

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NAVD) Modified
Texas .....	Galveston County (Unincorporated Areas) (FEMA Docket No. 7609).	Gulf of Mexico .....	North of FM 3005, from approximately 1,000 feet west of its intersection with Pirates Beach Circle to approximately 300 feet east of 12 mile Road. At the shoreline, near the Southern terminus of San Domingo Drive, about 100 feet west of the City of Galveston corporate limit, to the corporate limit.	*17  *20
Maps are available for inspection at the 123 Rosenberg Street, Suite 4157, Galveston, Texas.				
Texas .....	Galveston (City), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico .....	At the northern terminus of 9 Mile Road ..  Along the shoreline extending from approximately 1,500 feet east of the southern terminus of 11 Mile Road to Pabst Road.	*18  *20
Maps are available for inspection at City Hall, 823 Rosenberg Street, Galveston, Texas.				
Texas .....	Jamaica Beach (Village), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico .....	From the canal northwest of Bahama Way to West Bay.  Along the shoreline extending from the western corporate limit to the southern terminus of Buccaneer Drive.	*14  *20
Maps are available for inspection at 16628 San Luis Pass Road, Jamaica Beach, Texas.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 30, 2002.

**Anthony S. Lowe,**

Administrator, Federal Insurance and Mitigation Administration.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 61, and 69**

[CC Docket No. 96-187; FCC 02-242]

**Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission declined to revise its streamlined tariff procedures in the manner requested by the AT&T Corporation, MCI Telecommunications Corporation, and Southwestern Bell Telephone Company. The intended effect of this document is to maintain the existing Commission rules regarding the filing of tariffs on a streamlined basis.

**FOR FURTHER INFORMATION CONTACT:** Joi Roberson Nolen, Wireline Competition Bureau, 202-418-1537.

**SUPPLEMENTARY INFORMATION:** In this document, the Commission denies the petitions for reconsideration filed by AT&T Corporation (AT&T), MCI Telecommunications Corporation (MCI), and Southwestern Bell Telephone Company (SWBT) (hereinafter "the petitioners") regarding the Commission's 1997 *Streamlined Tariff Report and Order*, 12 FCC Rcd 2170 (1997), 62 FR 5757-03, February 7, 1997. The Commission also denies the requests for clarification filed by AT&T and MCI. The *Streamlined Tariff Report and Order* implemented amendments to section 204(a) of the Communications Act (Act) made by the Telecommunications Act of 1996 (1996 Act). Specifically, the 1996 Act allowed local exchange carriers (LECs) to file new or revised charges, classifications, regulations or practices with the Commission on a streamlined basis. See 47 U.S.C. 204(a)(3). In particular, the *Streamlined Tariff Report and Order* implemented the "deemed lawful" tariff provisions that the 1996 Act added to section 204(a)(3) of the Act. AT&T and MCI sought reconsideration of the Commission's conclusion that "deemed lawful" status confers a conclusive presumption of lawfulness. In their petitions, AT&T and MCI assert that the

Commission should have interpreted the phrase "deemed lawful" as creating a rebuttable presumption, *i.e.*, a tariff filed on a streamlined basis that becomes effective without suspension and investigation is presumed lawful, but that presumption may be rebutted. In support of their position, AT&T and MCI argue that the "deemed lawful" language in section 204(a)(3) is ambiguous. Subsequent to the filing of the petitions for reconsideration, the United States Court of Appeals for the District of Columbia Circuit considered the meaning of "deemed lawful" in section 204(a)(3) in the context of a section 208 complaint case. *ACS of Anchorage, Inc. v. FCC*, 290 F. 3d 406, 412 (D.C. Cir. 2002). The court focused on whether there was a distinction to be made between rates and rates of return for determining whether the deemed lawful standard was applicable to the case. In this context, however, the court specifically considered the Commission's statements in the *Streamlined Tariff Report and Order* that the term "deemed lawful" was "unambiguous" in the "consistent" interpretation of the courts. *Id.* That consideration led the court to say, "[t]his being so [that case law consistently found deemed lawful to be unambiguous], we find section 204(a)(3) equally unambiguous in banning refunds purportedly for rate-of-return

violations." *Id.* Given the court's conclusion, the Commission cannot adopt the reading urged by AT&T and MCI. The Commission thus denies the petitions filed by AT&T and MCI with respect to this issue.

The Commission also, however, denies SWBT's petition with respect to the issue of the Commission's interpretation of "deemed lawful." In its petition, SWBT asserts that "deemed lawful" creates a safe harbor in which LECs can operate without fear of an attack on their rates or other provisions once the tariffs become effective. The court's holding was limited to the question of refund liability for rates that were "deemed lawful"; it in fact acknowledged that the Commission might order prospective relief "[i]f a later reexamination shows them to be unreasonable." See *ACS of Anchorage, Inc. v. FCC*, 290 F. 3d at 411. Therefore, a rate that is deemed lawful within the meaning of section 204(a)(3) may be the subject of a complaint alleging that the rate has become unjust and unreasonable, and the Commission by order may prescribe a new rate to be effective prospectively, even if the Commission can not require a carrier to make refunds. The Commission also denies reconsideration and clarification of a number of other issues related to streamlined tariff filings.

Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 4(j), 201–205, and 405 of the Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, and 405, that the petitions for reconsideration filed by AT&T Corp., MCI Communications Corp., and Southwestern Bell Telephone Company are hereby denied.

#### List of Subjects

##### 47 CFR Part 1

Administrative Practices and Procedures, Communications common carriers, Telecommunications.

##### 47 CFR Part 61

Access Charges, Communications common carriers, Telephone.

##### 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 02–26238 Filed 10–15–02; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[CC Docket No. 94–102; DA 02–2423]

#### Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; stay of effective date.

**SUMMARY:** This document responds to a petition for reconsideration of a previous decision in this proceeding, by granting a request for stay of two of the Commission's rules imposing requirements for programming donated non-service-initialized phones and newly manufactured "911-only" wireless handsets with a code number as the telephone number/mobile identification number. Such phones currently lack such an identifying number and therefore do not have "call-back" capability. This inability to reach a caller, when such phones are used in emergency situations, can lead to critical delays in response time. The action is taken because the importance of the call-back issue to public safety and the merits of the arguments raised in the petition for reconsideration warrant further investigation before any rules are implemented.

**DATES:** Sections 20.18(l)(1)(i) and (l)(2)(i), added at 67 FR 36112, May 23, 2002, are stayed indefinitely effective October 1, 2002. The Commission will publish a document in the **Federal Register** when a final decision regarding these rule sections is reached.

**FOR FURTHER INFORMATION CONTACT:** David Siehl, Attorney, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Order in CC Docket No. 94–102; DA 02–2423, adopted and released on September 30, 2002. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

## Synopsis of the Order

1. The Order grants a Request for Stay of 47 CFR 20.28(l)(1)(i) and (l)(2)(i) as adopted in the Report and Order published at 67 FR 36112, May 23, 2002. These rules impose 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 rules is to address the lack of call-back capability when 911 calls are dialed from these wireless devices.

2. A Request for Stay of the rules was filed by the Emergency Services Interconnection Forum (ESIF), which is a sponsored committee of the Alliance for Telecommunications Industry Solutions and is comprised of Commercial Mobile Radio Service carriers, wireless handset vendors, and public safety representatives. A Public Notice soliciting comment on this Request for Stay was published at 67 FR 46909, July 17, 2002.

3. In examining ESIF's Request for Stay, the Order finds that a stay is warranted in this case based on the likelihood of success on the merits of a Petition for Reconsideration of the Report and Order (Reconsideration Petition), also filed by ESIF, 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, raised by ESIF in its Reconsideration Petition, for 911 calls from donated non-initialized wireless phones and 911-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.

### Ordering Clause

4. *It is therefore 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 1 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. The Commission will then publish a document in the **Federal Register** regarding these rules.

### List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.