

A cityscape background with a blue and green color gradient. Overlaid on the image are several white, thin, curved lines that form a network or web-like structure, connecting various points across the scene.

# Legal Training for Forum Leaders

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*Advancing ICT Industry Transformation*

# Reminders

- This presentation is intended to assist leaders of ATIS Forums and Committees in the identification of legal and process-related issues related to the operation of ATIS Forums and Committees.
- This presentation does not address every potential antitrust, intellectual property, or other legal risk and is not intended to serve as standalone legal advice.
- Legal counsel should always be consulted when dealing with any antitrust, intellectual property, or otherwise legal issues in the context of ATIS work.

# Issues

- Antitrust Considerations and Sensitive Discussion Topics
- Authority to Act
- Legal Agreements/Contracts
- Communications with Governmental Representatives
- ATIS Distribution Lists
- Whistleblower Policy
- Operating Procedures and IPR Policy
- Participant Responsibilities

# Antitrust Considerations

- ATIS Operating Procedures note that all ATIS Standards shall be developed in accordance with applicable antitrust and competition laws and meetings amongst competitors to develop ATIS Standards are to be conducted in accordance with these laws.
- Antitrust laws promote competition by prohibiting certain actions among existing or potential competitors.
  - Generally speaking, the prohibited actions include unfair methods of competition and deceptive practices that affect commerce, and combinations, contracts or conspiracies that unreasonably restrain trade.
  - Certain activities (e.g. price fixing) are regarded as so lacking in pro-competitive benefits that they are presumed to be illegal; other activities must be analyzed by balancing the perceived threat to competition against the likelihood of pro-competitive efficiencies.

# Antitrust Considerations

- Sensitive discussion topics include but are not limited to:
  - Price or pricing policies, including costs, discounts, etc.
  - Contractual terms including commercial liabilities, guarantees, patent licensing terms, or the particular terms and conditions of sales.
  - Sales/production quotas, territories, boycotts, market shares.
  - Confidential or proprietary information.
  - Individual company statistics, marketing plans.
  - Particular competitors or customers (particularly customers to whom services will or will not be offered).
  - “Arm-twisting,” trade abuses.
- Recommendation: Avoid sensitive discussion topics in meetings, as well as in documents, emails, and other communications.

# Authority to Act

- There are legal implications associated with acting on behalf of the association.
  - Actions can give rise to legal liability even if the actor does not believe that it has the authority to bind the organization.
  - Even unauthorized actions can create liability.
- Recommendation: Exercise caution if you are asked to provide an ATIS Forum view regarding a particular substantive issue.
  - This is particularly important if the party requesting the information is a regulator.
  - Members may, of course, provide their individual/company views on any issues.

# Legal Agreements/Contracts

- ATIS Forums are not separate corporate entities and cannot enter into legal agreements on ATIS' behalf.
  - Forums can recommend that ATIS enter into contracts, establish formal liaison agreements, etc.
- Recommendation: Forums should let ATIS staff know if they believe that ATIS should have a formal agreement with a particular organization/company.
  - There may be an existing liaison agreement that can be leveraged to facilitate Forum work.

# Communications with Governmental Representatives

- There are strategic and legal issues associated with communications with governmental representatives.
  - ATIS encourages governmental participation in its Forums.
  - ATIS (and/or its members) may be held accountable to positions taken in such communications.
  - There are also rules that may restrict the timing and/or content of correspondence.
- Recommendation: Ensure that all communications with governmental officials are reviewed by ATIS Legal.
  - Routine Forum communications generally do not raise strategic/legal concerns; however, care should be taken when distributing draft regulatory submissions.

# ATIS Distribution Lists/AWS

- ATIS e-mail distribution lists and ATIS Workspace may only be used to facilitate the work of ATIS and may not be used to distribute:
  - Third party sales or marketing materials;
  - Statements that: (1) contain false or malicious info; (2) injure a person/organization's reputation; or (3) contain antitrust sensitive issues; and
  - Copyrighted information, including magazine articles, without the owner's prior written consent.
- Recommendation: If there are questions about what is appropriate to distribute, please contact ATIS staff.
  - Also, please let ATIS staff know if you become aware of any inappropriate uses of distribution lists/AWS.

# ATIS Whistleblower Policy

- Under the ATIS Whistleblower Policy, members are protected from retaliation if they come forward with credible information on illegal practices or serious violations of adopted policies of the organization.
- Recommendation: If you have a complaint, report or inquiry, you should present it, along with the specific facts associated thereto, to the ATIS President and CEO or General Counsel. If both of those persons are implicated in the complaint, report or inquiry, it should be directed to the Chairman of the Board of Directors.

# ATIS Operating Procedures

- ATIS' Operating Procedures (OP) are based on the principles of openness, equity, and due process.
  - The procedures related to the development and approval of American National Standards are detailed in Appendix A of the OP.
  - ATIS procedures for the development of American National Standards must comply with ANSI Essential Requirements.
- This presentation highlights some of the key points and recent changes.
- Links to reference materials, including the OP, are included at the end of this presentation.

# ATIS Operating Procedures – Recent Changes

- In 2018, ATIS made changes to its Operating Procedures to address input from ANSI. An explanation of these changes was distributed in September of 2018. Changes were proposed to:
  - IPR Policy – Section 10.4.2
  - Appeals – Section 13.2.1
  - Appendix A
    - Records – Section A.2.2
    - Membership – Section A.2.3
    - Notification of Standards Development – Section A.4
    - Reporting Votes – Section A.7.7
    - Consideration of Views and Objection – Section A.7.9
    - Periodic Maintenance of American National Standards – Section A.13.1

# ATIS Operating Procedures – Participation

- Section 2 provides that Forum members may participate as either “Voting Members” or “Observers.”
  - Voting Members have the right to take part in the activities of the Forum, participate in the consensus process and cast ballots/votes.
  - Observers can express views but may not: (1) cast ballots or otherwise vote; or (2) serve in leadership positions (except task forces).
  - Observers may become Voting Members by providing written notice.
  - ATIS staff attempt to verify that all participants in a meeting are ATIS Forum members or appropriately invited Guests.

# ATIS Operating Procedures – Leadership

- Section 3 provides that leadership is elected by the Forum to serve up to two, two-year terms; exceptions are provided for:
  1. Task Force leaders, which serve for the term of the task force or one year, whichever is shorter; and
  2. Term-limited leadership positions for which there are no candidates, in which case the existing leader may continue as “acting” leader for up to one year.
- Section 4 explains that Forum leadership is elected by a simple majority of Forum Voting Members, with each member having one vote.
  - For elections held during meetings, the election is by a simple majority of those present at the time of election.
  - For elections held via electronic balloting, the election is by a simple majority of those casting votes.

# ATIS Operating Procedures – Issue Process, Deliverables

- Section 5 details the process by which Issues are introduced, accepted worked and resolved by a Forum.
  - If an Issue is identified as potentially resulting in the creation, revision, or any other action regarding an American National Standard, the Forum must follow the procedures in **Appendix A**.
- Section 6 provides an overview of possible deliverables.
  - An “ATIS Standard” includes, but is not limited to, an American National Standard, a Technical Requirement, a Technical Specification, a Technical Report, an industry guideline, or a white paper.
  - This section also addresses Implementable End-to-End and Trial Use Standards.

# ATIS Operating Procedures – Consensus

- Section 7.1 outlines that consensus is the method used by the ATIS Forums to reach decisions, unless otherwise provided for in Appendix A.
  - Consensus is not defined by a specific numerical benchmark, but is “substantial” agreement (more than simple majority, not necessarily unanimity).
  - All views/objections must be considered and a concerted effort made to resolve objections.
- When there are questions or disputes:
  - Objecting participant(s) must state a rationale, and an opportunity should be provided for discussion aimed at achieving full consideration of the objection.
  - Polling can be used to determine whether consensus has been achieved.
- If there is no consensus, the Forum would document as outlined in Section 5.3.8 (“no industry agreement”) that it could not agree on a resolution and describe the alternative viewpoints and their pros/cons.

# ATIS Operating Procedures – Meetings, IPR

- Section 8 details the meeting requirements:
  - Quorum is not required (unless the Forum agrees via consensus to observe a quorum requirement).
  - Forum leadership may invite an industry subject matter expert(s) to attend (but not participate in consensus decisions or voting processes) specific Forum meetings when his/her expertise is required to assist the Forum in resolving a specific Issue.
- Section 9 provides guidance on meeting notes.
- Section 10 explains ATIS Intellectual Property Rights (IPR) policy, including confidentiality, copyright and patents.

# ATIS Operating Procedures – Confidentiality

- Section 10.2 summarizes that, as a general rule, ATIS will not consider contributions that are subject to any confidentiality requirement or other restriction on its dissemination.
  - Generally, this issue is raised when presentations are included with copyright or proprietary restrictions on it.
  - Exceptions to the general rule are determined on a case-by-case basis.

# ATIS Operating Procedures – Copyright

- Section 10.3 on Copyright
  - Each contributor grants ATIS rights to adapt, copy, distribute contributions.
    - Each contribution is subject to an unlimited perpetual, non-exclusive, royalty-free, worldwide rights and license.
  - When referencing others' documents, it may be necessary to obtain permission from the copyright owner (determination on case-by-case basis).
    - Recent questions have arisen about use of photos in deliverables – please ensure that you have permission to include all photos and graphics.
  - ATIS deliverables are copyrighted to protect them from unauthorized distribution/modification; deliverables may not be reproduced without ATIS' written permission.

# ATIS Operating Procedures – IPR Policy

- Section 10.4 on Patents
  - ATIS' patent policy requires patent assurance statements to indicate that:
    - The owner (or party authorized to make assurances on its behalf) of a patent subject to a licensing statement will include in documents transferring ownership of such patents sufficient language to ensure that the licensing assurance is binding on the transferee, and that the transferee will include appropriate provisions in the event of future transfers with the goal of binding each successor-in-interest.
    - The assurance is intended to be binding on successors-in-interest regardless of whether such provisions are included in transfer documents.
    - No discussion of patent licensing terms may occur within ATIS Forums and ATIS will not determine the validity, enforceability or scope of any patents.

# ATIS Operating Procedures – IPR Policy

- Section 10.4 on Patents (continued)
  - Under ATIS' patent policy, if ATIS receives notice that a deliverable may require use of an essential patent claim, the patent owner is asked to provide an assurance stating that:
    - a) it does/does not hold such a patent;
    - b) it will make available licenses on reasonable and non-discriminatory (RAND) terms, with or without compensation; or
    - c) it is not willing or is unable to make a RAND license available.
  - Any such statement does not satisfy ATIS' policy unless it expressly states that the assurance is irrevocable.
  - Participants in the ATIS standards development process are encouraged to bring patents with claims believed to be essential to the attention of ATIS.

# ATIS Operating Procedures – Disclosure and Assurance Statements

- ATIS has a patent disclosure and assurance form to facilitate compliance with its policy; however, use of the form is not required.
- ATIS posts patent disclosure and assurance statements on its website [https://www.atis.org/01\\_legal/patent-assurances/](https://www.atis.org/01_legal/patent-assurances/).
  - Patent disclosures are organized by document identification number.
- When substantive changes are made to deliverables, ATIS reaches out to parties that have made patent assurance statements to verify that the statement should be associated with the modified deliverable.

# ATIS Operating Procedures – Internal Communications

- Section 11 explains that informal internal communications between the leadership of the ATIS Forums, Subtending Committees, and Subcommittees is encouraged.
  - Formal communications conveying a Forum position and those communications from an ATIS Forum to external organizations shall be agreed upon by the Forum.
  - The ATIS General Counsel shall review, prior to distribution, all proposed communications to regulatory, legislative, or governmental bodies, as well as any other sensitive material.

# ATIS Operating Procedures – Liaisons

- Section 12 provides that internal and external liaisons may be established.
  - Any Forum may designate a participant to act as a liaison to an organization external to ATIS.
  - The liaison shall seek to represent the Forum and respond to questions in a manner that would be acceptable to the Forum.
  - Each time a liaison attends an external meeting representing the originating Forum, a report shall be given to the originating Forum regarding any significant issues discussed, or those that are expected to arise, any conflicts, and input for, or questions to, the originating Forum.

# ATIS Operating Procedures – Appeals, etc.

- Section 13 details the appeals process; under this process:
  - Informal appeals/complaints may be made to relevant Forum leadership; and
  - Formal appeals may be made in writing to ATIS General Counsel after exhaustion of Forum processes.
- Section 14 explains the process by which partnership specifications are accepted and adopted.
- Section 15 provides guidance on interactions with the ITU; additional guidance on this topic can be found on the ATIS Operating Procedure webpage.

# ATIS Operating Procedures – Continued

- Section 16 notes that OP revisions may be suggested at any time by members.
  - Proposed changes are submitted to the Forum leaders for review and consideration; significant changes are presented to the Board for its review.

# ATIS Operating Procedures – Changes to Appendix A

- Section A.2.2 pertaining to materials associated with the development of a standard was revised to clarify that materials associated with the development of a standard must be retained until the standard is revised, or subsequently reviewed in connection with the stabilized maintenance of the standard as an ANS.
- Section A.2.3 regarding Forum membership was revised to note that ATIS forums should have sufficiently diverse membership to ensure reasonable balance without dominance by any single interest category, *individual, or organization.*

# ATIS Operating Procedures – Changes to Appendix A

- Section A.4 on standards development notification was revised to provide additional information regarding the notification of standards development to explain that: The outcome of a PINS deliberation shall be conveyed in writing within 30 days after the conclusion of the deliberation by ATIS to the commenter and to ANSI.
  - Upon submission of the Deliberation Report, ATIS may continue with the submission of the proposed standard for public review.
  - Any actions from the deliberations shall be carried out in timely manner.
  - ATIS shall include all of the Deliberation Report(s) with its ANSI BSR-9 submittal should ATIS ultimately submit the subject standard to ANSI for approval.
  - Stakeholders who were involved in the PINS deliberation process may also file separate Deliberation Report(s) with ANSI and ATIS within 30 days after conclusion of any deliberation if the standard is submitted to ANSI for approval.

# ATIS Operating Procedures – Changes to Appendix A

- Section A.13.1 regarding the periodic maintenance of American National Standards was modified to note that periodic maintenance of a standard includes the review of, and action to revise, reaffirm or *withdraw*, the standard.
  - Also explained that, “in the event that no decision has been made or action taken regarding the maintenance of an ANS within or approaching five years after its approval, ATIS may request an extension of time to reaffirm or, revise, or withdraw the standard via the BSR-11 form.”
- Minor modifications were also made to:
  - Section A.7.7 to explain that the results of each vote shall be recorded and reported to the consensus body; and
  - Section A.7.9 to explain that an “invalid ballot” would include a vote from non-voting member or non-member and that substantive public review comments along with accompany responses and reasons therefore should be circulated for a new ballot.

# Participant Responsibilities

- Follow the ATIS Operating Procedures.
- Be aware of sensitive topics (particularly costs).
- Be sensitive to comments made at meetings, on calls, in contributions or other documents, particularly if these comments appear to raise objections, or deal with sensitive topics.
- Let ATIS staff know if any comments, concerns, questions arise.



# Questions, Comments?

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# Reference Materials

- [ATIS Operating Procedures](#) (Updated 08/23/2018)
- [ATIS Forum/Committee – Issue Identification Form](#) (12/09/2016)
- [ATIS Bylaws](#) (Updated 09/02/2014)
- [Developing an “ATIS standard”](#)
- [ATIS Interaction with the ITU](#)
- [ATIS Document Numbering](#)
- [ANSI Essential Requirements](#) (Updated 01/2019)
- [List of patent disclosure and assurance statements](#)

Additional information on ATIS operating procedures can be found at:

[https://www.atis.org/01\\_legal/operating-procedures/](https://www.atis.org/01_legal/operating-procedures/)

# List of Liaisons and MoUs

Australian Communications Industry Forum (ACIF)  
CBRS Alliance  
Consumer Electronics Association (CEA)  
Digital Video Broadcasting (DVB)  
European Telecommunications Standards Institute (ETSI)  
International Organization for Standardization/  
International Engineering Consortium (ISO/IEC)  
Joint Technical Committee 1  
International Telecommunication Union –  
Radiocommunication Bureau (ITU-R)  
International Telecommunication Union –  
Telecom Standardization (ITU-T)

National Public Safety Telecommunications Council (NPSTC)  
NGMN and ATIS Cooperation Agreement  
OFDM Forum  
Metro Ethernet Forum (MEF)  
SIP Forum, LLC  
Telecommunications Industry Association (TIA)  
Telecommunications Standards Development Society, India (TSDSI)  
Telecommunications Technology Association (TTA)  
Telecommunication Technology Committee (TTC)  
TM Forum  
Video Services Forum, Inc. (VSF)  
5G Americas

# Governmental Participation in Forums

- Cybersecurity and Infrastructure Security Agency (CISA)
- Department of Defense (approved by ATIS Membership Committee April 24, 2019)
- Department of Justice/Operational Technology Division (OTD)
- FirstNet
- National Security Agency (NSA)
- National Institute of Standards and Technology (NIST)
- National Telecommunications and Information Administration (NTIA)
- Public Safety Canada
- U.S. Department of Transportation (DOT)