



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

November 19, 2007

Mr. Howard Van Pelt
President & CEO
Advanced Voting Solutions, Inc.
1600 Redbud Blvd., Suite 301
McKinney, TX 75069

Mr. Van Pelt,

This letter responds to your correspondence of October 17, 2007 (Attachment 1) which you submitted as a response to the EAC letter of October 10, 2007(Attachment 2). In the October 10th letter, the EAC asked AVS whether or not it wished to continue its EAC testing initiated on AVS WINWare 2.0.4.

You responded that, “(a)t this time AVS does not anticipate further testing with iBeta.” This statement appears to signify that AVS has voluntarily chosen to remove WINWare 2.0.4 from testing for EAC certification. Absent the receipt of a statement from AVS to the contrary, the EAC will therefore terminate your application for the testing of WINWare 2.0.4. on Tuesday, November 27, 2007. After that time, should AVS wish to have this system tested for EAC certification, it would need to submit a new application for voting system testing, as required by Section 4.3 of the EAC *Testing and Certification Program Manual*. Please also remember that any future EAC certification testing done on this voting system must be undertaken through iBeta Quality Assurance. (See *Manual*, Section 4.3.1.2)

In reviewing previous correspondence from AVS, it has become apparent that you have some fundamental misunderstandings regarding the scope and requirements of the EAC program. Based upon your continuing references to NASED and its qualification of voting systems, it appears you are confusing the NASED qualification program with the EAC Federal Certification Program which began on January 1, 2007. The EAC would like to clarify some inaccurate statements made in your letter of October 17, 2007.

On the first page of your letter, you state that “The PA certification report dated February 17, 2006, referred to confirmation received from Ciber Labs, a federally recognized ITA at that time....” The voting system division of Ciber Labs has never received Federal accreditation, although they remain active in seeking such accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (NIST). Ciber served as an Independent Test Authority for

the National Association of State Election Directors (NASSED). Please remember that the qualification testing for Pennsylvania you continually reference on the first page of your letter was done under the NASSED program and holds no relevance to testing done for EAC certification. (See *Manual*, Section 3.3)

In the third paragraph on page two of your letter, you state that, "... believing that the certification costs for version 2.0.4 would be in the same order of magnitude as the previously experienced minor engineering change (2.0.3), AVS entered into an agreement with iBeta, the designated VSTL." If AVS would have taken sufficient time to familiarize itself with our certification program *Manual*, it would have noted the requirement in Section 3.4.2 that systems not previously certified by the EAC "...must be **fully tested** and submitted to the EAC according to the requirements of Chapter 4 of this Manual." (Emphasis added) The EAC did not grandfather NASSED qualified voting systems. NASSED qualifications are, as we have repeatedly stated, irrelevant to the EAC program.

On the last page of your letter, you state that "The efforts you propose would ultimately involve complete review, testing and certification to the EAC 2005 VVSG standards not applicable or in effect at the time of our sale and delivery to the PA customer base." Participation in the EAC certification program is voluntary. States determine the requirements for voting systems used within their jurisdiction. Furthermore, your voting system was in the process of being tested to the 2002 VSS, not the 2005 VVSG as you suggest. Testing to the 2002 VSS was requested by AVS in its Application for Testing. You signed this application yourself on February 14, 2007.

In an effort to assist AVS in any future certification efforts, the EAC suggests that AVS, and all prospective manufacturers of voting systems seeking certification, carefully read the EAC *Testing and Certification Program Manual* in order to minimize confusion regarding the very specific requirements of the program.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Hancock". The signature is fluid and cursive, with the first name "Brian" and last name "Hancock" clearly legible.

Brian J. Hancock
Director, Testing and Certification

(Attachments)

October 17, 2007

Brian J. Hancock:
Director, Testing and Certifications
U.S. Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 2005

Dear Mr. Hancock:

I am in receipt of your letter dated October 10, 2007 and intend this letter to be responsive to your inquiry.

By way of background, I believe it is important to review the historical context of this letter.

Our operational goal has always been enabling local jurisdictions to conduct successful elections and accurately record the will of the voting public. In 2005, AVS endeavored to sell voting systems to PA counties. Sales in PA could be affected only upon prior certification of the AVS voting system by PA and the then applicable ITAs and NASED. Because of certification delays, backlogs and required manufacturing lead times, AVS chose to sell to 3 counties and to forgo sales to 10 PA counties rather than jeopardize HAVA funding for those 10 counties. The PA certification report dated February 17, 2006, referred to confirmation received from Ciber Labs, a federally recognized ITA at that time, that the AVS voting system hardware and software had successfully completed qualification testing in compliance with the Federal Election Commission 2002 Voting Standards. Subsequent to certification, sale and delivery in May 2006, the AVS voting equipment was used successfully in two primary elections and one general election in each of the three PA counties. In the case of one of the counties (Lackawanna), the most recent primary election successfully dealt with the highest write-in vote in that county's history. Counties using the certified voting systems of competitors had significantly less success in dealing with write-in ballots (for example Luzerne).

In order to satisfy security control questions identified in the February 17, 2006 Certification from PA, AVS made a minor engineering change to its software. PA reexamined the hardware and software on December 27, 2006 and completed the reexamination on January 3, 2007. PA certified the AVS 2.0.3 voting system in a report dated April 24, 2007. That report indicated PA received confirmation from Ciber Labs that the AVS System, both hardware and software, had successfully completed qualifications testing in compliance with the Federal Election Commission 2002 Voting System Standards.

You will recall your request regarding the manufacturer of the motherboard utilized on the System 2.0.2 and 2.0.3 which had been certified in PA and by NASED. We trust that we have clarified your misunderstandings regarding this matter by our submission on August 19, supplemented by extensive documentation which accompanied our letter to you dated September 19, 2007. Accordingly, there should be no question at this time that the AVS version 2.0.3 which AVS sold to PA counties remains NASED qualified and PA certified.

In addition to the foregoing change and at the request of its PA customers, AVS created further minor engineering changes and offered to provide such software to such customers (what is now called version 2.0.4). This modification was designed specifically to simplify Pennsylvania unique cross endorsed voting and secondarily related ballot preparation. Neither of these minor engineering changes would require further PA certification under existing PA law dealing with DREs, namely 25 P.S. §3031.5(d). When AVS first offered the system to PA's Bureau of Elections for review in early 2007, the Commissioner (Harry Van Sickle) suggested that the change (our nomenclature 2.0.4) should be submitted to the EAC and a VSTL prior to PA review and examination. Eventually, however, Mr. Van Sickle agreed to Pennsylvania review and examination, and Dr. Glenn Newkirk conducted a satisfactory test of the change related to cross endorsed voting in September 2007.

Initially and as a further accommodation to Mr. Van Sickle's suggestions, and believing that the certification costs for version 2.0.4 would be in the same order of magnitude as the previously experienced minor engineering change (2.0.3), AVS entered into an agreement with iBeta, the designated VSTL. AVS and iBeta subsequently had a contractual dispute, which was eventually settled. See the attached Order re: Stipulation for Dismissal with Prejudice signed by Judge Michael J. Speer in connection with the case of iBeta LLC v. Advanced Voting Solutions, Inc.

As an outgrowth of the publication of EAC/AVS/iBeta correspondence by the EAC, the Secretary of State of PA suspended the use of the approved AVS version 2.0.3 in the upcoming general election in November. Again as a matter of customer relations, AVS immediately investigated the feasibility of accommodating the PA Secretary of State by possible expedited certification of the version 2.0.4 voting system, so its PA customers could use that system in the November election. However, you will recall EAC refused to consider confirmation based solely on the completion of testing by iBeta; in addition, EAC advised it would not consider certification until it would be able to review a full and final report from iBeta. It was also indicated EAC could not schedule consideration of a test plan of certification on an expedited basis.

With time, it became apparent that PA would not remove its suspension of version 2.0.3 in time for the November election, that EAC consideration of version 2.0.4 could not be completed in time for use in the November election and that the costs of EAC certification of version 2.0.4 using the VSTL would be substantially in excess of the previously contemplated AVS accommodation to its customer base in PA. The systems

we delivered in 2006 were tested and certified to then existing Federal and PA standards and satisfied our vendor obligations to our customers. In fact, the systems have been used successfully in three significant elections to date. The testing you now suggest involves more than a review of the minor changes we have attempted to provide as a matter of accommodation. The efforts you propose would ultimately involve complete review, testing and certification to the EAC 2005 VVSG standards not applicable or in effect at the time of our sale and delivery to the PA customer base. While we have been cooperative to accommodate requests e.g. the cross-endorsed voting issue, it is not our responsibility or obligation to now provide or continue to provide modification, certification or re-certification to ever changing Federal standards. In that regard, AVS certification or recertification efforts beyond providing the developed software already delivered to Pennsylvania, involves costs and expenditures that will require third party funding. At this time AVS does not anticipate further testing with iBeta.

In passing we note with interest that Wayne County plans to use a voting system in place of the AVS version 2.0.3 for the November election. The system has a similar limitation as to cross endorsed voting as does the certified AVS version 2.0.3. However, unlike AVS, the vendor has not proposed any engineering solution to the cross endorsed voting requirement as effective as the version 2.0.4 that AVS first offered PA in January 2007 and satisfactorily demonstrated to Dr. Newkirk in September, 2007. Northampton County plans to use its old lever machines in the November 2007 election. In that case, lever machines, which are not HAVA compliant, will be used as a replacement for the HAVA compliant AVS 2.0.3 Voting System. Furthermore, Lackawanna County plans to use an optical scan central count system that is not HAVA compliant and can not be used in future elections. The granted, permitted use of above systems and denial and suspension of the AVS system is confusing, if not disingenuous.

If you have need for any additional comments or information, please call.

Respectfully yours,



By _____

Howard T. Van Pelt
President / CEO
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1600 Redbud Blvd. #301
McKinney, TX 75069
(972) 548-0079 Phone
(972) 548-2448 Fax

cc: Harry Van Sickle



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October 10, 2007

Mr. Howard Van Pelt
President & CEO
Advanced Voting Solutions, Inc.
1600 Redbud Blvd., Suite 301
McKinney, TX 75069

Mr. Van Pelt,

The EAC has received notice from iBeta that "Advanced Voting Solutions (AVS) and iBeta Quality Assurance have reached an agreement on the contract breach identified in our July 26, 2007 letter." iBeta has also requested that the EAC contact AVS for other information relating to this matter.

The EAC requests that AVS send us verification that the matter has been settled as noted in the iBeta email correspondence, and whether or not AVS wishes to continue with the testing process initiated on AVS WINWare 2.0.4.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Hancock". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian J. Hancock
Director, Testing and Certification

cc: Carolyn Coggins, iBeta Quality Assurance
Brad Bryant, President, National Association of State Election Directors (NASSED)