

LEGAL TRAINING FOR FORUM LEADERS AND PARTICIPANTS

Thomas Goode
General Counsel
ATIS

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Disclaimer

This presentation is intended to assist ATIS Leaders and Participants in the identification of legal and process-related issues associated with the operation of ATIS Forums and Committees. It does not address every potential legal risk and is not intended to serve as standalone legal advice.

Members should consult their legal counsel when dealing with legal issues in the context of ATIS work.



Issues

- Antitrust Considerations
- Communications with Governmental Representatives
- ATIS Distribution Lists
- Whistleblower Policy
- Compliance with Export Regulations
- Operating Procedures
- IPR Policy
- Participation Guidelines



Antitrust Considerations

- **Antitrust laws promote competition by prohibiting certain actions among existing or potential competitors.**
 - Generally speaking, these prohibited actions include unfair methods of competition and deceptive practices that affect commerce, as well as 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 (con't)

- **Sensitive discussion topics include:**
 - 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 during official meetings (as well as before/after meetings), in documents or on distribution lists.**



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 agreement, 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 (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 the ATIS General Counsel.**
 - Routine Forum communications generally do not raise strategic/legal concerns; however, care should be taken when distributing draft regulatory submissions.



ATIS Distribution Lists

- **ATIS e-mail distribution lists only may 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) address antitrust-sensitive issues such as price, cost, etc.
 - Copyrighted information without the owner's prior written consent.
- **Recommendation: Inform ATIS staff if you are aware of inappropriate use of an ATIS distribution list.**
 - Let us know immediately if you see any inappropriate uses of ATIS' distribution lists.
 - ATIS staff can assist in obtaining appropriate permission(s) from copyright owners (including magazine or newspaper articles).

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.
 - Complaints, reports or inquiries may be made under this policy on a confidential or anonymous basis.
- **Recommendation: If you have a complaint, report or inquiry regarding illegal practices or serious violations of ATIS' adopted policies, it should be presented, along with the specific facts associated thereto, to the ATIS President and CEO or General Counsel.**

Compliance with Export Regulations

- **ATIS' Board [Policy on Compliance with U.S. Export Regulations](#), adopted November 2021, explains that:**
 - ATIS will not approve as a member any entity that: (a) is included in the Export Administration Regulations (EAR) Entity List or otherwise restricted by U.S. Export Regulations to receive or transfer any information that is exchanged or transferred in the ordinary course of ATIS' activities, or (b) has violated such regulations and has not resolved the violation.
 - Prospective members must confirm that: (1) they are not subject to such restrictions; and (2) they will inform ATIS if this changes.
 - Should an existing member be added to the Entity List or otherwise become restricted by, or found to be in violation of, U.S. Export Regulations, that member shall inform ATIS and withdraw as an ATIS member.
 - If the member chooses not to withdraw, the member will be suspended.
- **Recommendation: Members should review the ATIS Policy on Compliance with U.S. Export Regulations and shall inform ATIS if relevant restrictions apply to them.**



ATIS Operating Procedures

- ATIS' [Operating Procedures \(OP\)](#) are based on the principles of openness, equity and due process.
- ATIS procedures for the development of American National Standards must comply with ANSI Essential Requirements.
- This presentation does not provide an overview of all procedures but focuses on key procedures and questions that have arisen.



ATIS Operating Procedures – Participation

- **Section 2 provides that Forum members may participate as either “Voting Members” or “Observers.”**
 - Section 2.1.1 -- Voting Members have the right to take part in the activities of the Forum, participate in the consensus process and cast ballots/votes.
 - Section 2.1.2 -- Observers can express views but may not: (1) cast ballots or otherwise vote during any Forum voting process; or (2) serve in leadership positions.
 - An Observer may choose to participate as a Voting Member by providing written notice to staff.

ATIS Operating Procedures – Participation (con't.)

- **Letter Ballot Requirements (Appendix B):**
 - A Voting Member that fails to cast a vote in three (3) consecutive letter ballots from the same Forum will receive a written warning; if the member fails to submit a vote on the next ballot, the member will be re-designated as an Observer.
 - The casting of a vote to abstain and/or the failure to cast a Letter Ballot on a “default ballot” are not considered under the Letter Ballot Requirements.
 - A Voting Member’s failure to comply with the Letter Ballot Requirements may be excused when warranted (based upon a written explanation of the circumstances).



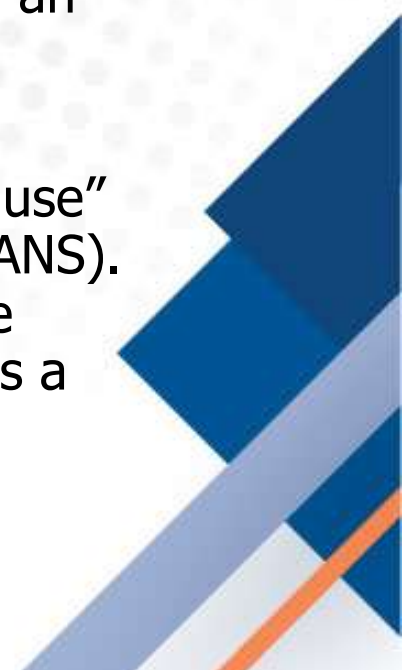
ATIS Operating Procedures – Issue Process

- **Once an Issue is submitted, the appropriate Forum shall determine whether to accept the Issue based on the following criteria:**
 - The Issue is clearly defined via the ATIS Issue Identification Form;
 - The Issue is within the scope of the Forum; and
 - There is no existing solution, or the existing solution can be enhanced to gain efficiencies (i.e., operational, functionality, etc.)



ATIS Operating Procedures – Deliverables

- **Section 6.1 – An ATIS Standard is an ATIS deliverable developed by an ATIS Forum that defines a technical or operational solution for voluntary industry implementation.**
 - It includes but is not limited to: an ANS; a Technical Requirement; a Technical Specification; a Technical Report; an industry guideline; or a white paper.
- **Section 6.3 – Standards for Trial Use**
 - An ATIS Forum may decide to develop a “standard for trial use” for a period of time not to exceed 18 months (may not be ANS).
 - Prior to the expiration date of the standard for trial use, the Forum must determine whether to process the document as a full-fledged ATIS Standard or withdraw the document.



ATIS Operating Procedures – Decision Making



- **Section 7.1 -- 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.”
 - “Substantial agreement” means more than a simple majority, but not necessarily unanimous agreement.
 - All views/objections must be considered, and a concerted effort made to resolve objections.
 - When there are questions or disputes:
 - Polling can be used to determine whether consensus has been achieved; this is not the same as voting.
 - An opportunity should be provided for discussion aimed at achieving full understanding and consideration of the objection.

ATIS Operating Procedures – Decision Making (con't)

- **Section 7.2 -- During any Forum voting process:**
 - Each Voting Member is given a single vote.
 - Observers are not permitted to vote.



ATIS Operating Procedures – Decision Making (con't)

- **Section 5.3.8 -- No Industry Agreement**
 - In some cases, a Forum may not be able to reach consensus surrounding an issue.
 - The Forum retains responsibility to resolve the issue; if circumstances change, the group may decide to revisit the decision.
 - The ATIS Issue Identification Form should document that the Forum could not agree on a resolution and state the alternative viewpoints with the pros and cons of each.
 - A resolution of “No Industry Agreement” does not mean the process failed.



ATIS Operating Procedures – Confidentiality

- **Section 10.2 -- As a general rule, ATIS will not consider contributions that are subject to any confidentiality requirement or other restriction on their dissemination.**
 - Generally, this issue is raised when contributions include copyright restrictions.
 - Exceptions to the general rule are determined on a case-by-case basis
 - Some ATIS Forums have executed non-disclosure agreements to accommodate the discussion of confidential information.

ATIS Operating Procedures – Copyright



- **Section 10.3 requires each contributor to grant to ATIS the rights to adapt, copy and distribute the contribution.**
 - 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 is made on a case-by-case basis).
 - ATIS deliverables are copyrighted by ATIS to protect them from unauthorized distribution/modification.
 - No ATIS deliverable may be reproduced without ATIS' written permission.



ATIS Operating Procedures – Patents

- **Section 10.4 -- Patents**

- Under ATIS patent policy, if ATIS receives notice that a deliverable may require use of a patented invention, the patent owner is asked to provide an assurance stating that:
 - a) it 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.
- No discussion of patent licensing terms may occur within ATIS Forums; ATIS also will not determine the validity, enforceability or scope of any patents.



ATIS Operating Procedures – Patents (con't)

- **Section 10.4 -- 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 the relevant transfer documents.



ATIS Operating Procedures – Patents (con't)

- ATIS has developed a [Patent Disclosure and Assurance Form](#) to facilitate compliance with its policy.
 - Use of the form is not required.
- ATIS posts [patent disclosure and assurance statements](#) on its website.
 - Patent disclosures are organized by document identification number.



ATIS Operating Procedures – Appeals and Revisions

- **Section 13 -- Appeals Process**

- Informal appeals/complaints may be made to relevant Forum leadership.
- Formal appeals may be made in writing to ATIS General Counsel after exhaustion of Forum processes.

- **Section 16 -- Revisions to the Operating Procedures**

- 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 ATIS Board for its review.



Guidelines for Engagement in ATIS Activities

- ATIS has developed guidelines to assist ATIS Participants and Leaders with participating in and running fair, productive, and courteous meetings. These guidelines address:
 - 1) Professionalism
 - 2) Openness
 - 3) Transparency
 - 4) Fairness



Professionalism

- Professionalism
 - Act honestly, in good faith and with the highest professional standards.
 - Always be respectful and courteous to others (e.g., name calling), whether during a meeting or on a distribution list, is never acceptable, nor is the dissemination of false or misleading information.
 - Communicate clearly and concisely and avoid unnecessary duplication and repetition.



Openness

- Openness
 - Leaders should strive to provide notice of any changes to the meeting schedule in advance and to begin and end all meetings on time.
 - Once an agenda has been distributed, any modifications should be announced in a timely manner. Changes to an agenda that affect the timing of votes or consensus decision-making should be announced in advance of a meeting.
 - An Issue Statement must contain certain key pieces of information, including a description of the problem, the suggested solution, and timeline (if known). Solutions must meet industry strategic, technical, and business needs.
 - Participants should post contributions sufficiently in advance of meeting to allow other Participants and the Leaders the opportunity to review the contribution prior to the meeting.



Transparency

- Transparency
 - Unless a special exception is made (see Invited SMEs and Guests), ATIS does not permit individuals that are unaffiliated with ATIS member companies to participate in ATIS Forums. Each participant must identify the organization(s) he/she is representing. Participants who have been retained to represent multiple organizations must declare those interests.
 - Leaders must remain neutral in discussions. In a meeting, should a leader wish to provide his/her view as a meeting participant, the other leader of the Forum should manage the meeting during that time.
 - Participants should review meeting notes in a timely manner and provide specific input and/or alternative text, as needed.
 - Meeting notes may not be modified to reflect discussions or proposals made after the meeting that differ from the discussion held or agreements reached during the meeting.
 - Any Forum may designate a participant(s) to act as a liaison to any other ATIS Forum(s) or external organizations. The liaison must reflect the consensus positions of the Forum. Each time a liaison attends a meeting representing the originating Forum, a report must be given to the originating Forum.

Fairness

- Fairness
 - It is appropriate for a Leader to consider a Participant's silence as the Participant's agreement to what is being proposed. A consensus-based decision therefore will not be revisited if a Participant fails to indicate his/her disagreement in a timely manner.
 - Participants are encouraged to voice opposition, abstention or concern related to a proposal during the discussion. If a Participant wishes to abstain, they must clearly indicate so in response to the call for consensus.
 - Objections without a rationale should not be considered.
 - Participants should dispute ideas using reasoned argument rather than intimidation or personal attack and should provide sufficient relevant data and facts to support his/her view so that other Participants can form an opinion.

Leader and Participant Responsibilities



- Follow the ATIS Operating Procedures and Participation Guidelines.
- 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.

**THANK YOU,
for questions, please contact:**

**Thomas Goode
ATIS General Counsel
tgoode@atis.org**

Forums with Government Participants

- ESIF
- INC
- NGIIF
- PTSC
- IP-NNI Task Force
- SYNC
- WTSC



Industry Liaisons

- 4G Americas
- Australian Communications Industry Forum (ACIF)
- CBRS Alliance
- CITELE
- Consumer Electronics Association
- Digital Video Broadcasting
- European Telecommunications Standards Institute
- International Organization for Standardization/ International Engineering Consortium
- International Telecommunication Union
- Metro Ethernet Forum
- National Public Safety Telecommunications Council
- Next Generation Mobile Networks
- Open Connectivity Foundation, Inc.
- SIP Forum, LLC
- Telecommunications Industry Association
- Telecommunications Standards Development Society, India
- Telecommunications Technology Association
- Telecommunication Technology Committee
- TM Forum
- Trusted Computer Group
- US Ignite

Relevant Source Documents

- [ANSI Essential Requirements](#)
- [ATIS Issue Identification Form](#)
- [ATIS Operating Procedures](#)
- [ATIS Patent Assurances](#)
- [ATIS Patent Disclosure and Assurance Form](#)
- [ATIS Policy on Compliance with U.S. Export Regulations](#)
- [ATIS Whistleblower Policy](#)
- [Guidelines for Engagement in ATIS Activities](#)





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