



April 3, 2020

VIA EMAIL
AND OVERNIGHT DELIVERY

Jerome Lovato
Director, Voting System Testing and Certification
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, Maryland 20910

**RE: Election Systems & Software, LLC (“ES&S”) DS200® Modem Marketing
Material Complaint**

Dear Mr. Lovato:

I am in receipt of your letter dated March 20, 2020, which sets forth certain findings by the Election Assistance Commission (“EAC”) regarding ES&S’ marketing materials for its DS200 precinct voting system tabulator (“DS200”) and other ES&S voting tabulation systems. ES&S has reviewed your letter and provides the following response to the findings identified by the EAC.

The EAC alleges that ES&S made certain misrepresentations in its DS200 marketing materials with respect to the DS200 being “fully certified and compliant with EAC guidelines” while also listing the use of a modem in the DS200 as an option for customers. **As previously communicated to the EAC with respect to the use of modems with the DS200, it was never the intent of ES&S to state or imply that ES&S’ DS200 modeming capability was EAC certified.** Further, ES&S makes those states which allow for modeming fully aware that the modeming configuration has not been approved by the EAC. Notwithstanding the foregoing and in order to avoid any confusion with respect to ES&S’ EAC certified voting systems and ES&S’ voting systems which allow for modeming, ES&S has and/or will take the following corrective actions as request by the EAC:

- **ES&S has revised all of its DS200 marketing materials included on its website, as well as revised all print marketing materials for its DS200, to make it clear that the EAC has not certified the DS200 with the use of modeming;**
- **ES&S will send the enclosed letter to all of its DS200 customers who use the DS200 with modem, informing them that the DS200 with modem has not been certified by the EAC; and**
- **ES&S will post a notice to its customer portal advising all ES&S’ customers that the DS200 with modem has not been certified by the EAC.**

In addition to the above finding by the EAC, the EAC alleges that ES&S’ also made certain representations in other ES&S marketing documents by stating that “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.”

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The EAC believes this statement is inaccurate since ES&S has state-certified voting systems that have not been tested or certified under the EAC's Certification and Testing Program. ES&S disagrees with the EAC's finding with respect to this statement, as all ES&S tabulation systems are submitted to independent test campaigns as part of the EAC Voting System Certification Program.

Please be advised that all ES&S tabulation systems are submitted for review and approval through the EAC Testing and Certification Program. This applies even to those ES&S tabulation systems which ES&S submits to states that do not require EAC certification and approval. All current ES&S tabulation systems which have been approved for use by those states which do not require EAC approval have been approved by the EAC. Therefore, ES&S' statement is factual and is not a misrepresentation as the EAC concluded in its findings. As such, ES&S does not believe that any corrective actions are necessary with respect to this statement.

As you are fully aware, the United States is currently involved with the unprecedented COVID-19 pandemic that has forced many employees of ES&S and its customers to take drastic actions through social distancing by working from home voluntarily or mandated through stay at home orders issued by a customer's state or local government. As a result of the COVID-19 pandemic, it may take ES&S additional time in notifying its customers as requested by the EAC. To that end, ES&S will make commercially reasonable efforts to provide its DS200 modem customers with the enclosed letter, as well as post its notice to ES&S' customer portal by no later than April 15, 2020.

If you have any questions or need additional information, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in blue ink that reads "Steve Pearson". The signature is fluid and cursive, with the first name "Steve" being the most prominent part.

Steve Pearson
Senior Vice President of Certification

cc: Kathy Rogers – ES&S