United States Election Assistance Commission

Meeting Minutes – August 23, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, August 23, 2005 at 10:00 a.m. in Denver, Colorado at the Adam's Mark Hotel 1550 Court Place, Denver, Colorado 80202.

Call to Order: Chair Hillman called the meeting to order at 10:00 a.m.

Pledge of Allegiance: Chair Hillman led all present in the Pledge of Allegiance.

Roll Call: Chair Hillman recognized Juliet Thompson, EAC General Counsel, who called the roll and in addition to the Chair, found present Vice Chairman Paul DeGregorio, Commissioner Ray Martinez, III and Commissioner Donetta Davidson.

Adoption of Agenda: Chair Hillman recognized Vice Chairman DeGregorio, who moved to adopt the agenda for the meeting of August 23, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Adoption of Minutes: Chair Hillman recognized Vice Chairman DeGregorio who moved that EAC adopt the minutes of the Commission meeting held on July 28, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Updates and Reports: EAC Vice Chairman DeGregorio welcomed Commissioner Davidson to her first EAC public meeting and provided an update on the Help America Vote Act (HAVA) Title II requirements payments.

The Vice Chairman reported that the EAC has not made any payments since the last report on July 7, 2005. EAC distributed $2.3 billion and $76 million left to distribute from funds appropriated in fiscal year (FY) 2005. Only Delaware, Guam, Montana and Oregon have not received any 2004 requirements payments. Certifications from Alaska and Guam are pending for over $6 million in payments. Alaska has filed a statement of certification for 2003 and 2004 payments. The state of Michigan has received a partial payment and plans to submit a certification for additional payments. Delaware needs to file a state plan to address the 2004 funds. EAC expects Hawaii to apply and certify for the 2004 funds because of the recent appropriated five percent match. Montana delivered its state plan to EAC and it has to be published in the Federal Register. EAC is waiting for the

conclusion of a 30-day Federal Register publication before processing the certification.

Chair Hillman introduced Carol Paquette, Senior Manager for Special Projects, to give an update on public comments received regarding the Voluntary Voting System Guidelines (VVSG). The guidelines went out for public comment at the end of June and will be out for comment until the end of September.

Ms. Paquette reported that EAC received 141 comments. Most comments were concise to a single requirement in the guidelines document. Several comments were followed by documentation and EAC is in the process of going through those documents to extract all the various comments to allocate them to the appropriate places in the guidelines. Half of the comments were received by email and the rest on the EAC website.

Ms. Paquette concluded that several of the comments were observations specifically related to the guidelines. The remaining observations were very general to the effect that the EAC should make paper audit trails mandatory or the election process in the United States should be improved. There were no specific attributions to the guidelines document that need to be modified. The most specific comments were on security and accessibility.

Ms. Paquette stated that the public comment period closes September 30, 2005 and there will be future reports. All the comments are posted on the EAC website for public access.

Commissioner Martinez asked Ms. Paquette if the 141 comments were pertinent to the document that EAC published in the Federal Register. Ms. Paquette stated that about half of the comments were directly referencing the guideline and the other half were general in nature. The NIST comments were processed with the public comments.

Chair Hillman introduced the panel of speakers for the next presentation regarding voting system certification and laboratory accreditation: Stephen Berger and Art Wall with TEM Consulting and Brian Hancock, Election Research Specialist with EAC.

Mr. Berger gave some introductory remarks regarding IEEE standards and the work of TEM Consulting. Mr. Berger reported that his presentation would discuss the elements that are common to conformity assessment systems, and how EAC may implement these elements in a system for certification and decertification of

voting systems and voting equipment. This presentation would be dedicated to discussing the VVSG.

Certification of a product is a means of providing assurance that it complies with specified standards and other normative documents. There are a number of conformity assessment systems that exist, and a body of international standards under the International Standard Organization (ISO) that give guidance on how to construct a conformity assessment system. For example, ISO Guide 17025 gives guidance on how to assess a laboratory as to its confidence.

The components of a conformity assessment system are initial type testing. A representative system is brought to an accredited laboratory and is evaluated as to whether it meets the requirements. The second element is the evaluation of the supplier's quality system, and their change control system. The third element is field information and feedback. Usability can be enhanced or diminished by the way the system is set up in the polling place.

The EAC has a pivotal role in this process, as do state certification authorities. The testing laboratories and the vendors, through state and local officials, all have vital roles.

Mr. Berger compared the national program with the state and local programs. The primary concern of the national program is to evaluate if the system design meets the requirements set forth. The focus is on evaluation of a system that is delivered, representative of a design for a voting system. The primary concern of the state and local officials, is that the units delivered meet and continue to meet the requirements over their useful life.

Mr. Berger described the proposed EAC certification process. Vendors will be registered, which will include their delivering information on their configuration control and quality systems. The vendor's system is brought to a set of accredited labs for testing. The labs first develop a test plan and deliver that to the EAC for review and approval by a set of technical experts. Once the test plan is approved and testing is conducted, a test report is prepared and delivered to EAC. Those documents are reviewed by EAC's technical experts. If the report is satisfactory then the following will occur:

- The system will be certified by the Commissioners. The vendor needs to put that system under its quality and configuration control process.

- An adequate and a technically detailed description of the system will be prepared and delivered to state and local officials.
- The software will be deposited in the software records library at NIST and hash codes and other metrics will be delivered.
- The system will be delivered for deployment and use.

Vendors need ongoing communication with the Commission, with state and local officials, technical viewers, NIST, the National Voluntary Laboratory Accreditation Program, the software reference library, and the citizens. Communication also envisions the vendor notifying officials of changes that they proposed, and then appropriate evaluations being done to upgrade systems certifications.

Mr. Berger concluded recommending the process described above.

Mr. Art Wall reported that his presentation would compare the proposed EAC certification program with a similar product approval program, mandated by the United States Federal Communication Commission (FCC).

EAC proposed certification system is comparable to other private sector and government conformity assessment systems. Mr. Wall briefly explained the mission and duties of the FCC. He explained that the FCC adopted mandatory standards and a quality approval program (conformity assessment program) and that the FCC regulates a number of products such as transmittals, computers, and other devices.

Mr. Wall briefly outlined the FCC's equipment modification program. Most products are subject to manufacturer's self-declaration. For certain items like transmitters there are greater potential for radio interference; therefore, a certification program was adopted.

- The product is tested to determine compliance.
- A report is prepared.
- The report is sent to the FCC or a telecommunication certification party.
- It is accredited by ANSI and designated by FCC.
- The manufacturer sends the application to either the FCC for approval or the ETCB.

- The FCC issues a grant, a label is put on the product with user instructions, and the product is marked.
- If necessary, follow-up audits and compliances are conducted.

Mr. Wall concluded while there are some minor differences between the proposed EAC system and the FCC certification system, the major issues and procedures are essentially the same. Both systems are developed in the open, with public input and guidance, and both have all the essential same elements. The key element of the EAC certification program is the use of technical reviews to review and evaluate the efficiency of voting systems. Sufficient training and time should be allocated to develop eight to ten technical reviewers. Meetings of the technical reviewers and the EAC staff should be held on a regular basis to ensure consistency of the results. Constant communication between all parties is a key element.

Mr. Brian Hancock began by thanking the Chair and explaining that the EAC has been working with Mr. Berger and Mr. Wall over the past several months to develop the proposed EAC testing and certification program, parallel to a developed and recognized program in other government agencies.

The National Association of State Election Directors (NASED) has been the entity in charge of testing and qualification of voting systems. The Federal Election Commission (FEC) passed the first set of voluntary voting systems standards in 1990. Congress did not give any federal agency the authority to implement the standards. NASED stepped in and developed a process to use these standards to test voting systems.

NASED worked with three test labs, accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). The process is that a voting system vendor will contract with one of these test labs to evaluate its voting system. These systems are currently tested to the 2002 Voting Systems Standards. Once that process has been completed, the test report moves from the test lab to members of the NASED technical subcommittee.

The NASED technical subcommittee is comprised of experts in election administration and computer science. They review the test reports to make sure that the labs have done their due diligence in testing these systems. Then, they recommend to the full voting systems board that the systems be qualified. Finally, NASED issues a qualification number to the voting system.

Mr. Hancock read the staff recommendation for the EAC voting system certification process into the record. In addition, the documents were submitted for inclusion into the written record. (Attached – Appendix 1)

Vice Chairman DeGregorio thanked the Chair and the panels for their presentations. He asked Mr. Berger how the EAC national program was going to help instruct state and local election officials in the process that they use to certify election equipment in their state. Mr. Berger responded by giving a comparison of the programs. In the national program, the primary focus is the common minimum requirements for voting equipment that are common in all states. In the state program, the primary focus is the unique ways that each state conducts elections and evaluates systems as to their adequacy to support individual state requirements.

Vice Chairman DeGregorio asked Mr. Hancock to give a time frame for the first equipment to be run through this program and to be certified by the EAC. Mr. Hancock responded by stating that at the end of the calendar year, EAC would be able to begin its testing program.

Vice Chairman DeGregorio asked Mr. Hancock to describe two to three major differences or enhancements to this process, EAC versus NASED process that has been in existence for several years. Mr. Hancock responded by stating the most apparent difference is the transparency of the process. The current process does not allow the public, media, or other members to review what goes on in the process, and the testing of labs to a great extent. EAC is going to provide a program to allow more openness. Much information will appear on the EAC website. In addition, the EAC process will have more resources than the NASED process, resulting in a larger and more consistent program.

Commissioner Martinez thanked the Chair and the panels for the presentations. He asked Mr. Hancock how many states currently participate or require a national certification of their voting systems before a vendor can actually market that system in their jurisdiction. Mr. Hancock responded stating about 40 states require a use of the current Voting System Standards.

Commissioner Martinez asked if there is any indication that some of the states do not participate may have some interest so that we can increase the number 40 up to full participation. Mr. Hancock

responded there are a few states that did not use the current voluntary voting systems standards and had problems in the last federal election. They now have a better understanding of the benefits of testing to the national standards.

Commissioner Martinez asked Mr. Berger and Mr. Hancock if there is any precedent for the decertification of a voting system in this country. Mr. Hancock responded by stating that as far as he knew the current NASED process has never decertified a voting system.

Commissioner Martinez asked Mr. Berger if there is a protocol for decertification. Mr. Berger responded no. Mr. Wall added that the decertification should be seen as a single tool in a list of remedies available to the Commission. There are many different remedies and it is best to use the simplest one. The last result is to revoke the granted certification. Mr. Hancock added to Mr. Wall's comment by stating that decertification is a remedy of last resort for the EAC.

Commissioner Martinez asked Mr. Berger to walk him through the different documents that are produced in the certification process. There is a set of documents that the vendor provides to the lab prior to testing, a technical data package. The test lab looks at the technical data package. A test plan is developed as to how the lab is going to review that specific system against the requirements. Both of the documents are sent to the EAC to be reviewed.

Commissioner Martinez asked Mr. Berger after the test plan and the technical data package are delivered and the test plan is developed, is that the end of the communication between the vendor, the ITA, and the laboratory, or is there ongoing communication during this entire process between the vendor and the testing authority. Mr. Berger responded by stating that communication between the vendor and the test lab is quite active throughout the process.

Commissioner Martinez asked Mr. Berger how do you reconcile the fact that the purpose of the National Software Reference Library is to compare the executable final software that was submitted for certification with what is out there in the field. Will there be any discrepancies? Mr. Berger responded stating a review is done to make sure the code was performing exactly as intended. Therefore, what is used in the National Software Reference Library is what is used on Election Day.

Commissioner Davidson asked Mr. Berger or Mr. Wall if there would be an issue with the same ITA doing the certification and the state test. Mr. Berger responded stating there will be conflicting issues. One concern is the value of having independent reviews. Another concern is if the individuals involved in testing will gain the requisite expertise needed to adequately evaluate systems.

Commissioner Davidson asked Mr. Berger if states will also decertify equipment that they found to be a problem within their own state. This has happened in the past. Mr. Berger responded yes. In fact it may go beyond the equipment performance to issues like service and support.

Chair Hillman asked Mr. Berger if the voting system guidelines and the testing and certification processes would help increase voter confidence in the reliability, accuracy and security of voting equipment and voting systems. Mr. Berger responded stating the system is built on decades of experience and the knowledge and understanding has been deposited into the ISO Guides and into the system in general. Mr. Wall added that the voting guidelines are critical and a work in progress. The standard should do what is expected and certification should follow. Mr. Hancock added that all of the components of this program work together.

Chair Hillman asked the gentleman could we compare the certification program EAC will adopt to those utilized by the FCC for telecommunication devices. Mr. Berger responded stating that is an accurate comparison. We've looked very consciously at the kinds of systems and requirements that we've used for telecommunications and brought over the lessons learned.

Chair Hillman asked Mr. Berger if there is a national program in place. Mr. Berger responded that the NASED program is national. It has fulfilled the function.

Chair Hillman asked Mr. Berger where we find technical reviewers. Mr. Berger responded stating they come from technical communities and have domain knowledge of elections, election systems and voting equipment. They have specific knowledge in specialized topics, such as security, usability, reliability, and accuracy.

Chair Hillman asked Mr. Berger if there are a sufficient number of entities that have qualified to be testing labs, to allow the EAC to fulfill their responsibilities. Mr. Berger responded stating there are

a number of very competent labs. Mr. Hancock added that he agrees with Mr. Berger. The NASED process has three testing labs they use. There are a limited number of labs for the election community.

Mr. Wilkey was recognized by the Chair and stated that the framework before the Commission is an excellent start and a good process for the EAC to undertake. Mr. Wilkey understands the process, what needs to be done and recommended the adoption of that concept.

Chair Hillman responded by asking Mr. Wilkey his thoughts if Congress does not appropriate the full amount of money requested for the 2006 budget, what does EAC have to do to make certain there are sufficient resources to meet the requirements. Mr. Wilkey responded stating that he hopes Congress will be inclined to listen to the EAC request. If not, we would have to do an overall review of the program.

Commissioner Martinez stated this project is a major responsibility for the EAC and could build the confidence in the public regarding American voting systems at the level it ought to be. There are states that are looking to jump into this process as well. All states should participate in this process. Part of doing this right is to have the resources, framework and infrastructure to get it done.

Chair Hillman asked for a motion to accept the recommendation as read and as presented to the Commission in writing. Commissioner Martinez moved and Commissioner Davidson seconded a motion to adopt the process for accrediting testing labs and certifying voting systems presented by staff, Mr. Berger and Mr. Wall. The motion carried unanimous.

Chair Hillman recognized several members of the EAC's Standard Board in the audience: Mike Sciortino (OH), Secretary Deb Markowitz (VT), Sarah Ball Johnson (KY), John Lindback (OR), and a number of local election officials from different parts of the country.

The meeting was adjourned at 12:00 pm.

Appendix 1