



1200 G Street, NW
Suite 500
Washington, DC 20005

P: 202-628-6380
F: 202-393-5453
W: www.atis.org

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December 6, 2010

Anne Caldas
Secretary, ANSI Executive Standards Council (ExSC)
Accreditation Services
American National Standards Institute (ANSI)
25 West 43 Street, 4th Floor
NY, NY 10036

Dear Ms. Caldas:

On behalf of the Alliance for Telecommunications Industry Solutions (ATIS), I appreciate the opportunity to provide input to the ANSI Executive Standards Council (ExSC) regarding proposed changes to the ANSI Essential Requirements (ER) related to conflict and duplication within the American National Standards (ANS) processes. While ATIS supports efforts to avoid duplication and conflict within the ANS processes, ATIS does not support the proposed changes for the reasons explained below.

First, ATIS believes that the proposed changes to the ER are inappropriate for Information and Communications Technology (ICT) standards. ICT standards are fast-changing, with new standards continuously being developed to meet evolving business and technology needs. New and innovative technical solutions continuously evolve and often compete with other standards in a dynamic global ecosystem. This enables market-driven growth, industry competitiveness and choice. A "first-in-time" approach, as proposed within the revisions to the ER, is simply not workable in the ICT sector. It would hamper innovation and the creation of overlapping standards that often are designed to address different user needs.

Second, ATIS is concerned that the proposed changes to the ER could undermine the development of standards by improperly imposing an affirmative burden on ASDs to police what might be ambiguous or unfounded claims of conflict or duplication. Such an obligation would raise the cost and slow the development of standards. This obligation is also contrary to an approach that would afford stakeholders the ability to raise complaints during the ANS approval and appeal process to the extent there are any issues.

ATIS also notes that, by compelling "coordination" and "harmonization" between and among ASDs, the proposal raises competition law concerns. The US antitrust agencies, as well as the European Commission, have recognized the importance of competition between and among standards, which would include standards

Standards that Drive the Business of Communications

developed by different ASDs. By requiring specific and concerted action to eliminate "duplication," especially as defined, the ER themselves may expose ANSI and ASDs to antitrust risks.

Third, ATIS notes that, in several sections, the proposed language is also vague and poses a risk of overly broad interpretation. For instance, Section 2.4.1 says that "[d]uplication within the ANS process commonly involves either similarity in subject matter . . . or similarity in specific technical content, between and among ANS and/or candidate ANS." The concept of "similarity" is so vague and could be interpreted so broadly that competing technologies would be prohibited from standardization. There is no reason to limit the development of such competitive standards, and by so doing, or allowing claims of "duplication" in such circumstances to delay or eliminate the development of a competitive standardized technology, the type of antitrust claims described above could arise. In the same section "duplication of scope" suffers from the same ambiguity and risk of overbroad interpretation. The definition of "duplication of technical content" is also very broad and could inhibit the use of references to existing standards to develop next generation standards.

Similarly, ATIS notes that Section 2.4.3 also contained uncertainties (for instance, what constitutes "unnecessary duplication?"). In addition, the minimum "good faith" requirements could essentially shut down an ASD if a party was intent on delaying or stopping some standards development. This section would also improperly shift the burden, and the cost, of addressing issues to the ASD, rather than have any issues of concern be addressed through the existing ANSI appeals and approval processes, and through a properly focused PINS procedure.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Thomas Goode
General Counsel
ATIS
202-434-8830
tgoode@atis.org



Jean-Paul Emard
Director - Industry Forums
ATIS
202-434-8824
jpemard@atis.org