



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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April 30, 2012

The Hon. Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Re: Request for Information Regarding Federal Participation in the
Development and Use of Voluntary Consensus Standards and in Conformity
Assessment Activities, 77 FR 19357 (March 30, 2012) (the "Request").

Dear Mr. Sunstein:

The Alliance for Telecommunications Industry Solutions ("ATIS") respectfully submits these comments in response to the Request for Information ("RFI") seeking input to the Office of Management and Budget ("OMB"), National Institute of Standards and Technology ("NIST"), Federal regulators, and other relevant agencies on how the Federal government should address issues in standards and conformity assessment that have emerged since OMB Circular A-119 was promulgated in 1998, and more specifically to inform OMB's consideration of whether and how to supplement Circular A-119 to provide additional or more specific guidance on standards and conformity assessment to agencies engaged in rulemaking, procurement, and other activities.

From its experience as a standards development organization and with regard to Circular A-119 specifically, ATIS submits that the use of voluntary consensus standards by agencies has proven successful, that further refinements to Circular A-119 through regulatory amendment are not necessary, that continuing coordination between private standards bodies such as ATIS and Federal agencies regarding standards development should proceed, and that NIST should continue to play the important role of coordinating such efforts between the private and public sectors.

About ATIS

ATIS is a not-for-profit global technology and standards development organization. ATIS is committed to providing leadership for, and the rapid development and promotion of, worldwide technical and operations standards, technical reports, and other materials ("Deliverables") for information, entertainment, and communications technologies. ATIS was established in 1983 in anticipation of the AT&T divestiture, under its prior name, the Exchange

Carriers Standards Association. At the outset, ATIS focused on the development and publication of standards and other materials related to traditional wireline telephone technologies and specifically with respect to network and interface standards made necessary by the creation of competition between and among exchange and interexchange wireline network interests. Since its founding, ATIS has evolved as relevant technologies and competitive interests have developed.

In developing standards and other Deliverables, ATIS, from the outset, has followed voluntary consensus procedures that incorporate the attributes of openness, balancing of interests, due process, an appeals process, and consensus, all in a manner consistent with Circular A-119, as revised February 10, 1998. It continues to do so currently. Such procedures can be described as follows:

- *Openness*: Participation in ATIS forums and committees is open to all interested stakeholders. Any of these persons may introduce new issues for consideration within the relevant ATIS forum or committee. Forums and committees publish fair, objective, and unbiased meeting notes.
- *Balance of interests*: ATIS' membership includes representatives of all aspects of the industries that ATIS serves, including manufacturers, suppliers, and users (including consumers and government agencies) of standardized products and services. A balance of interests is facilitated through the waiver of membership fees for charitable organizations, public interest groups, consumer groups, the disability community, and others.
- *Due process*: ATIS members are afforded the opportunity to comment, including negatively, in the development of ATIS standards, technical reports, and other Deliverables. All comments are addressed through the ATIS forum and committee structure.
- *An appeals process*: ATIS procedures allow for review of committee and forum decisions. In connection with the development of American National Standards, further appeals rights exist through the American National Standards Institute.
- *Consensus*: ATIS decision-making is based upon consensus, i.e., "... when substantial agreement has been reached among those participating in the issue at hand. Substantial agreement means more than a simple majority, but not necessarily unanimous agreement."

ATIS' membership has always been broad and diverse, and now includes stakeholders from the information and communication technology industries, the entertainment industry, as well as government representatives. Such stakeholders represent, among others, wireline and wireless service providers, equipment manufacturers, competitive local exchange carriers, data local exchange carriers, providers of commercial mobile radio services, broadband providers, software developers, consumer electronics companies, digital rights management companies, and internet service providers.

In addition to its members, federal government representatives have participated directly in ATIS' technical activities, including those from such agencies as the National Communications System,

the Department of Defense, the Federal Bureau of Investigation, the Federal Communications Commission (FCC), the Department of Homeland Security (DHS), the Department of Commerce, and the Federal Emergency Management Agency (FEMA). In just one example of the public-private partnership that ATIS facilitates, private stakeholders, together with representatives from some of these agencies (such as FCC, DHS and FEMA), worked through ATIS and the Telecommunications Industry Association to develop a standard needed to implement a program that allows participating commercial mobile service providers to send emergency alerts to customers' mobile devices.¹

In all, representatives from over 200 organizations participate in standards development and other technical activities through ATIS and its forums and committees. ATIS' roster is extensive and reflects its' broad efforts to address the evolving technical and competitive environments in the industries that it serves, while at the same time maintaining involvement in more traditional technologies and issues. The following brief overview of ATIS' current forums and committees, each of which publishes its own reports and other proprietary materials, illustrates the organization's success in this regard:

- **Automatic Identification and Data Capture Committee** establishes guidelines that simplify the receiving, shipping, transportation and tracing of telecommunications products through company and industry business processes and the global supply chain.
- **Copper/Optical Access, Synchronization and Transport Committee** develops standards and technical reports for home, access and transport networks, and synchronization technologies over copper and optical medium.
- **Cloud Services Forum** develops standards and other documents for the development of a framework to ensure the integration of network and information technologies related to the emerging cloud computing marketplace.
- **Emergency Services Interconnection Forum** develops standards and other documentation for the interconnection of emergency service networks.
- **IMSI Oversight Council** develops guidelines for the management and administration of International Mobile Subscriber Identities that have been assigned to the United States and its possessions as authorized by the U.S. Department of State.
- **Industry Numbering Committee** develops technical guidelines and recommendations associated with industry-wide issues relating to planning, administration, allocation, assignment, and use of the North American Numbering Plan.
- **IPTV Interoperability Forum** is the leading developer of technical requirements, standards, and specifications for Internet Protocol Television.
- **Next Generation Interconnection Interoperability Forum** addresses next generation interoperability issues associated with next generation technologies.
- **Network Performance, Reliability and Quality of Service Committee** develops standards, requirements, and technical reports relating to the performance, reliability and security aspects of communications networks, as well as the processing of voice, audio, data, image and video signals, and their multimedia integration.

¹ Such public-private interaction is consistent with the National Technology Transfer and Advancement Act of 1995, Public Law 104-113 as well as Circular A-119.

- **Network Reliability Standards Committee** addresses network reliability improvement opportunities through the development of standards, technical requirements, and technical reports.
- **Ordering & Billing Forum** is comprised of customers and providers to address issues affecting ordering, billing, provisioning, and information exchanges concerning access services and connectivity matters.
- **Packet Technologies and Systems Committee** develops standards relating to services, architecture, and signaling in relation to packet technologies and systems.
- **SMS/800 Number Administration Committee** identifies, develops, and implements the resolution of issues impacting existing toll free products, services, and evolving technologies affecting future developments in the toll free industry.
- **Sustainability in Telecom: Energy and Protection Committee** develops standards and technical reports for telecommunications equipment and environments in the areas of energy efficiency, environmental impacts, and power protection.
- **Telecom Management and Operations Committee** develops operations, administration, maintenance, and provisioning standards relating to Operations Support System and Network Element functions and interfaces for communications networks.
- **Wireless Technologies and Systems Committee** develops standards and technical reports related to wireless and/or mobile services systems.

Based upon its operations consistent with Circular A-119, ATIS has filed under the Standards Development Organization Advancement Act of 2004 (the “SDOAA”), 15 U.S.C. § 4301 *et seq.*

Responses to Specific Inquiries

Consensus vs. non-consensus standardization activities

ATIS has followed its open and consensus-driven process since its inception. In doing so, ATIS has facilitated the development of traditional standards supported by a broad representation of industry. ATIS has successfully used its process even with respect to the development of more targeted Deliverables, which generally may require expedited completion. ATIS has done so in connection with such Deliverables through the careful definition of projects and equally careful management of its process. In each instance, ATIS has followed its consensus approach, thus allowing the opportunity for input from all interested parties. As a result, whether in connection with more traditional standards activities or with targeted, time-sensitive Deliverables, ATIS has allowed for the development of solutions that are technically sound and reflective of input from those stakeholders with an interest in the technical outcome. This includes solutions used by Federal and other governmental agencies.

Based on this experience, ATIS supports the continued focus of Circular A-119 on standards developed through a consensus process, which has the other attributes identified in Circular A-119 of openness, balance, and due process. Modification, based on ATIS’ experience, is not necessary even when sophisticated technical solutions require prompt attention and resolution.

Indeed, elimination of Circular A-119’s requirement for consensus processes would, in ATIS’ opinion, risk the quality and nature of standardization, especially when standards are used by

Federal or other government agencies. The risk posed by non-consensus procedures would be a qualitative lessening of the technical merit of the standard or other Deliverable because of the diminished opportunity for parties of interest to contribute to the development of such works, and could result in output that favors one interest over those of others. Where the standard or other Deliverable is used by Federal or other agencies, such risks should be particularly avoided.

Continued requirement of consensus procedures also is appropriate because of the incorporation of Circular A-119's standards in, for example, the SDOAA. Under the SDOAA, standards organizations can qualify for protection against antitrust treble damage and attorneys' fees awards, as ATIS has done. The procedural safeguards afforded by a consensus approach, coupled with attributes of openness, balance, and due process, mitigate against antitrust liability by standards developers and justify the protections afforded by the SDOAA. Lesser requirements may not provide the same degree of assurance regarding standards development activities, and thus might expose standards organizations, such as ATIS, to greater antitrust risks and damages liability.

ATIS, therefore, submits that a continued focus of Circular A-119 should be on standards developed through a consensus process. To the extent that further improvements may be made to facilitate coordination between private sector standardization and Federal agency use of privately adopted standards, it would be best to pursue such efforts through continued dialogue between industry and Federal agencies using existing processes, including through NIST.

Protection of Copyright Associated With Standards

Circular A-119 states government policy to "observe and protect" the rights of copyright holders when incorporating by reference ("IBR") into law voluntary consensus standards. This is an important provision of the Circular, and should be maintained.

ATIS publishes copyrighted Deliverables that provide information and voluntary industry guidance on a wide range of topics. Every ATIS Deliverable is a work of authorship that is protected under copyright. ATIS Deliverables are made publically available. ATIS members receive access to Deliverables through membership. Some Deliverables are available to non-members at no cost, while other Deliverables may be purchased.

Federal, state, and local government agencies may obtain, at no cost, copies of ATIS Deliverables for internal distribution and use within the specific agency. ATIS freely provides the requested works once the agency represents that it will not otherwise distribute, publish, or circulate the Deliverables except for internal use.

A number of ATIS Deliverables comprise IBR materials. Examples of such materials are:

- The FCC requires the North American Numbering Plan Administrator and the Pooling Administrator to comply with the guidelines developed by the ATIS Industry Numbering Committee (47 CFR § 52.13(b)(3)).
- The Communications Assistance for Law Enforcement Act ("CALEA"), Public Law 103-414, also acknowledges industry standards by establishing that service providers may rely on industry-developed standards when determining compliance with CALEA. One such

“safe harbor” standard is ATIS’ standard entitled “Lawfully Authorized Electronic Surveillance for Voice over Packet Technologies in Wireline Telecommunications Networks (ver. 2).”

- The Commercial Mobile Alert System, also known as the Personal Localized Alerting Network (“PLAN”), incorporates ATIS-developed industry standards. The PLAN is an alerting network designed to disseminate emergency alerts to mobile devices such as cell phones and pagers. Industry standards, including standards developed by ATIS jointly with the Telecommunications Industry Association, were adopted for use in PLAN.

The current policy of respecting the rights of copyright holders when IBR promotes the development and adoption of consensus-based industry standards and should be sustained. It respects the copyright holder’s property interest in exploiting its works in a manner that sustains its mission. Agencies benefit from such an arrangement by gaining access to standards that are market-driven and consensus-based.

Using and Updating Standards in Regulation.

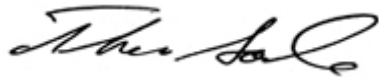
ATIS has an effective, collaborative relationship with government agencies that facilitates the work of those agencies in critical areas related to the subject matters addressed by ATIS. As agencies consider revisions to regulations, ATIS supports increased governmental outreach through, for example, even greater governmental participation in private standards bodies such as ATIS.

In sum, the current use of voluntary consensus standards by agencies has been successful. Further refinements to OMB Circular A-119 through amendments are not necessary and continuing coordination between private standards bodies such as ATIS and government agencies regarding standards development should be through NIST without modification to the terms of the Circular, which should be sustained.

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We appreciate the opportunity to provide these comments, and your consideration of them.

Respectfully submitted,



Thomas E. Goode
General Counsel