EXHIBIT M
COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

EXAMINATION RESULTS OF THE
ELECTION SYSTEMS AND SOFTWARE, INC.
PRECINCT AND CENTRAL COUNT OPTICAL SCAN SYSTEMS

Issued by:

[Signature]
Pedro A. Cortés
Secretary of the Commonwealth
January 6, 2006
EXAMINATION OF THE
ELECTION SYSTEMS AND SOFTWARE, INC.
PRECINCT AND CENTRAL COUNT OPTICAL SCAN SYSTEMS

A REPORT BY THE SECRETARY
OF THE COMMONWEALTH OF PENNSYLVANIA

I. INTRODUCTION

Article XI-A of the Pennsylvania Election Code, 25 P.S. § 3031.1 et seq., authorizes the use of electronic voting systems. Section 1105-A of the Election Code, 25 P.S. § 3031.5, requires all electronic voting systems to be examined and approved by the Secretary of the Commonwealth before use in any election in Pennsylvania.

Upon the request for an examination of the Model 100 precinct count scanner (M100), and Model 650 central count scanner (M650) with Unity, Election Management Software, version 3.0, (hereinafter referred to as the "System") made by Election System and Software, Inc. (ES&S), the Department of State scheduled an examination for November 16 and 17, 2005. The Department has received confirmation from SysTest Labs, a federally recognized independent testing authority (ITA) that the M100's and M650's hardware and software have successfully completed qualification testing in compliance with the Federal Election Commission 2002 Voting System Standards.

The Secretary of the Commonwealth retained Michael Ian Shamos, Ph.D., J.D., as a consultant to conduct an electronic voting system examination on November 16 and 17, 2005. Harry A. VanSickle, Commissioner of the Bureau of Commissions, Elections and Legislation; Kenneth A. Rapp, Deputy Secretary for Regulatory Programs; Larry Boyle, Deputy Chief Counsel; Chet Harhut, HAVA Administrator; Lindsley Houser, HAVA Assistant; Jim Criss, Bureau of Management Information Systems and Jonathan Marks, Chief of the Division of Elections/Precinct Data; represented the Secretary of the Commonwealth.

II. THE SYSTEM PRESENTED FOR EXAMINATION

The following paragraphs in this section briefly describe the functions of the items examined as summarized by the consultant.

Presented for certification were:

- Model 100 precinct scanner with firmware 5.2.0.0.
- Model 650 central scanner with firmware 2.1.0.0.
- Unity Election Management Software, version 3.0
Model 100 Precinct Scanner

The Model 100, version 5.2.0.0, is a low-speed in-precinct ballot scanner. A Personal Computer Memory Card International Association (PCMCIA) card, programmed through Unity software, is used to create ballot styles. This programming permits the M100 to read and tabulate ballots. The voter marks his or her ballot then inserts it into a slot in the machine. If the ballot is valid, it is tabulated and retained by the machine in a sealed ballot box. If the ballot contains a write-in vote, it is accepted and diverted to a different box since it will have to be read manually to count the write-in. If the ballot is invalid, blank or mismarked, it is returned to the voter and a brief message is displayed on an LCD screen indicating the manner in which the ballot is faulty. The voter then has the opportunity to spoil the ballot and obtain another. The M100 can be programmed to reject overvoted and/or undervoted ballots.

The M100 will read ballots that have been marked manually or marked using an electronic marking device. At the close of the polls, the M100 will produce summary reports using a built-in printer and/or write media that can be transported to a central computer for tabulation.

Model 650 Central Scanner

The Model 650, version 2.1.0.0, is a high-speed central count scanner. Ballot styles are loaded into the scanner by removable zip disk card produced using Unity software. This programming permits the M650 to read and tabulate ballots. Ballots are read and diverted to one ballot box or another depending on whether they contain write-in votes.

The M650 has two attached printers, one to print a real-time audit log of significant events and the other to produce tabulation reports. In addition, results can be written to a zip disk for accumulation with other results.

Unity Software

The M100 and M650 require data for election setup from the Unity software suite (Unity). Unity is an integral part of any ES&S optical scan unit and is required for its use. On December 22, the Secretary issued a report, “EXAMINATION RESULTS OF THE ELECTION SYSTEMS AND SOFTWARE, INC, iVotronic TOUCHSCREEN VOTING SYSTEM WITH UNITY SOFTWARE,” certifying Unity, version 3.0.

Voting System Accessibility

Section 301(a)(3)(B), 42 U.S.C. § 15481(a)(3)(B), of the Help America Vote Act (HAVA) mandates that every polling place must have at least one voting system in each precinct equipped for individuals with disabilities. Because the M100 and M650 only tabulate optical scan ballots without providing an audio interface and Americans with Disabilities Act (ADA) scroll buttons for the visually impaired, they are not accessible. To comply with the accessibility requirements found in HAVA, a county may purchase one iVotronic touch screen direct recording electronic voting system or the AutoMark ballot marking system for each precinct. Both devices are
compatible with the M100 and M650. The iVotronic is currently certified in Pennsylvania. The AutoMark’s state certification is currently pending.

III. EXAMINATION PROCEDURES AND RESULTS

At the examination conducted on November 16 and 17, 2005 the consultant tested the System for the statutory requirements specified in section 1107-A of the Election Code, 25 P.S. § 3031.7. The vendor demonstrated the setup, opening of the polls, voting, closing of the polls and election night tabulation features of the M100 and M650. The consultant and the Department representatives asked questions of the vendor and requested demonstrations of various features before conducting the Pennsylvania Standardized Test (Test). The first Test was a set of 12 Municipal Election ballots. The second Test was a set of 12 Municipal Primary ballots (6 Democratic and 6 Republican). Both Tests are designed to ensure an electronic voting system’s compliance with the Election Code.

Although the System accurately tabulated the results of the Test, based on the results of the examination, including the answers to questions provided by the vendor and the advice provided by the Department’s consultant, the Department offers the following observations for the System.

- Demonstration: During the examination of the M100, the vendor was unable to upload results into Unity Software because of a hardware failure. The vendor brought the M100 in for a demonstration on December 29, 2005. The vendor demonstrated, to Department representatives, that the machine is capable of uploading election results into Unity Software and tabulating them correctly, thus satisfying the Department’s need to witness this function of the M100.

- Security: Modem: The System has the ability to transmit official and unofficial election results through a modem. While the Pennsylvania Election Code does not deal specifically with modems and other particular communication methods, the general requirement of security in section 1107-A(12) of the Election Code, 25 P.S. § 3031.7(12), requires the Department to consider these devices. The Department has always taken the position, that modem communication of results, either official or unofficial, is impermissible. Doing so requires connection of uncertified equipment (the telephone instruments and network) to certified equipment (the voting machines and tabulators). The resulting configuration is uncertified and therefore cannot be used in elections.

IV. CONDITIONS/RECOMMENDATIONS

CONDITIONS

1. Pennsylvania counties purchasing the ES&S System may not use the ES&S provided modem upload capability to transmit official or unofficial election results.
2. Counties conducting an election using either the M100 or M650 are required to use various functions within the Unity software suite. On December 22, the Secretary issued a report, "EXAMINATION RESULTS OF THE ELECTION SYSTEMS AND SOFTWARE, INC, iVotronic TOUCHSCREEN VOTING SYSTEM WITH UNITY SOFTWARE," certifying Unity version 3.0. The report contained various conditions and recommendation for Unity software. It is imperative that counties purchasing the ES&S System refer and adhere to the similar conditions and recommendations detailed below and as set forth in the Secretary's report issued on December 22, 2005.

   a. Pennsylvania counties must change the default passwords upon receipt of this System.

   b. Unity must be operated as a standalone system without network connection, local or otherwise.

   c. A checklist must be prepared by ES&S, in consultation with the Department, to be furnished to any Pennsylvania county upon delivery of the System, detailing the selectability of each option when setting up an election.

RECOMMENDATIONS

The Secretary suggests the following recommendations for the Unity software:

1. The Secretary recommends that passwords be required for all Unity modules.

2. The Secretary recommends that counties continue to change their passwords after every election.

V. CONCLUSIONS

As a result of the examination conducted on November 16 and 17, 2005, and the demonstration conducted on December 29, 2005 and after consultation with the Department's staff and consultant, certification of the Model 100 and Model 650 optical scan counters is hereby awarded by the Secretary of the Commonwealth for use in elections in the Commonwealth of Pennsylvania in accordance with section 1105-A of the Election Code, 25 P.S. § 3031.5, provided it is implemented with the conditions listed in section IV of this report.

In addition, pursuant to the Directive on Electronic Voting Systems issued by the Secretary of the Commonwealth on July 22, 2005 and to section 1105-A(d) of the Pennsylvania Election Code, 25 P.S. § 3031.5(d), this certification is valid only for the voting system examined on November 16 and 17, 2005. If the vendor makes any changes to the system subsequent to November 16 and 17, 2005, it must immediately notify both the Pennsylvania Department of State and the relevant federal ITAs or their successors. Failure to do so may result in the decertification of this voting System in the Commonwealth of Pennsylvania.
All jurisdictions implementing the System for use must comply with the requirements found in this report, previous reports and any directives issued by the Secretary of the Commonwealth regarding the use of this System, in accordance section 1105-A(a-b) of the Pennsylvania Election Code, 25 P.S. § 3031.5(a-b).