



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

March 20, 2020

Sent via e-mail

Steve Pearson, Senior Vice President of Certification
Election Systems & Software
11208 John Galt Blvd.
Omaha, NE 69137

Re: DS200 Misrepresentation

Dear Mr. Pearson,

On January 7, 2020, the U.S. Election Assistance Commission (EAC) received a complaint from two organizations, Free Speech for People and National Election Defense Coalition, stating that:

1. ES&S may have violated Sections 5.14 and 5.15.1 of the EAC Testing and Certification Program Manual Version 2.0 by representing or implying that the DS200 with modem configuration is EAC certified when in fact only the DS200 without modem is EAC certified.
2. ES&S also may have violated Section 5.16 by failing to warn purchasers that adding a modem to the DS200 will void the EAC certification of the voting system in its entirety.

The complaint requested that the EAC conduct an investigation, require corrective action, and determine whether to suspend ES&S's manufacturer registration.

On the same day, I requested that ES&S submit all marketing material for all ES&S EAC-certified voting systems by COB on January 10, 2020. ES&S requested to extend the deadline to January 17th due to unavailability of ES&S's marketing manager. ES&S submitted the marketing material, including their response to the complaint, on January 17th. In their response, ES&S stated they have remedied the issue by removing all references in its current corporate marketing materials related to the "optional use" of modems.

I have reviewed the marketing material submitted by ES&S and confirm that ES&S has several documents that state that the DS200 is "fully certified and compliant with EAC guidelines" while also listing a modem as optional. This misrepresentation is in violation of the EAC's Testing and Certification Program. I am pleased that ES&S has taken prompt action to revise their marketing material. In order to be in compliance with our Program, ES&S must take the following corrective actions:

- Provide a plan to remove all misrepresented marketing material from circulation.
- Notify current and potential customers who received the misrepresented information that previous information was inaccurate.
- Distribute the revised information to those same customers.

In several other documents, ES&S states, "All ES&S tabulation systems are submitted to rigorous and extensive independent test campaigns as part of the Election Assistance Commission's (EAC) Voting System Certification Program." I find this statement to be a misrepresentation since ES&S has state-certified voting systems that have not been tested or certified under the EAC's Program. In order to be in compliance with our Program, ES&S must take the following corrective actions:

- Revise the marketing material to properly represent voting systems that have been certified by the EAC.
- Provide a plan to remove all misrepresented marketing material from circulation.
- Notify current and potential customers who received the misrepresented information that previous information was inaccurate.
- Distribute the revised information to those same customers.

As you are aware, the EAC has the authority to conduct reviews of fielded voting systems to ensure compliance with our Testing and Certification Program. We will conduct reviews of EAC-certified DS200s to ensure that they comply with our Program.

Finally, according to Section 5.15.4 of the Testing and Certification Program Manual, you have 15 days from receipt of this letter to comply with the recommended corrective actions. Failure to comply will result in the EAC publicly announcing that the voting system no longer complies with its original certification, and could include initiating decertification actions and/or suspension of manufacturer registration.

You are a valued stakeholder and I appreciate your proactive and prompt response.

Sincerely,



Jerome Lovato
Director, Voting System Testing and Certification

cc: Mona Harrington, Acting Executive Director
Amanda Joiner, Associate Counsel