

Standards Committee T1

June 12, 2002

Carrier Liaison Committee

Telecommunications
Industry Forum

VIA ELECTRONIC FILING

Ordering and Billing
Forum

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Network Interconnection
Interoperability Forum

Industry Numbering
Committee

Re: *Revision of the Commission's Rules to Ensure Compatibility
with Enhanced 911 Emergency Calling Systems, CC Docket No.
94-102, Report and Order (April 29, 2002) ("Report and
Order")*

Protection Engineers
Group

Standards Committee O5

Dear Ms. Dortch:

Network Reliability
Steering Committee

Enclosed is a Request for Stay of Effective Date from the Alliance for
Telecommunications Industry Solutions ("ATIS"), on behalf of the Emergency
Services Interconnection Forum ("ESIF"), in response to the Commission's recent
Report and Order, in the above-captioned case.

Internetwork
Interoperability Test
Coordination Committee

Consistent with the Commission's Rules, I am filing one electronic copy of this
document and request that you place it in the record of the proceedings. Please
contact me at 202/434-8847 if you have any questions or comments.

Telecommunications
Fraud Prevention
Committee

Generic Requirements
Users Group

Sincerely,

International Forum on
ANSI-41 Standards
Technology

Megan L. Campbell
General Counsel

Interactive Voice
Response Forum

Enclosure

TTY Forum

cc: Jared Carlson, Deputy Chief, Policy Division, WTB (jcarlson@fcc.gov)
Patrick Forster, Senior Engineer, Policy Division, WTB (pforster@fcc.gov)
Daniel Grosh, Senior Attorney, Policy Division, WTB (dgrosh@fcc.gov)
Leon Jackler, Attorney, CWD, WTB (ljackler@fcc.gov)
James Schlichting, Deputy Chief, WTB (jschlich@fcc.gov)
M.W. Thayer, Senior Engineer, Network Technology Division, OET
(wthayer@fcc.gov)

Administrative Council for
Terminal Attachments

IMSI Oversight Council

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REQUEST FOR STAY OF
EFFECTIVE DATE**

The Alliance for Telecommunications Industry Solutions (“ATIS”), on behalf of the Emergency Services Interconnection Forum (“ESIF”), respectfully requests that the Commission stay the October 1, 2002 effective date with respect to certain aspects of its decision in the Report and Order in this proceeding released April 29, 2002 (“Order”)¹ until the Commission disposes of all petitions for reconsideration and specifically that filed by ATIS in this matter. Specifically, ATIS requests that the Commission stay the October 1, 2002 effective date as it pertains to the requirements found in the new subsections (1)(1)(i) and (1)(2)(i) of Section 20.18 of the Rules regarding the use of the

¹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 02-120, released April 29, 2002. A summary of the Order was published in the *Federal Register*, 67 Fed. Reg. 36112-117, May 23, 2002. ATIS/ESIF has filed separately today a Petition for Reconsideration of the Order.

sequential number code, 123-456-7890, as the telephone number/mobile identification number in non-service-initialized handsets.²

The Stay is requested pending the ultimate resolution of the Petition for Reconsideration (note 1, *supra*). ATIS, at this time, is not requesting any other changes in the requirements imposed by the Commission in the Order.

I. BACKGROUND

A. The Emergency Services Interconnection Forum (ESIF)

The ESIF is a sponsored committee of ATIS jointly convened by ATIS and the National Emergency Number Association (“NENA”) to facilitate the identification and resolution of technical issues related to the interconnection of the telephony and emergency services networks. The ESIF is an open, technical forum encouraging the voluntary participation of interested parties to identify and resolve recognized interconnection issues.³

² The Rules state, in relevant part, “(1) Licensees subject to this section that donate a non-service-initialized handset for purposes of providing access to 911 services are required to: (i) Program 123-456-7890 as the telephone number/mobile identification number into each handset;” and “(2) Manufacturers of 911-only handsets that are manufactured on or after October 1, 2002, are required to: (i) Program each handset with 123-456-7890 as its telephone number/mobile identification number.” See 47 CFR §20.18 (1)(1)(i) and (1)(2)(i).

³ Companies and organizations participating in the inaugural ESIF meeting on May 7-8, 2002, included: Alcatel USA, APCO, AT&T, AWS, BellSouth, Cap Gemini Ernst & Young, Cingular Wireless, CommFlowResources, C.W.T.A., GPNS, Intrado, Lucent Technologies, Marconi, Mitretek, NCS, NENA, NeuStar, Nextel Corporation, Nokia, Nortel Networks, Panasonic MMCD, Qualcomm, RCC Consultants, SBC, Siemens, Singlesoft Corp., Spectrum Global Services, Inc., Sprint PCS, Tarrant County 9-1-1 District, Telecommunications Systems (TCS), TIA, Triton PCS, Trueposition, Verizon, Verizon Wireless, and Voicestream,. For further information on the ESIF, its work or meetings, please see www.atis.org/atis/esif/esifhome.htm.

During the inaugural meeting of the ESIF on May 7-8, 2002, the Forum participants discussed the Order. The ESIF identified concerns with the new requirement providing for the use of the sequential number code 123-456-7890 as the telephone number/mobile identification number. The Forum also identified a potential solution found in an industry standard but not introduced into the record during the proceedings. As a result, the ESIF reached consensus to file the appropriate documentation with the Commission providing the new information and requesting a stay of the October 1, 2002 effective date for implementation of the 123-456-7890 sequential number code. Prior to the publication of the Order in the *Federal Register* on May 23, 2002, the ESIF Chair, on behalf of the Forum, filed an *Ex Parte* Communication with the Commission detailing much of the information provided in this Request for a Stay.⁴

B. The Call-Back Problem

The Commission released a Public Notice on May 18, 2000 seeking comments on the “call back capabilities for non-serviced initialized handsets” and whether the Commission should address technical solutions or educational programs.⁵ The Public Notice was prompted by the requests of a group of Public Safety Entities led by the Texas Commission on State Emergency Communications. The group requested that the Commission revisit issues surrounding non-service initialized phones and, specifically, the requirement that calls be forwarded to Public Safety Answering Points (“PSAPs”) and

⁴ Letter from James Nixon, ESIF Chair, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated May 17, 2002.

⁵ See *Public Notice*, “Comment Sought on Request for Further Consideration of Call Back Number Issues Associated with Non-Service Initialized Wireless 911 Calls,” DA 00-1098 (rel. May 18, 2000).

the inability for call-back once the connection is broken.⁶ The Commission then released a Further Notice of Proposed Rulemaking on May 25, 2001 seeking additional comment on possible technical solutions to the call-back issue.⁷

II. DISCUSSION

In the Order, the Commission required that non-service initialized handsets donated through carrier-sponsored programs and newly manufactured “911-only” phones be programmed with the sequential number code 123-456-7890 as the telephone number/mobile identification number. The Order further requires, subject to OMB approval, that the requirement become effective on October 1, 2002.

The ESIF has identified at least one other plausible solution to the call-back issue apparently not introduced into the record during the comment cycle. That solution is found in Annex C of J-STD-036, “Enhanced Wireless 9-1-1 Phase 2,” published in August of 2000 as a joint standard by the Telecommunications Industry Association (“TIA”), on behalf of Committee TR-45, and ATIS, on behalf of its sponsored Committee T1. There is agreement between the TIA TR-45.2 Ad Hoc on Emergency

⁶ Letter from the Texas Commission on State Emergency Communications and 16 local Texas Emergency Communications Districts, the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State Nine-One-One Administrators to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, dated April 28, 2000.

⁷ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Further Notice of Proposed Rulemaking, RM-8143 (rel. May 25, 2001).

Services and the NENA Technical Committees that Annex C contains a solution suggesting the use of a handset's Electronic Serial Number ("ESN") or International Mobile Station Equipment Identity ("IMEI") to create a surrogate number. The surrogate number would be "911" plus the last seven digits of the ESN or the IMEI expressed as a decimal number. The IMEI is associated with GSM phones.

The Annex C solution has several benefits over the currently proposed consecutive number code (123-456-7890) where the Annex C solution would allow for easier identification of the specific phone used. For example, in situations where a non-initialized phone is used abusively and repeatedly to make harassing calls to a PSAP, the phone could be identified and the PSAP could take the appropriate steps to prevent adverse impacts on the 9-1-1 system in that area. Likewise, the Annex C solution would allow for the identification of legitimate emergency callers forced by extenuating circumstances to make multiple calls to the PSAP.⁸

The ESIF also identified an adverse impact of the currently proposed solution, again, apparently not discussed or introduced into the record. The consecutive number solution of 123-456-7890 also serves as a valid International Roaming MIN (Mobile Identification Number) ("IRM") range. The impact of the 123-456-7890 consecutive number code requirement is to potentially remove one million numbers from the IRM assignment pool.

⁸ By contrast, a PSAP call taker seeing the digits 123-456-7890 on repeated calls does not know whether the calls are coming from the same phone or multiple phones – except by identifying a common voice. Harassers could defeat, and have defeated, this ID by disguising their voices or using confederates.

IRMs are a finite numbering resource where the first number of a ten-digit number must be a zero (0) or a one (1).⁹

III. JUSTIFICATION FOR REQUEST

The Commission has declined to encode a single evidentiary standard for a request for injunctive relief.¹⁰ However, parties seeking a stay of a Commission order must generally demonstrate the following: 1) a likelihood of success on the merits; 2) irreparable harm to the party seeking the stay if the stay is not granted; 3) lack of significant harm to other parties if the stay is issued; and 4) a stay would serve the public interest.¹¹

⁹ See *International Roaming Guide*, release 1.1, dated November 2001, and *International Roaming Mobile Identification Number (MIN) Assignment Guidelines and Procedures*, version 3.0, dated May 2001. The International Forum for ANSI-41 Standards Technology (“IFAST”) is an open, international, technical forum that facilitates the identification and resolution of issues to enable the interoperability of systems between countries, carriers, technologies, and standards, thereby protecting the investment made by the industry in the ANSI-41 family of standards while evolving to a seamless global network. For further information on the IFAST, its work or meetings, please see www.atis.org/atis/ifast/ifasthome.htm.

¹⁰ See *In the Matter of Biennial Regulatory Review of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, FCC 99-129, 14 FCC Rcd 9305, 9307 (1999), citing Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, *Report and Order*, 12 FCC Rcd 22497, 22565-66 (1997).

¹¹ See *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*per curiam*) (*Virginia Petroleum Jobbers Ass’n*) (setting forth requirements for stay), as modified by, *Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (*Washington Metropolitan Area Transit Comm’n*) (slightly modifying requirements for stay); see also AVR, L.P. D/B/A Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(D) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas, FCC 01-3, CC Docket No. 98-92, N.5 (rel. Jan. 8, 2001) (noting that, when considering a motion for stay, the Commission applies the four-part test set forth in *Virginia Jobbers Ass’n*, subsequently modified by *Washington Metropolitan Transit Comm’n*).

The Commission will balance these factors, and determine whether to stay the effectiveness of an order or action on a case-by-case basis.¹² Moreover, there is no requirement that there be a showing as to each single factor; if there is a particularly overwhelming showing in at least one of the factors, the Commission may find that a stay is warranted notwithstanding the absence of another one of the factors.¹³

In the current situation, there is justification for the Commission to grant the requested stay where the facts support at least three of the four factors. First, based on the new information regarding the other plausible solution -- Annex C, the benefits of that solution over the currently proposed requirement, and the potential adverse impact of the currently proposed requirement to the IRM assignment pool, it is in the public interest to grant the stay and allow for further examination and consideration.

Second, the same set of facts support the rationale or likelihood of success on ATIS' Petition for Reconsideration. However, even if ATIS cannot point to a mathematical certainty of success, the otherwise overwhelming potentially adverse impact of the proposed requirement to the IRM assignment pool, coupled with the benefits to the public interest would justify the relief. As the D.C. Circuit of the U.S. Court of Appeals has noted, in interpreting the standard enunciated in *Virginia Petroleum Jobbers, supra*:

An order maintaining the *status quo* is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable harm on the movant. There

¹² *Biennial Regulatory Review of the Commission's Rules*, at 9307.

¹³ *Id.* See also *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

is substantial equity and the need for judicial protection, whether or not movant has shown a mathematical probability of success [on the merits]."¹⁴

Third, should the request for a stay be granted, there will not be significant harm to any parties. Instead, a stay of the October 1, 2002 effective date for the consecutive number requirements will allow for the thorough consideration and, potentially, further comments from the industry, regarding ATIS' Petition for Reconsideration. During this time, the industry may also further examine the options available, the impacts of such options and introduce relevant information into the record for Commission consideration.

IV. CONCLUSION

For the foregoing reasons, ATIS, on behalf of the ESIF, respectfully requests that the Commission grant a stay of the October 1, 2002 effective date with respect to the sequential number code requirements, specifically 47 C.F.R. § 20.18 (l)(1)(i) and (l)(2)(i), while a decision regarding the ATIS Petition for Reconsideration is pending and to allow for further examination by the industry of the potential alternative solutions.

Respectfully submitted by,

ATIS on behalf of the ESIF

Megan L. Campbell
General Counsel
ATIS
1200 G Street, NW, Suite 500
Washington, DC 20005
202-434-8847

June 12, 2002

¹⁴ *Washington Metropolitan Transit Commission*, 559 F.2d at 844