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Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Revision of the Commission's Rules	)	
To Ensure Compatibility with	)	CC Docket No. 94-102
Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Non-Initialized Phones	)	RM-8143
	)	

ORDER

Adopted: September 30, 2002 Released: September 30, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order,* we grant a Request for Stay filed by the Emergency Services Interconnection Forum (ESIF),[1] which comprises CMRS carriers, wireless handset vendors, and public safety representatives, concerning the effective date of *two* rule sections adopted by the Commission's April 29, 2002, *Report and Order*.[2] The *Report and Order* imposes requirements for programming both donated non-service-initialized phones and newly manufactured "911-only" wireless handsets with the code 123-456-7890 as the telephone number/mobile identification number. The purpose of the rule is to address the lack of call-back capability when 911 calls are dialed from these wireless devices.[3] The *Report and Order* designated the effective date of these rules as October 1, 2002.[4] For the reasons set forth below, we stay this effective date pending Commission consideration of a Petition for Reconsideration (Reconsideration Petition) that ESIF has separately filed. Because of the importance of

[1] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Non-Initialized Phones, CC Docket No. 94-102, ESIF Request for Stay (Stay Request), tiled June 12, 2002. ESIF is a sponsored committee of the Alliance for Telecommunications Industry Solutions (ATIS). *See* Wireless Telecommunications Bureau Seeks Comment on Petition for Reconsideration on Non-Initialized Phones and Filing of Request for Stay, *Public Notice,* CC Docket No. 94-102, DA 02-1575 (rel. July 3, 2002), 67 Fed. Reg. 46909 (2002) *(Public Notice).* ESIF is jointly convened by the Alliance for Telecommunications Industry Solutions (ATIS) and the National Emergency Number Association (NENA) to facilitate the identification and resolution of technical issues related to the interconnection of telephony and emergency service networks.

[2] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Non-initialized Phones, CC Docket No. 94-102, RM-8143, *Report and Order,* FCC 02-120 (rel. April 29, 2002) *(Report and Order);* 67 Fed. Reg. 36112 (2002) (to he codified at 47 C.F.R. §§ 20.18(*l*)(1)(i), (*l*)(2)(i)).

[3] Non-service initialized wireless mobile telephones (non-initialized phones) are phones that are not registered for service with any Commercial Mobile Radio Service (CMRS) carrier. Because carriers generally assign a dialable number to a handset only when a customer enters into a service contract, a non-initialized phone lacks a dialable number. *See Report and Order,* at para. 1, n.1.

[4] *Id.* at paras. 36, 51.

the call-back issue, the merits of the arguments raised by the Reconsideration Petition will be considered expeditiously.

2. In the ***Report and Order,*** the Commission amended section 20.18 of its rules by adding new paragraph (I). Specifically, section 20.18(I)(1)(i) requires that licensees donating non-service-initialized handsets program those wireless handsets with the code 123-4.56-7890 as the telephone number/mobile identification number to alert Public Safety Answering Points (PSAPs) that a 911 call is being made from a wireless phone that lacks call-back capability. Section 20.18(I)(2)(i) also requires that all manufacturers of 911-only wireless handsets manufactured on or after October 1,2002, program each handset with the same code.

3. On June 12,2002, ESIF filed its Reconsideration Petition: seeking reconsideration of the Commission's ***Report and Order*** adopting sections 20.18(I)(1)(i) and (I)(2)(i) of the Commission's rules.[6] Also, on June 12,2002, ESIF filed a separate Request for Stay (Stay Request) of the effective date of these rules, October 1,2002, until the Commission disposes of ESIF's Reconsideration Petition.

4. In its Reconsideration Petition, ESIF submits that there is a solution that was not raised in the record to address the lack of call-back capability of non-initialized and 91I-only handsets. The proposed solution is based on a technical standard (Annex C solution) published jointly by the Telecommunications Industry Association (TIA) and ATIS for mobile phones that do not have a valid call-back number.? The Annex C solution suggests the use of a wireless handset's Electronic Serial Number (ESN) or International Mobile Station Equipment Identity (IMEI)[8] to create a surrogate number as follows: "911" plus the last seven digits of the ESN or IMEI expressed as a decimal number? According to ESIF, using this surrogate number provides easier identification of the specific phone used in placing a wireless 911 call. Moreover, the surrogate number would allow a PSAP to: (1) prevent the misuse of the 9-1-1 system due to repeated harassing calls made on non-initialized phones, and (2) identify legitimate emergency callers making multiple calls."

5. In addition, in the Reconsideration Petition, ESIF asserts that it has identified a problem that the record in this proceeding did not address. According to ESIF, the number 123-456-7890 also serves as a valid IRM or International Roaming MIN (Mobile Identification Number) range. As a result, the potential impact of the 123-456-7890 code is to remove one million numbers from the IRM assignment pool, when IRMs are a finite numbering resource where the first number must be a zero (0) or

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[5] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Non-initialized Phones, CC Docket No. 94-102, ESIF Petition for Reconsideration, filed June 12, 2002. See ***Public*** Notice.

[6] See 67 Fed. Reg. 36112 (2002) (to be codified at 47 C.F.R . §§ 20.18 (I)(1)(i), (I)(2)(i)).

[7] ESIF refers to the solution as the "Annex C" solution, due to the fact that the joint standard was published in Annex C of J-STD,-036, "Enhanced Wireless 9-1-1 Phase 2 (Aug., 2000). See Stay Request at 4-5.

[8] According to the Reconsideration Petition, the IMEI is associated with GSM phones. See Reconsideration Petition at 5.

[9] Reconsideration Petition at 4-5 & n.9. *E.g.*, a mobile phone could have an ESN with a Manufacturer's Code of 029 and a Serial Number of 880405, for an ESN in binary form of 0001 1101 0000 1101 0110 1111 0001 0101, where the eight high order bits identify the manufacturer of the mobile phone and the low order twenty-four bits identify the unit. If a mobile phone with this ESN, but without a valid call-back number, is used to call 911, using 911 plus the last seven digits of the ESN (in decimal form), would result in 911 988-0405 being sent to the PSAP as an identifier for that phone.

[10] Id., at 5

a one (1).[11]

6. In its Stay Request, ESIF argues that a stay of sections 20.18(*l*)(1)(i) and (*l*)(2)(i) of the Commission's Rules is warranted, because three out of the four criteria the Commission generally examines in considering a stay are satisfied in this case.[12] **ESIF** first contends that, it is in the public interest to grant the Stay Request based on (1) the new information regarding the Annex C solution proposed in its Reconsideration Petition, (2) the benefits of that solution over the prospective requirements, and (3) the potentially adverse impact of the currently proposed requirement to the IRM assignment pool." ESIF also submits that a stay will allow additional time for the thorough consideration of the matters raised by the Reconsideration Petition and for industry to further examine the options available and their impact.[14] Second, according to **ESIF,** these same facts support the likelihood of success on the merits of its Reconsideration Petition. ESIF argues that although it cannot point to a mathematical certainty of success, the potential adverse impact of the prospective requirement to the IRM assignment pool, plus the benefits to the public interest, justify the interim relief requested." Third, ESIF contends that no significant harm to any parties would occur if the Commission were to grant a stay.[16]

7. On July 3,2002, the Commission's Wireless Telecommunications Bureau released a Public Notice seeking comment on the Reconsideration Petition and the Stay Request.[17] Five comments and five Reply Comments have been received. Commenters generally support a stay.'* Only one commenter, Texas 9-1-1 Agencies, asserts, in a general fashion, that **ESIF** has not presented sufficient information related to the Stay Request."

II. DISCUSSION

8. In examining **ESIF's** Stay Request, we find that stay is warranted in this case based on the likelihood of success on the merits of the Reconsideration Petition and the lack of injury to third parties if the Stay Request is granted. Issuance of a stay will allow further consideration of a solution for 911 calls from donated non-initialized wireless phones and 91I-only wireless handsets that the Commission has not previously reviewed in this proceeding and that possesses certain potential advantages over the approach adopted in the ***Report*** and ***Order.***

9. In considering requests for injunctive relief, the Commission generally considers the four criteria set forth in ***Virginia Petroleum Jobbers Ass'n.***[20] These criteria are: (I) a likelihood of success on

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[11] ***See id.,*** at 5-6.

[12] Request for Stay at 6-7, citing ***Virginia Petroleum Jobbers Ass'n v. FPC,*** 259 F. 2d 921,925 (D.C. Cir. 1958) ***(Virginia Petroleum Jobbers Ass 'n)*** (setting forth the four criteria for injunctive relief); ***Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc.***, 559 F. 2d 841,843 (D.C. Cir. 1977) ***(Holiday Tours).***

[13] Stay Request at 7.

[14] Stay Request at 8.

[15] Stay Request at 7.

[16] Stay Request at 8.

[17] ***See Public Notice.***

[18] ***See, e.g.***, Cellular Telecommunications and Internet Association Comments at 1-2; Remote MDx, Inc. Comments at 1-2; VoiceStream Wireless Corporation Comments at 1, 5.

[19] Texas 9-1-1 Agencies Comments at 1-2, 5 (also making same assertion with regard to the Reconsideration Petition).

[20] ***Virginia Petroleum Jobbers Ass'n.,*** 259 F. 2d at 925; In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development (continued....)

the merits; **(2)** the threat of irreparable harm absent the grant of preliminary relief; **(3)** the degree of injury to other parties if relief is granted; and **(4)** the issuance **of** the order will further the public interest?' The Commission then balances these interests in order to determine an administrative response on a case-by-case basis.[22] There is no requirement that there be a showing as to each criterion.[23] The relative importance of the four criteria will vary depending upon the circumstances of the case.[24] If the Bureau finds that there is a particularly overwhelming showing in at least one of the factors, we may find that a stay is warranted notwithstanding the absence of another one of the factors.[25]

10. We find that based predominantly on the criterion of likelihood of success on the merits, the matters ESIF has raised in its Stay Request justify the grant of a stay. **In** support of this determination, we conclude that the alleged advantages of the proposed ESIF solution, which was not raised in this proceeding and not considered by the Commission, in comparison to the requirement in the prospective Commission rules, warrant additional consideration. We also find that a further evaluation of solutions that may assist PSAPs in managing the problems arising from the lack of a call-back capability in those handsets serves the public interest. We note that there appears to be a consensus in the comments and reply comments received that further evaluation is required of approaches other than the use of the code **123-456-7890** by handsets and CMRS networks for these **calls.**[26]

11. We also find that, based on expeditious treatment of the Reconsideration Petition, the criterion that other parties will not be harmed by grant of a stay is met. Parties responding to the ***Public Notice*** generally have not alleged that there will be an adverse impact on them if the Stay Request were granted. For instance, we note that Remote MDx, a manufacturer of **91** 1-only phones, has not alleged any harm and generally supports the request for **stay.**[27] The Texas **91** 1 Agencies generally support the delivery of **123-456-7890** to notify a PSAP that a call is being placed from a non-initialized phone, but also support a re-evaluation of that requirement?' We note that Remote MDx's **91** 1-only phones are currently manufactured to transmit **123-456-7890** to the PSAP and our action today does not preclude them from doing so in the near future, until and unless the Commission determines on reconsideration that a different number should be transmitted to the PSAP. Therefore, the primary category of phones potentially at issue by a grant of this stay are non-initialized phones processed through carrier-sponsored

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and Use of the Universal Licensing System in the Wireless Telecommunications Services, Memorandum Opinion and Order, WT Docket No. **98-20, 14** FCC Rcd **9305, 9307** & n.10 **(1999)** ***(Biennial Regulatory Review Order),*** citing *AT&T v.* ***Amerifech,*** **13** FCC Rcd **14508 (1998).**

[21] ***Virginia Petroleum Jobbers*** Ass'n., **259** F. 2d at **925.**

[22] ***Biennial Regulatory Review Order,*** **14** FCC Rcd at **9307**

[23] ***Id.***

[24] *AT&T v.* ***Ameritech Corp.***, **13** FCC Rcd at **14515-16** (para. 14).

[25] ***Id.***, at **9307** & n.11, citing ***AT&T v. Amerifech,*** 13 FCC Rcd at **14516,** n.43 **(1988)** and ***Southwestern Cable,*** **382** U.S. **157,** 180 (1968).

[26] ***See Holiday Tours,*** **559** F. **2d** at **843-44** (a finding that ultimate success on the merits is a mathematical probability is not required; but ". . . if other elements are present, it will ordinarily be enough [to raise] questions so serious, substantial and doubtful **as** to make them a fair ground . . . for more deliberative investigation."). We note that although opposed to a stay, the Texas **9-1-1** Agencies do urge further examination of a solution to resolve the issues ESIF has raised. Texas **9-1-1** Agencies Comments at 1-2, 5.

[27] The record in this proceeding shows that Remote MDx is a successor-in-interest to Secure Alert, the manufacturer and distributor of **"91** I-only" phones. The ***Report and Order*** notes that Secure Alert had already sold over 40,000 handsets programmed with 123-456-7890 as the telephone number/MIN. ***Report and Order,*** at para. **34.**

[28] Texas **9-1-1** Agencies Comments at **2.**

donation programs. The record in the underlying proceeding suggested that most parties participating in carrier-sponsored donation programs were delivering service-initialized phones,[29] and no party has suggested otherwise in the record in the Stay and Reconsideration proceedings. Thus, we find that the degree of injury to third parties as a result of granting a stay is, at best, slight.

12. We note also that one commenter, Verizon Wireless, states that it has already required its vendors to deliver products based on the Annex C solution?' Verizon Wireless states that to comply with the Commission's ***Report and Order,*** it would have to ask its vendors to disable functionality that would allow transmission of 911 plus the last seven digits of the ESN in favor of transmission of 123-456-7890.[31] The apparent public interest benefits of the Annex C solution, and the requirement that companies would have to disable this Annex C functionality in order to comply with the mandates of the ***Report and Order,*** further argue in favor of a grant of a stay while the Commission completes its deliberations regarding the Reconsideration Petition. More broadly, we find that somewhat delayed implementation of one requirement better serves the public interest than the potentially disruptive sequential implementation of two different requirements over a short period of time.

13. For the foregoing reasons, therefore, we conclude that staying the effective date of sections 20.18(*l*)(1)(i) and (*l*)(2)(i) of the Commission's Rules and the network programming requirement on carriers is in the public interest. We grant this stay, pending the Commission's evaluation of the ESIF Reconsideration Petition and the comments received in response to the Public Notice. As a result of this stay rendering the rule requirements ineffective, the Commission will expeditiously visit the issues on the merits in view of the substantial impact on the public interest.

14. Finally, ESIF has raised the issue that transmitting 123-456-7890 could compound a substantial problem for the IRM numbering regime by encumbering one million numbers from the finite IRM assignment pool.[32] Because 911-only phones already exist, it is unclear whether these numbers have already been removed from the IRM numbering pool, and, if so, what problems this poses. Furthermore, it is unclear why the transmission of one particular number necessarily results in the stranding of one million numbers from the IRM assignment pool. Parties have not addressed this issue in the record, and, consequently, we will entertain written and oral ***ex parte*** communications on this aspect of the Reconsideration Petition.

III. ORDERING CLAUSES

15. For the aforementioned reasons, IT IS ORDERED pursuant to Sections 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, 303(g), and 303(r), that the Request for Stay filed by Emergency Services Interconnection Forum on June 12, 2002, is GRANTED and will remain in effect until the Commission resolves the Petition for Reconsideration,

[29] ***Report and Order*** at paras. ***28-30.***

[30] Verizon Wireless Reply Comments at 3.

[31] ***Id.***

[32] Stay Request at 5-6.

filed by ESIF on June 12,2002 in this proceeding. This action is taken pursuant to authority delegated by § 0.131 ofthe Commission's Rules, 47 C.F.R. § 0.131.

FEDERAL COMMUNICATIONS COMMISSION

J. D. Schlichting

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