standard. The Sponsor shall be notified of the approval. Balloters with unresolved negative ballot comments shall be informed of the approval and of their right to appeal.*

The appeal panel finds the first paragraph cited in the governance clause is the most relevant. The term ‘*every attempt*’ is used regarding the Ballot Resolutions Group’s (comment resolution group’s) responsibility for resolving comments. Note that while the responsibility for resolving comments is imputed to the Sponsor, this responsibility is often delegated to the working group, and specifically the comment resolution group with regards to Sponsor ballots concerning the LMSC. Thus the comment resolution group really must make ‘*every attempt*’ to resolve negative comments.

While the term ‘*every attempt*’ is somewhat vague, this seems to require a fairly high level of responsibility of the comment resolution group. However, the appeal panel does not find that direct contact with the commenter is required to meet that responsibility. The appeal panel interprets the term ‘*every attempt*’ as meaning ‘*every reasonable attempt*’. There will clearly be exceptional cases where an attempt is possible but unreasonable due to cost or time constraints. The appeal panel finds the question of reasonableness should be based on common practice, and what has been considered acceptable within the IEEE-SA in the past.

The ultimate arbiter of the interpretation of ‘*every attempt*’ is the IEEE-SA Standards Board Review Committee (RevCom). It falls to RevCom to ensure that proper process is followed in the development of a standard. The question for the appeal is “what is the minimum acceptable process to satisfy the ‘*every attempt*’ requirement”. Based on past history it seems to be:

- Conduct ballot
- Conduct ‘open’ comment resolution meeting
- Recirculate comments and resolutions
- Iterate process till no valid new comments.

The appeal panel finds that if a publicly announced meeting to resolve the commenter’s comment is held such that the commenter may attend, the comment is considered by the comment resolution group during such a meeting, and the results of that consideration recirculated to the balloting group (which includes the commenter), that this is sufficient to satisfy the ‘*every attempt*’ requirement. Of course, a comment resolution group may always do more, but it is not required of them.

The appeal panel finds that this is common practice for resolving comments within IEEE 802, and that it is an acceptable process within the IEEE-SA. The act of recirculating the resolution constitutes ‘*contacting*’ the commenter and, more importantly, sharing the commenter’s concerns and the comment resolution group’s response to those concerns with the rest of the balloting group. At that point, anyone in the balloting group may change their vote based on both the comment and response. It is also possible for the commenter to continue the dialogue by commenting on the resolution, or proposing an alternate resolution. Having a direct interaction with the commenter may be better, but



is not required. The comment resolution group has no responsibility to contact a commenter or directly interact with them except in the case where they are representing that the commenter has been satisfied with the resolution and is changing their vote from 'Disapprove' to 'Approve'.

The appeal panel finds that the facts indicate that public notice of the comment resolution meeting was made and received by the Appellant. The appeal panel also finds that it appears that all the comments identified by the Appellant were considered by the comment resolution group at an open meeting. Further, the appeal panel finds that the comments and resolutions were circulated to the ballot group on a recirculation ballot and that the Appellant is a member of that ballot group. The appeal panel finds that the commenter could have responded to the resolutions of his comments on the recirculation ballot. Finally, the appeal panel finds that the Appellees did attempt to reconcile rejections of the comments.

### **7.3.2 Assertion that commenter was effectively excluded from key comment-resolution discussions**

**Findings of fact:** Considering the testimony at the appeal hearing, the events most of interest to the appeal panel are the events of March 17, 2005, when the Appellant was not allowed to present alternate resolutions to his comments. The minutes from that meeting read:

*"Mr. James made a request to present alternative resolution to his comment (MyBallot comment #7 of IEEE P802.3REVam D2.1), which was included within the bucket motion.*

*The Chair ruled that the previous motion established the order of business which was to consider the editor's proposed responses in a "bucket" vote."*

This is the only case, based on the facts presented, that the appeal panel finds the Appellant may have been excluded from 'key comment resolution discussions'. It is noted the Appellant was at disadvantage in this meeting. While the Appellant was a member of the sponsor ballot group he was not a member of the 802.3 working group, the ballot resolution committee. Because the Appellant was not a member of 802.3, he could not bring motions to the floor or vote on motions. It is noted that the Appellant was allowed to participate in discussions, until the point indicated above, but not afterward.

The appeal panel finds that the fact that the commenter may not be permitted to directly interact with the meeting of the ballot resolution committee does not mean that the commenter has no way to comment on what happened at the meeting or to present alternate resolutions. The recirculation ballot allows the Appellant to comment on the responses of the comment resolution group. This is the minimum level of interaction required. The comment resolution group may allow greater more direct interaction, but is not required to do so. The requirement that a meeting be 'open' means it should be observable, but does not require that interaction be allowed by all who attend. Issues observed during the meeting can be raised on the recirculation ballot by the observer. The appeal panel finds that, because the Appellant has a voice in the sponsor ballot process and is able to submit further comments on the resolutions to his previous comments during the recirculation of those previous comments to the sponsor balloting group, the Appellant was not excluded from the process of comment resolution.

**Panel Conclusion:** The action requested by the Appellant is denied.

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

The appeal panel has examined all of the evidence and references in the light of the testimony provided by the Appellant and Appellees. We find the following:

1. as to the Appellant's objection regarding "Obscure responses. Responsive responses to rejected comments were not provided", we find that the objection is without merit and the requested actions are denied.
2. as to the Appellant's objection regarding "Content violations. Document content and responses knowingly violate the IEEE Style Manual", we find that the objection is without merit and the requested actions are denied.
3. as to the Appellant's objection regarding "Procedure violations. No attempts were made to reconcile rejections; the commenter was effectively excluded from key comment-resolution discussions", we find that the objection is without merit and the requested actions are denied.

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

Bob O'Hara:           Chair, Appeal Panel  
John Hawkins:       Member, Appeal Panel  
Mathew Sherman:    Member, Appeal Panel

Issued on behalf of the panel by: Bob O'Hara  
Dated : August 19, 2005