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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 7, 2001

Magalie Salas
Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

**Re: 2000 Biennial Regulatory Review of
Part 68 of the Commission's Rules and
Regulations--CC Docket No. 99-216--/
Report and Order adopted 11/9/2000 and
released 12/21/2000 (Ex parte Filing)**

Dear Ms. Salas:

On February 6, 2001, an ex parte presentation was made by representatives of the American National Standards Institute (ANSI), Alliance for Telecommunications Industry Solutions (ATIS), and Telecommunications Industry Association (TIA) to employees of the Network Services Division, Common Carrier Bureau of the Federal Communications Commission in the above-referenced matter. Participants in this meeting included the following people:

ANSI

Amy Marasco, Vice President and General Counsel
Jane Schweiker, Director of Public Policy and Government Relations

ATIS

Megan Campbell, General Counsel

FCC Common Carrier Bureau

Staci Pies, Deputy Director,
Dennis Johnson, Attorney Advisor
Susan Magnotti, Attorney

TIA

Dan Bart, Senior Vice President, Standards and Special Projects

ANSI provided the FCC staff with a memorandum dated February 6, 2001, setting forth three areas in which the FCC may wish to modify the Report and Order. A copy of that memorandum, which was discussed during the meeting, is enclosed.

ANSI also provided FCC staff with a document entitled "Report and Recommendation of the Ad Hoc Group of the ANSI Board National Issues Committee Addressing the Viability of the Canvass Method for Standards Development" dated September 16, 1998. A copy of that document also is enclosed.

Pursuant to Section 1.1206(a)(1) of the Commission Rules, ANSI submits an original and one copy of this notice of ex parte contact for inclusion in the public record of the above-referenced proceeding. Please date-stamp and return the extra copy to our messenger. Should you have any questions regarding this matter, please contact me at 202-331-3610.

Sincerely,


Jane W. Schweiker
Director, Public Policy and Government Relations

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MEMORANDUM

DATE: February 6, 2001
TO: FCC
FROM: Amy Marasco and Jane Schweiker on behalf of ANSI
RE: In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations – CC Docket No. 99-216 – Report and Order adopted November 9, 2000 and released December 21, 2000

The American National Standards Institute (ANSI) is very pleased that the FCC has chosen, in the Report and Order referred to above, to recognize some of beneficial attributes of ANSI and the processes by which it accredits standards developers and approves American National Standards.

With all due respect, however, ANSI believes that there are three areas in which the FCC may wish to modify the Report and Order. They are as follows:

1. Reference to the different “methods” of developing American National Standards:

In paragraphs 22 and 28 the FCC has made some characterizations of the three methods of developing American National Standards that ANSI does not believe are accurate. ANSI has reviewed the three methods in close detail and determined that they are all equivalent methods of developing American National Standards.

We note that the FCC has not equated the canvass method with the organization and committee methods. In paragraph 28 of the Report and Order, it states that “[t]he Canvass Method provides that due process be used to determine consensus only after the draft standard has been developed. Thus, development of the draft standard for which consensus is sought under the Canvass Method does not necessarily include broad and open participation as does the other two accreditation methods.”

Please be advised that there is no such requirement whatsoever for any of the three development methods regarding the production of a draft proposed American National Standard. To require that a balanced, open group of all materially interested parties must together write a draft document would seem to ANSI to be both unnecessary and impractical. In actual practice, many standards developers using the organization or committee methods rely on a small task group to prepare a draft standard for consideration by the full consensus

body, or else they use an already prepared document (such as either a draft industry standard or one that already is in use such as an international standard) as the draft consensus document.

The goal of the ANSI process is to obtain a document that a balanced consensus of materially affected interest groups believes is an appropriate standard. Due process is critical when it comes to determining if that consensus has been fairly achieved. Accordingly, the ANSI Procedures require that a draft proposed American National Standard be appropriately circulated (both to the consensus body and the public at large) and that an attempt is made to resolve all negative comments. There must be an appeals process. If a balanced consensus body then votes on and approves the proposed document after reviewing all unresolved negative comments and any substantive changes to the text, consensus has been achieved and due process has been satisfied. This basic formula has been the hallmark of the ANSI process for decades, and it has earned widespread respect and acceptance.

Accordingly, ANSI suggests that paragraph 28 (the text of which follows) and the related footnotes be eliminated:

~~“28. Pursuant to ANSI procedures, an entity that develops standards may be accredited under one or more of three methods for developing evidence of consensus: (1) the Organization Method, (2) the Standards Committee Method, and (3) the Canvass Method. The Organization Method is most often used by associations or societies that have, among their other activities, an interest in developing standards. The Standards Committee Method is most often used when a standard affects a broad range of diverse interests or where multiple associations or societies with similar interests exists. The primary operational difference between the Organization Method and the Standards Committee Method is that, in the latter, ANSI generally requires the entity to be divided into a consensus body and a secretariat. The functions of the secretariat include overseeing the consensus body’s compliance with ANSI criteria and administrative functions in connection with the development and approval of standards. The Canvass Method provides that due process be used to determine consensus only after the draft standard has been developed. Thus, development of the draft standard for which consensus is sought under the Canvass Method does not necessarily include broad and open participation as does the other two accreditation methods.”~~

Similarly, ANSI respectfully suggests that paragraph 22 (the text of which follows) be modified as follows:

~~“22. Accordingly, we conclude that any standards development organization (SDO), accredited by ANSI under the ANSI Organization Method or the Standards Committee Method, can establish technical criteria for terminal equipment pursuant to ANSI consensus decision-making procedures, and, as discussed in detail below, submit such criteria to the Administrative Council for Terminal Attachments established by industry. ...”~~

2. Reference to Appeals at ANSI:

The Report and Order provides for appeals to the “American National Standards Board” (which we presume was meant to refer to the ANSI Board of Standards Review or BSR) to hear appeals on technical issues and at certain points in time. Please be advised that the ANSI BSR only hears appeals regarding procedural issues and only with regard to a standard that is intended to be an American National Standard. While sometimes these issues relate to the treatment of technical issues, the BSR will only issue a decision regarding the standards developer’s compliance with all of ANSI’s requirements for the development of American National Standards. In addition, appeals must be filed at ANSI within 15 working days after receipt of notification by ANSI of an action by the BSR. Anyone appealing to ANSI must first exhaust the appeals mechanism at the standards developer.

Accordingly, ANSI respectfully suggests that paragraphs 52, 71 and 72 (the text of which follows) be modified as follows:

“52. We conclude that the Administrative Council will adopt technical criteria for terminal equipment through the act of publishing criteria developed by ANSI-accredited standards development organizations. This process will operate as follows: Immediately upon receipt of the document containing the submitted technical criteria, the Administrative Council will publish a public notice detailing the technical criteria and the standards development organization responsible for its submission. Interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization, ~~to the American National Standards (ANS) Board~~, or to the Commission. In addition, interested parties may submit an appeal relating to the process by which any American National Standard was developed to the ANSI Board of Standards Review pursuant to its Operating Procedures and within the timeframes delineated therein. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council’s public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid.”

“71. *Appeals of Technical Criteria Before Publication by the Administrative Council.* We adopt our proposal to require a party, aggrieved by an SDO’s decision to submit a document containing technical criteria to the Administrative Council for publication, to appeal this decision through the SDO’s ANSI-accredited appeal procedures. As explained *supra* in Section C.2.c, interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization; ~~to the American National Standards (ANS) Board~~, or to the Commission. In addition,

interested parties may submit an appeal relating to the process by which any American National Standard was developed to the ANSI Board of Standards Review pursuant to its Operating Procedures and within the timeframes delineated therein. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council's public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid. These procedures should address the needs of a party that has a direct and material interest in the criteria at issue, as well as a commenter in the standard development proceedings whose interest may not rise to the level of "direct and material." We conclude that this appeal process alleviates local exchange carrier commenters' concerns that they may be required to permit connection of terminal equipment that is the subject of appealed criteria.

"72. Appeals of Technical Criteria After Publication by the Administrative Council. If the Administrative Council receives a ~~complaint~~ appeal regarding published technical criteria, the Administrative Council shall refer the proposed technical criteria and the comments back to the submitting SDO. The SDO shall first try to satisfy the objecting party's concerns, subject to a time limitation imposed by the Administrative Council. ~~;~~ ~~if that process is unsuccessful~~ The party filing an objection may then appeal an action or inaction by the SDO and then must exhaust their appeal process through the SDO and ANSI (if appropriate). If the SDO appeal procedures are completed but are unsuccessful in resolving the objection, the objecting party may file a request for *de novo* review by this Commission, as explained *supra* in Section C.4.b. ~~If~~ Regardless of whether a complaint or an appeal is initiated before or after the Administrative Council publishes the technical criteria, the Commission will continue to not recognize the technical criteria as presumptively valid until the appeal has been resolved by the SDO (and ANSI if appropriate), and, if review is sought here, by the Commission."

3. Reference to Interested Parties

The FCC correctly notes in paragraph 29 that ANSI's due process requirements include "[t]he right of any person (organization, company, government agency, individual, etc.) with a direct and material interest to participate by expressing an opinion and its basis, having that position considered, and appealing if adversely affected" and a requirement that standards developers must seek to have a balance of interest groups represented on the consensus body.

In the Report and Order, the FCC states that certain interest groups must be on the ACTA. ANSI respectfully suggests that the consensus body (ACTA) be open to representation from all interested parties. Accordingly, ANSI suggests that the following paragraphs be modified as follows:

“51. [W]e anticipate the Administrative Council membership will represent all segments of the industry including local exchange carriers, interexchange carriers, terminal and network equipment manufacturers, test laboratories, and other interested parties. We agree with ATIS that the individual member’s industry segment or interest group, rather than the office held in industry organizations, such as Committees T1 or TR41, should be counted to ascertain the balance of membership. We require that the Administrative Council limit the number of Administrative Council members to a workable number. This requirement, however, shall not be used to limit arbitrarily participation by any one segment of the industry or interest category. In addition, to the extent there is interest among industry members and other interested parties, the Administrative Council is required to rotate the Administrative Council membership to give all interested individuals an opportunity to participate, and to avoid placing undue burden on specific individuals.”

“40. The sponsoring organization is responsible for ensuring that the Administrative Council is populated ~~industry populates the Administrative Council~~ in a manner consistent with ANSI criteria for a balanced and open membership. We require the sponsor to notify the industry and other interested parties that it intends to establish an Administrative Council with membership that is balanced in terms of the points of view represented.”

“44. We note, moreover, that both parties have agreed to eliminate influence from themselves ~~organizations, including TIA and ATIS themselves,~~ as members of ~~from~~ the Administrative Council.

ANSI wishes to thank the FCC for its consideration of these suggestions.



September 16, 1998

**Report and Recommendation of the
Ad Hoc Group of the ANSI Board National
Issues Committee Addressing the Viability
of the Canvass Method for Standards Development**

This Report and Recommendation is divided into the following four sections:

Section 1 reviews the background as to how this issue arose and became a matter for the ANSI Board National Issues Committee (NIC) to address.

Section 2 reviews the process by which the NIC chose to address the issue.

Section 3 sets forth the procedures that were followed at the August 31, 1998 meeting.

Section 4 sets forth the Recommendation of the NIC Ad Hoc Group that will be presented to the full NIC at its next meeting for its review and approval.

Section 1: Background as to How This Issue Came to the NIC

According to the written testimony of Steven G. Roll before the ANSI Executive Standards Council (ExSC) on December 11, 1996, ACIL is a national trade association representing independent, commercial engineering and scientific laboratory, testing, consulting and research and development firms. The ExSC is the ANSI committee that is responsible, among other things, for maintaining (and when necessary revising) the *Procedures for the Development and Coordination of American National Standards* (the "ANSI Procedures") and the accreditation of standards developers. The ANSI Procedures set forth the procedural requirements for developing American National Standards. Pursuant to those procedures, a standards developer may be accredited under one or more of the following three methods of standards development: the organization method, the committee method and the canvass method.

In late 1996, ACIL approached the ExSC and requested that it modify the ANSI Procedures to limit the use of the canvass method to "smaller trade associations or societies that have documented current industry practices and wish to have these standards recognized nationally." (See Proposed Amendment to Section 1.2 of the ANSI Procedures). ACIL's reasoning is set forth in the written testimony of Mr. Roll cited above. In summary, ACIL argued that the canvass method inherently limits the ability of

materially affected parties to participate meaningfully in the standards development process (particularly in the earlier stages). The ExSC responded to ACIL in a letter dated August 14, 1997. In that letter, the ExSC “determined that the three methods of development are equivalent in their end results.” In addition, the ExSC expressed its belief that a method of standards development either contains adequate due process protections or not and that the scale of standards work being done was not a relevant factor.

By letter dated October 22, 1997 and pursuant to Section 15 of the Operating Procedures of the ExSC, ACIL appealed the decision of the ExSC not to amend the ANSI Procedures as ACIL requested. ACIL’s arguments appear in that letter and in the Statement of ACIL to the American National Standards Institute Executive Standards Council dated December 1, 1997. On December 1, 1997, an Appeals Panel of the ExSC heard the appeal and issued a decision dated December 12, 1997. At the hearing, ACIL modified its original request to the ExSC. ACIL requested that, instead of limiting the canvass method to organizations with a small standards program, the canvass method be eliminated as an option for developing American National Standards. The ExSC Appeals Panel decided that, as that was a new request not previously considered by the ExSC as a whole, it should be referred back to the ExSC for its review and consideration.

At its next meeting, the ExSC determined that the issue of whether to eliminate the canvass method was one that affects the ANSI community on a broad-based level. The ExSC therefore decided that the issue should be referred to the Executive Committee of the ANSI Board of Directors. The Executive Committee referred the matter to the newly formed National Issues Committee, which is a committee of ANSI Board members with responsibility (among other things) for matters relating to the domestic standards development processes.

ACIL had the option to appeal the decision of the ExSC Appeals Panel to the ANSI Appeals Board. It did not do so. The referral of the issue to the NIC was not done as part of any appeals process. The NIC was being asked to review the issue of whether to eliminate the canvass method as a policy matter.

Section 2: The Process by Which the NIC Chose to Address the Issue

The NIC first discussed ACIL’s request to eliminate the canvass method at its April 14, 1998 meeting. The NIC decided to establish an Ad Hoc Group to review the issue and formulate a Recommendation for the full NIC to consider. Dr. Nina McClelland of Nina I. McClelland, LLC agreed to serve as the Chair of the Ad Hoc Group. The following NIC members volunteered to serve on the Group: Mr. George Arnold from Lucent Technologies, Mr. Dan Bart from the Telecommunications Industry Association (TIA), Mr. Joe Bhatia from Underwriters Laboratories (UL), Mr. Art Cote from the National Fire Protection Association (NFPA), and Mr. Greg Saunders from the Department of Defense (DOD). It was agreed that they could each designate an alternate from their company, organization or agency to facilitate participation. The NIC believed

that the Group was fairly balanced in that industry, standards developers using different standards development processes and the government were represented.

The Group met by telephone on June 19, 1998 to decide how it wanted to proceed. The Group decided to ask ACIL to come to a meeting and present its views. As the largest standards developer using the canvass method of standards development, UL offered to present the argument at that meeting that the canvass method should not be eliminated or modified.

The meeting with ACIL was held on August 31, 1998 at the offices of the Information Technology Industry Council (ITI) in Washington, DC.

Section 3: The August 31, 1998 Meeting

Prior to the August 31, 1998 meeting, ACIL was asked if it wanted to submit any documentation to the Group other than what ACIL had previously submitted to the ExSC. ACIL responded that the only other submission it wanted to make was the following short statement:

“ACIL’s original position was that use of the canvass method for the development of American National Standards should be limited to smaller trade associations or societies that have documented current industry practices and wish to have those standards recognized nationally. This position is taken in ACIL’s proposed amendment to ANSI’s Procedures For The Development And Coordination Of American National Standards. In ACIL’s appeal of the ExSC decision to not adopt the proposed amendment, ACIL stated that the canvass method should be eliminated as a method for developing American National Standards. Upon further reflection, ACIL believes that the canvass method can have value if limited to its original purpose. Therefore, ACIL wishes to proceed based upon its original position as set forth in its proposed amendment.”

At the time of the meeting on August 31, 1998, the record before the Ad Hoc Group consisted of:

1. Written Testimony of Steven G. Roll Before the ANSI ExSC December 11, 1996.
2. ACIL Proposed Amendment to Section 1.2 of the ANSI Procedures.
3. Letter from the ExSC to ACIL dated August 14, 1997.
4. ACIL Appeal to the ExSC dated October 22, 1997.
5. Letter from ACIL to ANSI correcting an error on the Appeal.
6. Statement of ACIL to ANSI ExSC dated December 1, 1997.
7. Letter/Decision from the ExSC to ACIL dated December 12, 1997.
8. Additional Statement from ACIL on August 7, 1998 quoted in full above.

9. Submission from UL to the Ad Hoc Group dated August 1998 entitled "The ANSI Canvass Method – a Standards Consensus Process that Works".
10. Two matrixes approved and submitted by the ExSC (Documents ExSC 4444 and 4458).

All of these materials were circulated to ACIL, UL and the members of the Ad Hoc Group prior to the August 31, 1998 meeting.

Also circulated to ACIL, UL and the Ad Hoc Group prior to the August 31, 1998 meeting were the following proposed procedures for the meeting:

1. The Ad Hoc Group will begin meeting at 10:00 a.m. at ITI's offices to review the meeting procedures.
2. The meeting itself will begin at 10:30 a.m. at ITI's offices.
3. Everyone will introduce themselves.
4. ACIL and UL will then be given a total of 40 minutes each to present their view of the issue. They may each "save" a portion of the 40 minutes to use to respond to the initial comments made by the other presenting group. As it is the party that raised the issue initially, ACIL will go first. (So it is likely to be ACIL, then UL, then ACIL rebuttal, and then UL rebuttal.) During the initial and rebuttal presentations, members of the Ad Hoc Group are requested not to interrupt the speakers. They are to make note of any questions they may have and then ask them later during the question and answer period.
5. After each side has made their initial presentation and rebuttal remarks (or after they have each exhausted their 40 minutes, whichever comes first), members of the NIC Ad Hoc Group will be asked if they have any questions they wish to ask of either side. A question and answer period and related discussion will ensue.
6. When it appears that the question and answer period has naturally concluded, ACIL and UL will each be given 5 minutes to summarize their position. Again, ACIL will go first.
7. ACIL and UL will then be excused so that the Ad Hoc Group can go into executive session and make a decision. The decision will then be reflected in writing and will be faxed to ACIL and UL as soon as it is finalized. Information concerning the decision will not be provided via telephone. Participants should not contact members of the Ad Hoc Group or ANSI staff while the decision is pending.

There was no objection to these procedures either prior to or during the meeting. These procedures were followed. The representatives from UL left the meeting at the same time as the ACIL representatives. Neither UL nor ACIL participated in the deliberations of the Group, nor did either of them in any way participate in formulating or approving this Report and Recommendation.

For the record, the following people were present at the meeting:

ACIL: Mr. Joe O'Neil (ACIL)
Mr. Eugene Curry (Special Counsel to the ACIL Canvass Method Task Force)
Mr. Robert Martell (Factory Mutual Research Corporation)
Mr. James Kendzel (NSF International)
Mr. Milton Bush (The M Companies)

UL: Mr. Joe Bhatia (UL)
Mr. John Verscaj (UL)

Ad Hoc Group:

Dr. Nina McClelland (Nina I. McClelland, LLC) (via telephone)
Mr. Art Cote (NFPA) (who presided over the August 31, 1998 meeting due to the fact that Dr. McClelland could not participate in person)
Ms. Susan Hoyler (TIA)
Mr. John Bobsin (Lucent)

ANSI: Ms. Amy Marasco (ANSI)
Mr. Steve Cornish (ANSI)

Prior to the August 31, 1998 meeting, ACIL was presented with the names and affiliations of the members of the Ad Hoc Group and asked if they objected to any of those individuals serving on the Group. ACIL objected to Mr. Bhatia from UL. Because UL had offered to present the argument at the meeting that the canvass method should not be eliminated, Mr. Bhatia agreed that he and any other representatives from UL would leave the meeting at the same time as the ACIL representatives. UL further agreed that Mr. Bhatia would not participate either in the executive session that followed the meeting or in the formulation of the Group's Report and Recommendation. While Mr. Bhatia expressed a "vote" in favor of retaining the canvass method during his concluding remarks at the meeting, he did not vote on the matter during the executive session nor did he participate in any way in the approval or formulation of this Report and Recommendation. The only votes considered were from the members of the Group who did participate in these activities.

During the August 31, 1998 meeting, both ACIL and UL confirmed that they had no objection to Dr. McClelland's participation as the Chair of the Ad Hoc Group, and they recognized that she was participating in her capacity as a representative of Nina I. McClelland, LLC and a Board member of ANSI.

Section 4: Recommendation of the NIC Ad Hoc Group

The Ad Hoc Group is appreciative of ACIL's comments. The Group recognizes that it is important for ANSI to be responsive to expressed concerns and review its current processes objectively to determine if there is a legitimate need to revise them. The ANSI system is known both nationally and internationally for its required adherence to the principles of openness, due process and consensus, and it is the responsibility of the ANSI Board of Directors to ensure that those hallmarks of the ANSI process are reflected and maintained in the ANSI Procedures.

However, for the reasons set forth below, the Ad Hoc Group does not believe that ACIL has demonstrated that the canvass method provides less "due process" than the organization or committee methods of standards development.

ACIL's arguments can be broken down as follows:

- a. The canvass method does not satisfy the requirements of due process.
- b. The broader the impact of the standard, the broader participation in the process should be.
- c. When ANSI addresses the issue of "participation", ANSI should be consistent with the position it takes in connection with certain international standards-setting processes and the position it takes in connection with the canvass method.

In addition, UL expressed its view that, in objecting to the canvass method, ACIL was motivated by commercial concerns.

Each of these arguments will be addressed below.

A. Due Process Concerns

ACIL asserts that the canvass method does not provide for adequate due process primarily for two reasons: (1) the method inherently limits participation in the early part of the process in that "the due process used to determine consensus begins after the draft standard has been developed" (*See Annex E to the ANSI Procedures*) and (2) the ability to comment on a draft standard does not provide the same level of participation as the ability to meet and work with the other members of the consensus body.

By way of background, under the organization method and the committee method of standards development, the developer may submit their own procedures and they will be approved as long as those procedures meet the requirements set forth in the body of the ANSI Procedures. (Annex A to the Procedures is only a set of model procedures for the committee method; they are not required.) By way of contrast, all canvass method standards developers must use Annex B as their procedures.

ACIL appears to be under the mistaken impression that the ANSI Procedures require that the process by which a draft is prepared under the organization and committee methods requires open participation. As can be seen by the matrixes submitted by the ExSC, there is no requirement whatsoever for any of the three development methods regarding the production of a draft proposed standard. To require that a balanced, open group of all materially interested parties must together write a draft document would seem to the Ad Hoc Group to be both unnecessary and impractical. In actual practice, many standards developers using the organization or committee methods rely on a small task group to prepare a draft standard for consideration by the full consensus body, or else they use an already prepared document (such as either a draft industry standard or one that already is in use) as the draft consensus document.

The goal of the ANSI process is to obtain a document that a balanced consensus of materially affected interest groups believes is an appropriate standard. Due process is critical when it comes to determining if that consensus has been fairly achieved. Accordingly, the ANSI Procedures require that a draft proposed standard be appropriately circulated (both to the consensus body and the public at large) and that an attempt is made to resolve all negative comments. There must be an appeals process. If a balanced consensus body then votes on and approves the proposed document after reviewing all unresolved negative comments and any substantive changes to the text, consensus has been achieved and due process has been satisfied. This basic formula has been the hallmark of the ANSI process for decades, and it has earned widespread respect and acceptance.

ACIL also argues that the canvass method fails to provide the same level of participation as the other methods in that the canvass method provides an ability to comment on a proposed standard while the other methods provide an ability to be part of the decision-making process regarding the standard, often at a meeting. Again, ACIL has failed to recognize what it is that the ANSI Procedures require for any and all of the three methods of standards development. Section 1.2.7 of the ANSI Procedures provides that

“[p]rompt consideration shall be given to the written views and objections of all participants, including those commenting on the listing in *Standards Action*. An effort to resolve all expressed objections shall be made, and each objector shall be advised of the disposition of the objection and the reasons therefor. In addition, each objector shall be informed that an appeals process exists within procedures used by the standards developer. . . . Unresolved objections and any substantive change (see 1.2.9) made in a proposed American National Standard shall be reported to the consensus-developing group or canvass list in order to afford all members or canvassees an opportunity to respond, reaffirm, or change their vote.”

Nowhere do the ANSI Procedures require for any method that the initial decisions such as whether to accept or reject negative comments, etc., be made by the full consensus body. (The initial decision must be circulated to the consensus body, but the consensus body is not required to participate in the formulation of that initial decision.) It

is up to the standards developer to specify in its procedures how it will comply with the requirements of Section 1.2.7. Nowhere do the ANSI Procedures require for any method that the members of the consensus body must meet or even communicate with one another except in terms of reviewing each other's unresolved negative comments and re-evaluating their individual votes. The point is that every negative comment (whether from public review or a member of the consensus body) is reviewed and addressed, and either the comment or the proposed change to the standard is re-circulated to all of the members of the consensus body before a final consensus vote is taken.

The Ad Hoc Group believes that the matrixes approved and submitted by the ExSC are helpful in that they list all of the essential due process requirements set forth in the ANSI Procedures and show how each method is held to those requirements.

ACIL also argues that in the past organizations such as ASME, ASTM, IEEE and others have also complained about the alleged inferiority of the canvass method. Yet the Ad Hoc Group has not seen any evidence that these other organizations today support ACIL's position. The Ad Hoc Group notes that the canvass method has been approved and in widespread use for decades. It has been used to develop over a thousand American National Standards. Approximately one-half of the 189 different organizations or committees accredited by ANSI are accredited to use this method. ACIL has not submitted any evidence to show that, if used properly, the canvass method contains any inherent flaws that will result in the subversion of due process. In fact, ACIL has stated that it has no problem with the resulting standards. (When asked if they could provide a "smoking gun" example of what can go wrong with the canvass method, the ACIL representatives said that they could not; they were specifically focussing on what is stated in the ANSI Procedures and elsewhere.)

The Ad Hoc Group recognizes that all three methods of standards development are subject to potential abuse, and that no rendition of the ANSI Procedures can protect against all possible problems and still be relatively efficient and effective. The ANSI system does have several safeguards:

1. Any specific alleged abuse of the process involving a proposed American National Standard can be appealed at the standards developer and at ANSI (either by appealing the relevant standard to the ANSI Board of Standards Review or by appealing a particular standards developer's accreditation to the ExSC).
2. Regardless of the method of standards development, all comments (whether from a consensus body member or as a result of the public review announcement) must be considered and any unresolved negative must be circulated to the entire consensus body. In addition, any substantive change to the proposed standard made as a result of a comment must be submitted for public review and circulated to the consensus body. Any draft of the standard has to get a sufficient number of "yes" votes from the balanced consensus body in order to be approved.

If consensus has not been reached, the draft has to be revised and put through the entire consensus process again.

3. The developer certifies to ANSI that it has met the requirements set forth in the ANSI Procedures.
4. Formal submittals of proposed American National Standards that include unresolved negative public review comments and/or consensus body votes are reviewed by the ANSI Board of Standards Review (BSR). The BSR evaluates procedural compliance based on the evidence submitted.
5. All accredited standards developers are required to undergo a thorough procedural audit on a regular basis that is reviewed by the ExSC.

ACIL has quoted ANSI's President, Sergio Mazza, as stating that:

“How standards are developed and established is a more critical question than which standards may result. The process of standards development is crucial. If the process for developing standards is in harmony with the needs of users, makers, and providers alike, as well as those of society as a whole, the outcomes will be optimal.”

The Ad Hoc Group agrees. It too believes that the standards development process must meet the requirements of the ANSI Procedures, satisfy the elements of due process and result in a balanced consensus. The fact that the ANSI process has the requirements it does and the safeguards to police those requirements is crucial. The wide acceptance of American National Standards by industry and the government regardless of the standards development method used is evidence that the ANSI process is in harmony with the needs of those who use standards.

B. ACIL's Distinction Based on the Breadth of the Standard's Impact

At the August 31, 1998 meeting ACIL vacillated in terms of what it was proposing as a solution to the problems it alleges in connection with the canvass method. ACIL argued (1) that the canvass method should be eliminated, (2) that it should be limited to developers with a small scope of work and the goal of documenting industry practice, and (3) that it should be limited to standards with a smaller scope of impact. ACIL appeared to be arguing that the broader the impact of the standard, the broader the requirements regarding participation in the standards development process should be.

The Ad Hoc Group believes that if the issue is whether a standards development process provides for adequate due process and participation when developing consensus, then either the process as a process is sufficient or it is not. Whether the procedural process is sufficient should not be affected by the size of the standards developer or its portfolio of standards, or by the content of the proposed standard.

ACIL argues that Annex E of the ANSI Procedures supports its argument that the canvass method should be limited to certain standards or standards developers. Annex E provided that:

“The canvass method is most often used by smaller trade associations or societies that have documented current industry practices and wish to have these standards recognized nationally. Most canvass developers are responsible for less than five standards each.”

ACIL argues that this shows that the original intent of the canvass method was to limit its use to smaller trade associations that wish to document current industry practice.

The Ad Hoc Group believes that ACIL was misguided in relying too heavily on Annex E. Annex E has been and is only informative. Nothing in it is required by virtue of it being stated in this Annex. The language quoted above itself does not purport to restrict the use of the canvass method. It simply states for informational purposes that, at the time Annex E was originally prepared, the canvass method was “most often used” by smaller trade associations. The “most often” language in the informative Annex can be satisfied if a simple majority of canvass method developers were small or had a small number of standards. Contrary to the assertion of ACIL, Annex E does not provide a type of legislative history to the construct of the canvass method. Annex E was prepared after the canvass method was in use as a means of providing some general observations. It certainly does not reflect the situation today, as the canvass method is used by a variety of standards developers of varying sizes developing a wide array of standards.

ACIL’s argument that a proposed standard with a broad impact should permit virtually anyone with an interest in the standard to participate actively in all stages of its development is unrealistic. When implementing any of the three methods of standards development, the principles of openness, due process, balance and consensus have to work in harmony. If a consensus body (whether a committee or canvass list) is forced to accept as members all those who may want to participate at that level, it could become unbalanced. For example, one interest group could then have 100 representatives while two other interest groups each have only 10. That is why ANSI also provides that any affected party has the absolute right to participate as a public review commenter, have their comment reviewed, receive a response and have the right to appeal. Is that the same level of participation as a member of the consensus body? No, but it is sufficient as long as a balanced consensus body exists that will, as part of at least one recirculation ballot, review:

1. all unresolved negative public comments,
2. all unresolved negative votes from members of the consensus body, and
3. any substantive changes made in the standard in order to resolve comments or votes.

The process is one of checks and balances, and that is why it works.

C. Consistency With ANSI's Positions Internationally

ACIL also argues that ANSI is inconsistent in that internationally it complains that CEN (European Committee for Standardization), CENELEC (European Committee for Electrotechnical Standardization) and ETSI (European Telecommunications Standards Institute) should be more open to U.S. organizations, and yet ANSI endorses the canvass method.

The Ad Hoc Group disagrees. There are many differences between the situation with CEN, CENELEC and ETSI and the American National Standard (ANS) development processes. These European standards-setting bodies use a standards development process that is much less transparent than the ANS process. There are no mechanisms whereby U.S. interests can submit their comments, sustain their objections and appeal the treatment of those comments. Under the canvass method, these mechanisms are all available to anyone who is materially affected by the proposed standard.

Also, ANSI has endorsed one or more variations of the canvass method internationally. For example, it was largely due to ANSI and the U.S. standards community it represents that the "fast track" method of standards development was approved for use at ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission). This fast track method was intentionally designed to facilitate the approval at ISO and IEC of already formulated standards documents that contain excellent technical work. These documents start the process at the DIS (Draft International Standard) stage, which is considered the final draft stage.

In addition, even for standards projects not being submitted through the fast-track process, ISO and IEC have begun to encourage the submittal of a CD (Committee Draft) at the time a new work item is submitted. Again, the point is that under the ISO and IEC processes, and the American National Standards process, there are sufficient safeguards in the process so that ratification of an already prepared document can still adequately reflect an appropriate level of consensus and due process.

D. Commercial Issues

It is undisputed that the members of ACIL are direct competitors to UL in the third-party certification marketplace. It also is undisputed that UL is the largest ANSI-accredited standards developer using the canvass method. UL has suggested that ACIL's criticism of the canvass method is to some degree an attempt to discredit UL and its standards. In the Testimony of Steve G. Roll dated December 11, 1996, ACIL has stated:

"The canvass method inherently limits the ability of parties with a direct and material interest to participate meaningfully in the early, and often crucial, stages of standards development. UL exacerbates this trend by refusing to allow representatives of government agencies and other competing laboratories to

participate in the committees that prepare the initial drafts of UL standards. In addition, UL only permits its own clients to participate.”

The Ad Hoc Group expresses no view on this issue. The Ad Hoc Group notes that independent laboratories are a part of the canvass list used by UL and often such laboratories vote and provide comments on UL proposed American National Standards. ACIL itself is solicited for comments on such proposed American National Standards but has provided such input in only a limited number of cases.

Conclusion:

For the reasons stated above, the Ad Hoc Group does not believe that ACIL has met its burden of establishing that the canvass method for developing American National Standards is inherently flawed. Accordingly, the Group recommends that the NIC take no action regarding the canvass method at this time. The Group also would comment that it envisions that the “Essential Requirements” project being undertaken by ANSI at this time (pursuant to which the three specific methods of standards development will be eliminated in favor of a list of required due process principles to which all accredited standards developers must adhere) will enable the ANSI community to respond to new tools such as electronic processes, and at the same time preserve ANSI’s commitment to due process and its integrity in the standards development process.