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TO: NAESB Managing Committee

FROM: Bill Boswell, NAESB General Counsel

DATE: January 7, 2005

SUBJECT: WEQ Quadrant Procedures and Challenges to Quadrant & Segment
Membership Self-Selection

The following is my opinion regarding WEQ Quadrant Procedures as approved and adopted by the NAESB Board of Directors on July 29, 2002, with specific reference to challenges to membership of parties that have elected to join the Quadrant and the Segments and sub-Segments thereof. This memo supplements and expands upon the opinions expressed by the then-NAESB General Counsel, Jay Costan, at the time of the Board's adoption of those procedures. His memo (copy attached) was the predicate for the wording of the Board's resolution of that date (also attached).

Mr. Costan's memo is self-explanatory and will not be repeated, but, in summary, he advised the Board that the draft WEQ procedures were consistent with Article IV, Section 1 of the Certificate and Article 2, Section 2.2 of the Bylaws only if interpreted as providing that "... any person or firm with a legitimate business interest in a given Quadrant should be permitted to join at least one Segment of that Quadrant." The memo went on to discuss the proposed procedures with specific reference to service providers and transmission organizations, and determined that the former by definition have a legitimate business interest in any of the Segments and sub-Segments of the WEQ and that the latter have a legitimate business interest in the Transmission Segment.

In approving the WEQ Quadrant Procedures the Board accepted Mr. Costan's opinion and advice and exercised its plenary authority to condition ratification upon one of two events. First, the WEQ voting members were given until August 30, 2002 to amend or clarify which specific Segments or sub-Segments the service providers and transmission organizations would be permitted to join. Second, failing action by that date, the procedures were deemed to be interpreted to recognize the legitimate business interests described in the preceding paragraph and the coordinate right to join such Segments and sub-Segments as voting members. The August 30 date passed without action, thus the second provision came into effect and remains in effect at this time.

It remains the prerogative of the WEQ members to further amend their Quadrant Procedures as provided therein. However, there are two caveats to this power: 1) any amendments must be consistent with the NAESB Certificate and Bylaws and the previously-described Board resolution, and 2) in the interim, service providers may continue to join any Segment and sub-Segment and transmission organizations may join the Transmission Segment as voting members. That means they have the same rights as all voting members, including the right to run for seats on the Board and on the executive Committee.

A further caveat to the immediately preceding paragraph is in order. Self-selection of a Quadrant, Segment and sub-Segment is a traditional NAESB practice. WEQ procedures as approved permit challenges to self-selection to be made by any member. However, as to service providers or transmission organizations no challenge is in order based solely upon their failure to meet the specific definitions of the Segments or sub-Segments contained the WEQ procedures. Put another way, a service provider has an absolute right to self-select any Segment or sub-Segment of the WEQ and a transmission organization has an absolute right to self-select any sub-Segment of the Transmission Segment of the WEQ.

I hope this advice clarifies the questions that have occasionally been raised since the Board's action in July of 2002, and that it further assists WEQ members in their efforts to determine whether and how to change the WEQ Quadrant Procedures.

Attachments(2)