

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Development of Operational,)	
Technical and Spectrum Requirements)	
For Meeting Federal, State and Local)	WT Docket No. 96-86
Public Safety Agency Communication)	
Requirements Through the Year 2010)	
)	
Establishment of Rules and Requirements)	
For Priority Access Service)	

PETITION FOR RECONSIDERATION

**TELECOMMUNICATIONS INDUSTRY
ASSOCIATION
Wireless Communications Division**

Dan Bart
Vice President, Standards and Technology

Jesse Russell, Chair, Wireless Communications
Division

2500 Wilson Blvd., Suite 300
Arlington, VA 22201

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SUMMARY

TIA is an American National Standards Institute (“ANSI”) accredited standards developer. As such, it has a long track record in developing standards for private radio equipment, including public safety equipment. TIA is familiar with ANSI procedures and processes. It supports the Commission’s goal of use of such ANSI-approved processes to generate standards for public safety equipment, but on reconsideration requests that the FCC’s Order be amended to recognize the use of existing ANSI accredited Standards Development Organizations (“ASDOs”). This will support the FCC’s goals, but will also save time in bringing the needed standards to this segment of the industry. If the National Coordination Committee were to seek its own accreditation, significant delays in creating needed standards would occur. TIA has served and stands ready to serve the need for ANSI standards for public safety equipment.

TIA also requests that the Order be amended to clarify that ANSI itself is not a standards developer and that ANSI cannot determine fair and reasonable licensing terms for intellectual property, but that ANSI’s patent policy is a good reference point. Such actions would also follow the Congressional guidance set forth in the National Technology Transfer and Advancement Act.

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PETITION FOR RECONSIDERATION

Pursuant to Commission rules, section 1.429, 47 C.F.R. §.429, the Telecommunications Industry Association’s Wireless Communications Division (“TIA”) hereby files this Petition for Reconsideration. As an American National Standards Institute (“ANSI”)-accredited Standards Development Organization (“SDO”) TIA appreciates the Federal Communications Commission’s (“FCC” or the “Commission”) recognition in the Commission’s First Report and Order (the “Order”)¹ of the value of ANSI-accreditation and ANSI’s requirements of openness, consensus and due process in connection with the voluntary standards development process. TIA is submitting this Petition for Reconsideration because TIA has a recommendation regarding the Commission’s stated intent to have the National Coordination Committee (“NCC”) seek

¹ See the First Report and Order and Third Notice of Proposed Rulemaking, FCC 98-191, released September 29, 1998, 63 Fed. Reg. 58645 (November 2, 1998).

ANSI accreditation. In addition, TIA respectfully requests that the Commission modify and conditions) as contemplated in paragraph 122 of the Order.²

Description of ANSI

TIA is accredited by Standards and Technology holds a seat on ANSI's Board of Directors and chairs its Patent Committee. TIA, its members, and TIA staff are very much involved in ANSI

By way of background, ANSI is a private sector organization that serves many roles:

- ANSI is a federation of companies and organizations that establishes a national consensus on national and international standards and conformity assessment policy as it relates to trade, regulatory matters, and the integrity of the processes.
- ANSI's mission is to enhance both the global competitiveness of U.S. business and U.S. quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems and safeguarding their integrity.
- The ANSI membership, representing all interested parties, includes nearly 1,600 organizations from the business community, professional and engineering societies, trade associations, federal, state and local government agencies, consumer interests, labor, academia, laboratory and testing organizations and others.
- ANSI approves "American National Standards" and ensures that its guiding principles – consensus, due process, balance and openness – are followed by accrediting and auditing nearly 200 standards developing organizations.
- ANSI represents the U.S. at the International Organization for Standardization ("ISO"), the International Electrotechnical Commission ("IEC") via the Institute's

² As a member of ANSI and because TIA staff holds an ANSI Board seat and chairs the ANSI Patent Committee, this pleading was coordinated with ANSI and contains many similar points and arguments.

U.S. National Committee to the IEC, the International Accreditation Forum (“IAF”), also participated in the State Department’s (“DoS”) International Telecommunications Advisory Committee (“ITAC”) which is a Federal Advisory Committee on policy from DoS and other federal agencies participate on the Institute’s Board level, International Committee. ANSI for example, was active with DoS on the issue of the Property Rights (“IPR”) debate, and has addressed other IPR issues that come before ITAC.

In addition to accrediting domestic standards developers, ANSI also accredits U.S.

- Registrar Accreditation Board, ISO 9000 and 14000 registrars.
- In support of its mission, ANSI provides information and training services related to national and international standards and conformity assessment activities.

Description of ANSI’s standards developer accreditation and standards approval programs

ANSI accreditation of a standards developer such as TIA signifies that the developer’s procedures for the development of standards meet all of ANSI’s requirements. These requirements are based on due process principles of openness and fairness. The developer must have an adequate appeals process. In addition, each accredited standards developer must have a group of individuals who serve as the consensus body or formulating group. The consensus body must represent a balance of relevant interest groups. When that body has reached a consensus on a standard intended to be an American National Standard, the Standards Proposal (“SP”) is ready for public review and ultimately approval by ANSI. ANSI’s requirements are delineated in the *ANSI Procedures for the Development and Coordination of American National Standards*(the

“ANSI Procedures”), which are available on the ANSI web site. As an organizationally-accredited SDO, TIA’s procedures have been found to comply with ANSI Procedures and TIA’s procedures, its Engineering Manual, can be found on the TIA web site at www.tiaonline.org.

The ANSI Executive Standards Council ("ExSC") is responsible for all matters relating to the accreditation of standards developers. It hears appeals regarding accreditation matters. The ExSC also is responsible for maintaining and when necessary recommending revisions of the ANSI Procedures to the appropriate ANSI Board Committee, and other related procedures. The ExSC is made up of experienced standards volunteers from companies, government, consumer organizations, and standards developers. When the ANSI Procedures are changed, SDOs are informed and given a period of time to revise their procedures to comply.

Currently, ANSI accredits standards developers under one or more of the following three “methods”:

Accredited Organization: If an organization has its own unique procedures that meet the requirements set forth in the ANSI Procedures and wants its own accreditation, then it may want to become an accredited organization. The organization has its own procedures (that are ANSI-approved) that apply to any and all of its “consensus bodies.” A consensus body is usually a committee of individuals that is balanced (*i.e.*, has representatives from all of the relevant interest groups) and its goal is to achieve consensus on a standard. The organization usually provides administrative support as the Secretariat for the consensus body or bodies. TIA is accredited under this method of accreditation.

Accredited Committee: An accredited committee is a committee (consensus body) that usually is administratively supported by a separate Secretariat organization. An accredited committee can prepare its own procedures that meet ANSI requirements, or it can use Annex A of the ANSI Procedures which is a model set of procedures for an accredited committee. Because an

accredited committee may be viewed legally as an unincorporated association, ANSI recommends that accredited committees specify the roles and responsibilities of the committee vis-a-vis the Secretariat. An example of an Accredited Standards Committee in the field of telecommunications would be Committee T1 which is sponsored by its Secretariat, the Alliance for Telecommunications Industry Solutions ("ATIS").

Canvass Method: All accredited canvass developers must use the procedures set forth in Annex B of the ANSI Procedures. Basically, under the canvass method, the consensus body is a list of "canvasees." The list must reflect a balance of relevant interests. When a proposed standard is ready, it is balloted to the members of the canvass list. An example of a canvass method accredited developer related to telecommunications field might be Underwriters Laboratories ("UL").

All accredited standards development organizations ("ASDOs") are required to be audited by ANSI once every five years. This is a procedural audit to (i) determine whether the developer is following its procedures and ANSI requirements and (ii) suggest to the ASDO ways in which the ASDO can improve its standards development processes. If the ASDO is newly accredited, its first audit will take place after it has completed the processing of its first American National Standard. TIA recently completed an audit in 1998.

Questions related to an ASDO's accreditation can have complaints filed with and heard by the ExSC, with further appeals to the ANSI Appeals Board. ANSI currently has approximately 180 ASDOs.

In Section 273 of the Telecommunications Act of 1996, Congress noted the benefits of accreditation programs such as ANSI's and even required the FCC to administer a program for non-accredited standards developing organization ("NASDOs") which encompasses many of the notice, opportunity for comment, appeals, and other due

process portions of the ANSI process for certain industry wide standards used in procurement.

The ANSI and TIA standards development and approval processes generally takes from 6 months to 2 years and can be summarized as follows:

Step 1 is the PINS notification. PINS stands for “Project Initiation Notification System.” ANSI requires that ASDOs submit a PINS form that basically states that the ASDO is beginning to develop a standard in a certain area. The PINS form is also used to announce revision or withdrawal of an American National Standard. ANSI announces that in *ANSI Standards Action*. TIA posts PINS information on its web page, and also gives notice via TIA’s *Industry Pulse*, in that publication’s Standards Action section. A sample of *Industry Pulse* Standards Action is attached as Exhibit A, noting recent TIA ANSI standards for public safety digital radio systems . In part, the PINS system enables standards developers to coordinate similar and potentially overlapping standards development activities as well as providing public notice to materially interested parties of a new work item.

Step 2 is the process by which the formulating group develops consensus on a document. Consensus does not mean unanimity. The formulating group must review and address any negative votes or comments from members of the consensus body. If a member of the consensus body or other materially interested party believes that it was treated unfairly and that the relevant procedures were not followed, it can file an appeal with the ASDO and in some cases further appeals to ANSI. In most cases, appeals are resolved quickly by action of the Secretariat. In some cases, a disinterested Appeals Panel may need to be formed. In the last 10 years, TIA only had one case where it needed to convene an Appeals Panel.

Step 3 is the public review announcement. When the consensus body believes that it has a satisfactory draft or a proposal for an American National Standard, it submits a Board of Standards Review ("BSR") form known as a BSR-8 Form to ANSI. ANSI then places a 60-day public review notice in *Standards Action* seeking any further comments from the public at large. In TIA’s process, these public review comments are treated the same as comments from members of the formulating group. If a public review commentator believes that it was treated unfairly and that the relevant procedures were not followed, it can file an appeal with the ASDO and in some cases further appeals with ANSI.

If the TIA formulating group decides to revise the proposed American National Standard as a result of a public review comment and if any substantive changes are made to the standard as a result of reviewing the comments, the proposed standard must undergo another public review.

Step 4 is the submission of the standard to ANSI for final approval as an approval, then the ASDO submits a BSR-9 Form to ANSI. If any essential patents (s) of

reasonable and non-discriminatory and otherwise in accordance with ANSI's Patent Policy

The ANSI Board of Standards Review is the committee that is responsible for standards

volunteers from companies, government and standards

developers. any member of the BSR has a conflict with the document under review, from a decisional role.

specialized subcommittee of the TIA Technical Committee, known as the Technical Standards Subcommittee (“TSSC”) that also conducts a procedural review of the entire

Thus, there are multiple protections of the due process system.

If the BSR takes an action on a standard, any materially affected party who ASDO procedures were not followed can submit an appeal to the BSR. This does not happen very often. Typically such a person would be an

A

decision of the BSR can be further appealed to the ANSI Appeals Board.

formal complaints can be filed with TIA as part of its complaint/appeals process.

The Commission's Order as it relates to TIA and ANSI

First TIA will address the Order as it relates to the accreditation of the NCC. Second we will address the proposed role for ANSI in connection with the licensing terms and conditions relating to any proprietary data incorporated into technical standards relating to public safety interoperability channel equipment.

The proposed NCC accreditation

TIA notes that in paragraphs 7, 10, 92, 105, 113, 117, 122 and 219, the Order specifies that either the NCC or a working group established thereunder will seek ANSI accreditation as a standards developer in order to develop and/or recommend certain voluntary technical standards to the Commission. TIA believes that the Order mistakenly refers to ANSI accreditation as ANSI “certification” of a standards developing body. ANSI’s role is strictly that of an accreditor. The term “certification” is a standards or conformity assessment term typically reserved for the processes of those organizations that conduct tests and certify that certain products, management systems, or services conform to certain standards. The Commission similarly has precisely defined terms used with its Part 2 Equipment Authorization Procedures, and “certification” has a precise definition in that context also. *See* §.907.

Certainly the NCC or a related working group could seek ANSI accreditation but that is not necessary in this instance. There is already an ASDO which has provided and can provide American National Standards for the type of equipment contemplated in the Order.

TIA has an Engineering Committee, currently known as TR-8, Mobile and standards for this type of private radio equipment for over fifty years. TR-8 was featured in TIA's first Standards and Technology Annual Report ("STAR") in 1994, as TIA 1994 STAR article. In addition, Exhibit C is a copy of the TR-8 sections of STAR for 1994, 1995, 1996, and 1997, highlighting the standards work of TR-8. The standards interoperability, compatibility, and compliance requirements for systems and services. Private radio systems include those used for public safety radio applications as discussed Systems ("EDACS") and produced a suite of documents for Project 25. This effort was coordinated between the TIA Ad Hoc Project 25 Interface Committee ("APIC") and TR-National Standards for public safety equipment.

If the NCC or a working group of it were to seek ANSI accreditation, then that the application would be

The ExSC also reviews it. The ExSC also places a public review notice regarding the proposed accreditation in ANSI's and solicits comments from the public.

TIA has observed that it can take up to 15 months for ANSI to approve an application for accreditation. The process is usually quicker if the applicant proposes to use one of the sets of model procedures (Annex A or Annex B of ANSI Procedures). Typically if there is a time lag in connection with an accreditation, it is because (a) the organization had little experience in connection with the administrative and procedural aspects of the standards development process, (b) the accreditation application generated opposition as a result of public review, or (c) the procedures are either very complicated or unacceptable. If the proposed scope of an applicant overlaps that of current ASDOs such as TIA or there are serious questions of competency to develop standards in a proposed technical area, it is very likely that oppositions will be filed on these and related issues. In one recent case related to telecommunications, the applicant narrowed its scope to areas of known competency and agreed to work cooperatively with other ASDOs on joint standards in remaining areas of potential overlap. Prolonged resolution of such issues can dramatically increase the time interval for accreditation.

If substantive changes are made to the proposed procedures as a result of the accreditation review process, the procedures may have to be subjected to additional public review periods.

To summarize, if the NCC or a working group of it decided to seek ANSI accreditation, it would have to (a) identify a Secretariat who would be responsible for the administrative aspects of the standards development process, (b) prepare or identify the procedures it would use to develop standards and (c) undergo the accreditation approval process and submit to subsequent procedural audits. The process to discuss, prepare and

draft a set of proposed procedures before filing with ANSI itself may take several months or even a year or two. Most ASDOs spend a significant amount of time in their initial preparation of procedures for a new organization. TIA initially processed standards under the Electronic Industries Alliance (formerly Electronic Industries Association or “EIA”) accreditation before becoming separately ANSI-accredited. TIA spent over a year developing the procedures it filed for accreditation.

TIA notes that in the Order, the Commission is requiring that the NCC complete its work in the next four years. The procedures preparation interval and accreditation interval could significantly use up a major portion of this four-year interval leaving no or limited time for the actual technical standards work. Consequently, on reconsideration, TIA strongly recommends that the Commission modify the language in its Order to specify that the NCC or a related Working Group become ANSI-accredited, or that the NCC rely on an already-accredited ANSI standards developer who has expertise in this area of telecommunications work. (Emphasis added) TIA has developed, approved and published American National Standards for this type of equipment already in its Engineering Committee TR-8.

The advantages of using an already-accredited standards developer are (a) TIA has already done standards work in the area contemplated by the Order, (b) accredited standards developers have already undergone the accreditation process (including audits of that process) and they can begin any required standards development work immediately, and (c) they have experience in administering the development process and providing the necessary documentation to ANSI. In addition, they can take responsibility

for maintaining the standard. (ANSI requires that all American National Standards must be revised, reaffirmed or withdrawn after five years.)

The proposed role for ANSI relating to intellectual property licensing is not appropriate or necessary

Having clarified ANSI's role and procedures regarding American National Standards and accreditation of standards developers and TIA's willingness to produce the American National Standards contemplated in the Order, TIA will now discuss the portion of the Order where the Commission has directed an expanded, unwanted role for ANSI. In paragraph 122 of the Order, it states that:

[T]echnical standards for all interoperability channels in the 700 MHz band should be chosen and recommended in accordance with the following process, reporting requirements and time frame:

. . . no proprietary data is to be incorporated in any standard ultimately recommended unless the proprietary data is made available on a fair, reasonable, unbiased and non-discriminatory basis, with license fees approved by ANSI and on terms and conditions set by that standards body”

TIA submits that ANSI is incapable of determining what are fair, reasonable, and non-discriminatory license fees in connection with any proprietary data incorporated into standards. There is no one on ANSI staff who has the expertise to do this, nor is it something that the voluntary standards community or intellectual property holders would want ANSI to undertake, nor is it a role that ANSI sought from the Commission. In many cases TIA members are the companies who have invested millions of dollars in Research and Development and produced new technology and patented inventions that may be used in standards if the formulating group believes there is a technical reason to justify that use.

ANSI's and TIA's patent policy in connection with American National Standards (which is very similar to the patent policies followed by ISO and IEC, the two largest non-treaty international standards organizations) provides that a standard may include patented technology if there are technical reasons to justify that approach. Any identified patent holder, however, must provide to TIA who in turn forwards to ANSI a statement that the patent holder either will (a) make its technology available to those desiring to implement the standard without compensation to the patent holder or (b) license its technology under reasonable and non-discriminatory terms and conditions.

The purpose of this policy is to balance the rights of patent holders to exploit their government-granted monopoly with the rights of users of the standard. In other words, while the patent holder may enjoy the market power it receives from its patented technology, the patent holder should not be able to obtain any unfair market power as a result of the incorporation of that technology into a consensus standard. As ANSI advised the Federal Trade Commission in its hearing on FTC vs. Dell Consent Decree, the ANSI Patent Policy is "pro-competitive" in that patent holders are required to license to all parties, including their competitors, on reasonable, non-discriminatory terms under such policies.

By filing a statement with TIA and ANSI, a patent holder represents to the community of standards users that it will license on reasonable and non-discriminatory terms and conditions. TIA and ANSI keep these statements on file, but do not review any licensing terms and conditions. Beneficiaries of this statement made to ASDOs and ANSI can seek other methods of enforcing the statements.

To date TIA believes that the ANSI/TIA patent policy, which is largely self-policing Telecommunication Union ("ITU") terms and conditions. The risks if a company makes such a representation and fails to adhere to it are that (1) the approval of the standard is subject to withdrawal published in the first instance, often rendering the company's innovation relatively useless (2) competitors can avail themselves of their legal rights in court; deliberate misconduct, the FTC can intervene. In addition, a company engaging in such conduct likely would lose some of its stature in the standards development community.

ANSI is not an SDO but accredits SDOs

Additionally, in paragraph 122, the Commission refers to ANSI as a "standards body" which might mislead some readers to think that ANSI is a standards developer, which it is not. ANSI accredits standards developers but is not a standards developer itself.

On reconsideration, TIA recommends that this paragraph be modified to read as follows, which TIA believes preserves the intent of what the Commission sought:

[T]echnical standards for all interoperability channels in the 700 MHz band should be chosen and recommended in accordance with the following process, reporting requirements and time frame:

. . . no intellectual property is to be incorporated in any standard ultimately recommended unless the intellectual property is made available on a fair, reasonable, non-discriminatory basis, as required by the Patent Policy of ANSI”

This approach would also be in keeping with the guidance given federal agencies under the National Technology Transfer and Advancement Act ("NTTAA") and Office of

Management and Budget ("OMB") Circular A-119, 63 Fed. Reg. 8545 (February 18, 1998), Sections 4a and 6j, which recommend that federal agencies participate in and support the voluntary standards process and that patents essential to a standard be licensed on terms that are reasonable and non-discriminatory.

CONCLUSION

On reconsideration, TIA requests that the Commission specifically refer to allowing existing ASDOs to be utilized by the NCC and that the Order's language referencing licensing of intellectual property be modified as requested herein.

Respectfully submitted,

**TELECOMMUNICATIONS INDUSTRY
ASSOCIATION**
Wireless Communications Division

By: _____

Dan Bart
Vice President, Standards and Technology

Jesse Russell, Chair, Wireless Communications
Division

2500 Wilson Blvd., Suite 300
Arlington, VA 22201

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