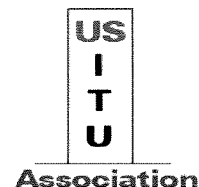


The USITUA is working to improve coordination and cooperation between the private sector and the U.S. Government to enhance U.S. effectiveness in the International Telecommunication Union (ITU).



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February 19, 2004

Ms. Cecily Holiday
Chairman, ITAC-R
National Committee
CIP
State Department

Dear Ms. Holiday:

Pursuant to your request for comments on the General Guidance Document for U.S. participation in the ITU Radiocommunication Sector and in CITELE PCCII meetings (November 18, 2003, draft), the United States ITU Association hereby submits its comments on a number of the sections in that General Guidance Document. It has been difficult in the short time period permitted for response to thoroughly consider all the issues by all of our members.

Our Association is anxious to cooperate fully with the State Department in developing a sound set of principles for private sector participation. We would like to reserve the right to comment further as warranted by discussions at the future ITAC-R meetings.

Section 3 Rapporteur and Correspondence Groups

Section 3.1 states that these groups "generally operate on an informal basis, subject to discretion of the Rapporteur (or chairman)". We recommend that the phrase "subject to discretion of the Rapporteur (or chairman)" be replaced by "subject to appropriate ITU-R procedures". While the chairman does have considerable discretion, the guidance policy should be that the chairman must follow established ITU-R procedures and policies.

Section 3.3 states that all U.S.-generated new text destined for these groups must be approved in the ITAC-R National Committee process. This seems to be at odds with Section 3.4.1 which permits submissions by "U.S. individuals" if marked as comments from a Sector Member or Associate, not from the U.S. or USG.

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Section 5 ITAC-R National Committee Review

Section 5.3 states that documents will be distributed to the full National Committee only once and that edited versions will only be coordinated with parties who have expressed interest during the review process. Because changes to a document may trigger new interests or concerns, we suggest that if a document is modified substantively, it should be recirculated to the full list. Section 5.10 should be similarly changed.

Section 5.9 seems impractical in light of multi-national companies and industry associations that include both U.S. and non-U.S. entities. In addition, the provisions of Section 5.8 make Section 5.9 unnecessary, so the latter section should be deleted.

Section 5.13 states in part that “the Department of State may either direct authors to make certain adjustment to documents, or otherwise make decisions as to acceptability of documents for a particular meeting.” We believe this asserts a broader authority than exists. Among others, Section 5.14 acknowledged that a Sector Member or Associate does have the ability to directly submit a paper even if there is disagreement by U.S. government representatives.

Section 5.14 is confusing as currently drafted. Direct contributions are discouraged but permitted. If a document directly submitted “is deemed to be in contradiction to U.S. policy, or otherwise found to be deficient,” there are negative consequences. According to Section 7.3, the company or organization submitting the contribution will be excluded from the U.S. DEL (see Section 7.3 below for comments). But submission of such documents for review by “appropriate U.S. government agencies” is optional. This section seems to go back and forth between the rights of Sector Members and Associates and the wishes but not necessarily the authority of the U.S. government. It may be clearer to separate this into two different sections on those two subjects. We suggest that the text also be revised or clarified regarding terms such as “appropriate” agencies, “at variance with the U.S. position”, “no determination of support”, and “otherwise found to be deficient”.

Section 6 Participation in CITEL “Electronic Form”

Sections 6.3.3 and 6.4.4 give control over participation in and proposed submissions of any sort to CITEL Electronic Fora to the U.S. government employee “gatekeeper” in consultation with other U.S. agency representatives. There are no stated criteria regarding standards for decision-making by that person. This is a very different and much more restrictive process than for ITU Rapporteur and Correspondence Groups. It is unclear whether this restrictive process is workable for Sector Members and Associates and whether authority exists for the gatekeeper approach.

Section 7 Formation and conduct of U.S. Delegations at and after ITU-R and CITELE meetings

Section 7.3 states that if a Sector Member or Associate is unable to support fully the national position at an international meeting, representatives from that member organization should expect exclusion from the U.S. Delegation (accredited or otherwise). This section seems to be inconsistent with 1979 Guidelines published in the Federal Register regarding private sector advisors on U.S. delegations. They state in part:

“Private sector representatives are not expected to agree with the U.S. position in all respects.”

“Private sector representatives shall not at any time negotiate or purport to negotiate for the U.S. government, nor shall they advocate positions outside of the delegation during a conference or negotiation which would tend to undermine the tactical or substantive positions of the U.S. as determined by the head of delegation. However, no private citizen or entity shall be prohibited from expressing views on publicly available U.S. positions, whether or not the interest of the citizen or entity is represented by a private sector representative on the delegation, nor shall any private sector representative be prohibited from expressing views on the outcome of a negotiation so long as classified information is not released thereby.”

“No private sector representative, however, may be excluded from the delegation merely because of views provided in good faith to government officials on the delegation, nor may a private sector representative be excluded from the delegation for declining to provide views on matters where he or she believes this would be inappropriate or prejudicial.” (Public Notice 665, Mar. 23, 1979; 44 F.R. 17846)

Section 7.3 should be revised to be consistent with the published 1979 Guidelines, which are in force today.

Section 7.3 also states that if a separate (non-U.S.) contribution is submitted which has not been approved in National Committee, representatives from that member organization should expect exclusion from the U.S. Delegation (accredited or otherwise). Previous versions of the document stated that the authors of a separate contribution, not all representatives from a Sector Member or Associate, would be excluded from the U.S. Delegation. We believe that broadening the exclusion is unnecessary and counter-productive “overkill” and this section should be revised to reinstate the narrower exclusion.

Section 7.4 states that members of the U.S. Delegation cannot serve dually on the delegations of other Member States, Sector Members or Associates. We believe that there can be utility for both the U.S. government and Sector Members and Associates in

allowing delegates to be on both the U.S. Delegation and a Sector Member or Associate Delegation. With appropriate coordination, Sector Member or Associate delegations can provide useful meeting support to the U.S. Delegation. We suggest that this restriction be narrowed from the existing text.

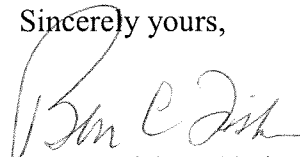
Section 7.5 states that Sector Members or Associates have the obligation to introduce and defend their own documentation and members of the U.S. Delegation will not introduce or defend any Sector Member or Associate contribution. This could be construed to mean that a U.S. Delegation can never introduce or support a Sector Member or Associate contribution. In fact, that can and has been done with appropriate pre-arrangements. We suggest that this section be revised to be less absolute.

Section 8 Policy on Alternative Approval Process

Section 8.2 states that U.S. policy regarding the Alternative Approval Process in the Radiocommunication Sector “includes a first presumption that all ITU-R questions and recommendations in all study groups, working parties, task groups (including joint task groups) and rapporteurs groups, have a policy or regulatory implication, until agreed otherwise.” Section 8.3 lists many different types of questions and recommendations that “cannot be considered under the alternative process”.

Some members of the private sector do not agree with the first presumption. In light of the predominance of technical expertise in the private sector rather than the U.S. government, it may be inappropriate and counterproductive to pre-label technical studies by technical experts as having policy or regulatory implications and thereby exclude them from the APP. Any policy or regulatory concerns can be dealt with at the appropriate time. It virtually eliminates the possibility of rapid action on any issue in ITU-R. We suggest consideration of narrowing the list of topics in ITU-R excluded from application of the Alternative Approval Process.

Sincerely yours,



Ben C. Fisher, Chair