



May 24, 2005

Remarks by Michael Kerr, Director, Election Technology Council, Information Technology Association of America before the U.S. Election Assistance Commission

Good morning Chair Hillman and Commissioners:

My name is Michael Kerr and I am here on behalf of the Information Technology Association of America (ITAA) and its Election Technology Council (ETC). The ITAA is one of the nation's oldest and largest trade associations for the information technology industry, representing around 400 companies. The Election Technology Council is made up of a group of companies which offer hardware products, software and services to support the electoral process. These companies have organized as an association to work together to address common issues facing their industry. Current members of the ETC are: Advanced Voting Solutions, Danaher Guardian Voting System, Diebold Election Systems, Election Systems & Software, Hart InterCivic, Perfect Voting System, Sequoia Voting Systems, and UniLect Corporation. Membership in the ETC is open to any company in the election systems marketplace

The ETC is pleased to respond to your request for vendor perspective on issues surrounding the timing of implementation of the Voluntary Voting System Guidelines (VVSG). Our member companies have a great stake in the conduct and outcome of this process. Indeed, equipment provided by our members accounts for over 90% of voting systems in the marketplace today. Over 2,000 dedicated citizen employees at our member companies work hard to make American elections run well.

The Election Technology Council applauds the Election Assistance Commission (EAC), the Technical Guidelines Development Committee (TGDC) and the National Institute of Standards and Technology (NIST) on the aggressive timetable to adopt revised guidelines for the 2002 Federal Voting System Standard. However, despite the considerable work underway, our member companies are concerned that election officials may have unrealistic expectations about the completion of the first phase of the VVSG, the amendments to the 2002 Voting System Standard.

As the Commissioners and EAC staff already know, the drafting of the guidelines is just the first phase of a multi-step process before there will be substantive changes in the

Information Technology Association of America

1401 Wilson Boulevard, Suite 1100, Arlington, Virginia 22209-2318 Phone: (703) 522-5055 Fax: (703) 525-2279

design and function of actual voting equipment. Therefore, as the EAC considers an effective date for the VVSG, it is critically important to keep in mind all that must occur after new guidelines are in place. As history has shown, taken in whole, this is a process which can take years to complete.

Today's Reality

As this process gets underway, there are several realities that voting system vendors believe must be acknowledged and accounted for in laying the groundwork for a successful rollout of the VVSG.

- 1) ***The delays at the beginning of the EAC-NIST ramp-up period set the guidelines development process back by 12 – 18 months, and there is no reasonable way to make up for the front-end delays by shortcutting the VVSG process. There is too much at stake to expedite the process to meet artificial deadlines, while creating a risk of getting the outcome wrong.*** The current guidelines revision effort is unparalleled in terms of the scope and speed of a technical guidelines development for voting systems, and possibly for any comparable technology. Indeed, similar efforts have taken many years to complete.

For evidence of the time it takes for the marketplace to completely adjust to and absorb a new standard from release to widespread adoption, one need look no further than the case of the 2002 Voluntary Voting System Standards. In 2005, three years after their initial release, only now is the standard beginning to take hold on a near-universal basis. This lengthy adoption period has not been for a lack of trying, as meeting the standards that the election market demands provides a competitive advantage, but rather recognition that the process to make encompassing changes requires the time to do it right.

- 2) ***Promulgating change to rules, guidelines, and standards is a time-consuming, risky, and complex business for technology vendors and customers. Because of its almost unprecedented nature, it can fairly be said that no one understands how specific changes proposed in the voting system guidelines will impact the “big picture” in terms of voting system reliability, accuracy, usability, and security.*** Moreover, the changes proposed might have a profound impact on the economic and business models under which companies operate in the voting system marketplace.

The vendor community is pleased to be working with EAC and NIST as one of the constituencies providing input to the guidelines, but due to the way the guidelines development process has been designed and operated from the outset,

that is, without direct vendor participation on the Technical Guidelines Development Committee, our members will be coming in on the tail end of the process and sorting through a complex set of proposals. Some of our members have dozens of different products in the field. To turn on a dime to bring all products into compliance with the new guideline is not likely to comport with the realities of generating quality products, producing shareholder value, and assisting the customers, election officials and ultimately voters, with the key element of democracy, providing secure, accurate and reliable voting systems.

It is unrealistic to expect that vendors, the independent testing labs, and customers, which include state, county and local officials, will be able to make wholesale changes to current products and get those products certified and into the field for a national election in November 2006. While we have yet to see the final version of the guidelines, early indications point to many new requirements that impact widely on vendor equipment and practices, as well as on the customer. Some have been drafted hastily and may conflict with other requirements. Changes to the requirements are still occurring today will continue through the public comment period. These proposals will require interpretation, test design, and product certification. On the vendor side, a likely scenario will be that changes contained in the VVSG will have to be factored into system design, production, testing, marketing, support and maintenance operations over the course of two to three years after their final release.

Customers will be faced with a similar set of metrics and procedures when it comes to acquisition, deployment and support for systems seeking compliance with the new VVSG. In addition to funding and management issues, there remains a host of policy questions to be considered and resolved at the customer level. In fact, consideration of questions related to paper requirements has already slowed considerably the acquisition and deployment of new equipment in several states, even in the case of systems mandated for replacement under HAVA.

Ensuring Compliance with HAVA Deadlines

Members of the ETC are concerned that many state and county officials are delaying their acquisition and deployment of voting systems under the false assumption that the adoption of new standards will immediately result in revised voting technology appearing in the marketplace prior to January 2006, and that these new systems can be implemented and used in 2006 primary and general elections. Given the realities described above, it is simply not possible to achieve these timelines. Therefore, if state and counties delay their decisions, it is very likely they will miss the 2006 deadlines for HAVA compliance.

To help minimize that issue, we think it would be helpful for the EAC to advise election officials that waiting for these guidelines to be implemented may jeopardize their ability to comply with HAVA deadlines. The EAC should likewise assure jurisdictions that equipment properly certified to existing standards is capable of providing secure, accurate and reliable elections that meet the functional requirements of the Help America Vote Act.

Under a best-case scenario, it will be still be difficult for states and counties to meet the HAVA deadlines under the current 2002 standards unless they act quickly. Recognizing that it often takes three to six months for counties to select a system and complete contracts, waiting for the 2005 VSSG will effectively preclude counties and states from completing their transition to new voting technology under the deadlines established by HAVA.

We urge you to communicate these important timeline issues to counties and states and encourage them to proceed as quickly as possible under the currently available standards.

Grandfathering Current Equipment

It is our understanding that the subject of grandfathering current equipment under the new guidelines, as well as phased implementation through effective dates has come up for discussion at the TGDC. This is a critically important issue which merits consideration by the EAC.

As we have stated above, we believe that equipment certified under the 2002 standard is HAVA-compliant. The core requirements of the 2002 standard make up the VVSG 1, with some notable additions. Therefore, should it not follow that systems certified to meet 2002 standards, and that have been proven in the field to provide the customer and the voter with an acceptable level of usability, reliability, accuracy, and security, would be grandfathered under the VVSG?

The decision to grandfather or re-test the installed base of equipment to the 2005 guidelines leads to some tough questions:

- What impact of the business case and lifetime cost of equipment would be caused by changes proposed in the guidelines?
- What is the gain to the customer and to the voter of equipment recertified under the VVSG?
- Is a minor modification sufficient to cause retesting of thousands of lines of code and dozens of hardware components?

- Should higher immunity testing thresholds mandate costly hardware changes to existing installations when the benefits are minimal?

This decision raises serious funding issues, as well. If equipment certified under the 2002 standard is not grandfathered under the new guidelines the cost burden to the customer will be onerous. Without some type of grandfathering provisions under the VVSG, additional federal funds will be necessary to cover the cost of replacement equipment and upgrades.

The Continually Evolving Nature of Guidelines Implementation

We believe that implementation of the guidelines should follow the old adage: “perfect should not be the enemy of good.” While we always strive towards perfection, we believe that making perfection the operating standard in the guidelines development process and then requiring re-certification of existing equipment will lead to slower adoption of the guidelines, greater backlogs in systems certification and testing, and other undesirable and unintended outcomes.

The Commission and customers should know that companies operating in a profit-seeking market are driven to out-compete each other on the basis of product features, benefits, quality, service, and price. It is only logical that they will make every effort to bring their products into line with the updated guidelines because that is what their customers will be demanding. But to find a system, an entire product line, or even a generation of voting equipment un-certifiable against a possibly unattainable or untestable standard set forth in the VVSG, while that equipment can readily meet the requirements spelled out in HAVA, would be a poor outcome and one that may force states to squander federal and state monies already appropriated, disbursed and spent.

Conclusion

Please accept the foregoing comments in the spirit offered. The ETC members fully support the goals of the VVSG development efforts. However, as the party charged with implementing the guidelines into all of the legacy, current, and future election products, we urge circumspection and caution in this process. ***Workable and reasonable requirements and timetables are key.***

Thank you for providing us with the opportunity to express our concerns and participate at this level. The ETC members will continue to participate and provide meaningful input through all the avenues afforded to us. Again, we thank the Commissioners and the EAC staff for your hard efforts and all that you have accomplished. I would be happy to answer questions for the Commission.