



October 9, 2008

Via E-Mail Delivery

Nicholas A. Fraser
Office of Management and Budget
New Executive Office Building,
Washington, DC 20503

Re: 73 FR 52354; Information Collection Regarding Emergency Backup Power for Communications Assets as set forth in the Commission's Rules (47 CFR 12.2)

Dear Mr. Fraser:

The United States Telecom Association (USTelecom)¹ submits this letter in response to the Federal Communications Commission's (Commission's) notice regarding its most recent backup power regulation Paperwork Reduction Act (PRA) analysis submitted to the Office of Management and Budget (OMB).² USTelecom members recognize the Commission's important public safety function and are moving forward with efforts to comply with the new regulations. However, despite significant concerns identified by USTelecom and others regarding the Commission's first PRA analysis,³ the Commission has failed to adjust its PRA analysis in any meaningful form.

The Commission sought comment on its initial PRA analysis in January 2008. In that proceeding, numerous commenters detailed the considerable challenges associated with compiling the requested data and faulted the Commission's findings in terms of estimated hours and cost. Yet after reviewing the extensive record in that proceeding, the Commission scarcely adjusted one component of its PRA analysis and left another completely unchanged. Specifically, the Commission's current PRA analysis scarcely increases the estimated hours necessary for completion from 70.32 to just 116.64 and – despite strong evidence to the contrary – maintains that the cost of compliance is “None.”

While USTelecom and its member companies support the Commission's goals, the Commission's current PRA analysis remains unreasonable and is inconsistent with recent OMB guidelines regarding the collection of information by Federal agencies. The PRA analysis is an important part of the regulatory process, enabling federal agencies to fully appreciate and weigh the burdens and benefits of information collections on industry and the public. Accordingly, we

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

² 73 F.R. 52354 (2008). *See also* Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Order on Reconsideration*, FCC 07-177, 72 FR 57879, (2007).

³ *See* Letter from Glenn Reynolds, USTelecom, VP, Policy, to Jerry Cowden, Federal Communications Commission, regarding Information Collection Regarding Emergency Backup Power for Communications Assets as set forth in the Commission's rules (dated January 14, 2008) (*USTelecom Letter*).

urge the OMB to reject the current PRA analysis and work with the Commission in order to develop a more realistic estimate of the burden resulting from its information collection requirements.

The Commission's PRA Analysis Vastly Understates Estimated Time Requirements

The Commission's current PRA submission addresses new reporting requirements for – among others – certain local exchange carriers (LECs), most of whom are USTelecom members. In response to issues arising in the aftermath of Hurricane Katrina, the Commission is mandating that LECs identify and report on the emergency backup power sources for all assets that are normally powered from local commercial power. Specifically, all Class A LECs must file reports with the Commission – supported by an affidavit or declaration under penalty of perjury – that identify an inventory listing of each asset: 1) that was designed in compliance with the backup power mandate; 2) where compliance is precluded due to risk to safety or life or health; 3) where compliance is precluded by private legal obligation or agreement; 4) where compliance is precluded by Federal, state, tribal or local law; and 5) designed with less than the required emergency backup power capacity and that is not otherwise precluded from compliance. Finally, LECs must file a certified emergency backup power compliance plan that is subject to Commission review for certain assets, if any.

USTelecom has been supportive of the Commission's effort to improve disaster preparedness, network reliability and communications among first responders such as police, fire fighters, and emergency medical personnel. USTelecom and its members companies have worked closely with the Commission on carefully crafting regulations that meet the legitimate needs of the Federal Government in ensuring continuity of telecommunications services during times of natural and other disasters. Nonetheless, it is important for OMB to have a clear appreciation of the burden that LECs will experience as a result of the Commission's Order, and for that burden to be accurately reflected in the Commission's PRA analysis.

With respect to the wireline facilities of local exchange companies, the assets subject to this information collection are primarily central offices and remote terminals. These facilities, many of which may need to be individually inspected to comply with this information request, are spread throughout a LEC's network territory, covering in some cases several states. For example, three of the smallest companies subject to these rules have assets spread across between 17 and 23 states. While there is a large spread in the number of these assets owned by the various affected companies, an informal survey of USTelecom member companies required to respond to this information collection indicates that these companies have an average of more than 25,000 wireline assets subject to the reporting requirement.

The Commission's first estimate of 70 hours provided LECs with just 10 seconds per wireline asset to comply with the reporting requirements. Yet after reviewing the extensive record in this proceeding, the Commission's revised estimate of 116.64 hours allows for a mere *16.79 seconds per wireline asset*. A brief description of the steps necessary to compile the information required demonstrates that it will take many, many times that interval to satisfy the requirements.

First and foremost, the companies will need to conduct a review in order to identify all of the facilities responsive to this request. As noted above, the USTelecom companies required to respond to this Order (which we believe represent the majority of all LECs subject to the information collection) have on average more than 25,000 assets that must be reviewed.⁴ These assets are spread throughout the companies' networks, which in most cases cover multiple states. Given the types of information that must be gathered, and the fact that the filing with the Commission must be under sworn affidavit, this review will require visual on-site inspection in many cases.

Once this review is complete, the companies must then assign each of the assets into categories. This effort will necessarily include analysis of: 1) existing contractual agreements; 2) Federal, state, tribal or local laws; and 3) safety, life and health assessments. Indeed, because networks are geographically dispersed throughout numerous localities – and in many instances several states – accurate reporting to the Commission could require review of multiple local laws and numerous private access agreements. And where a LEC believes it cannot comply with the backup power mandate with respect to a particular asset due to risk to safety of life or health, the LEC must include in its report “a description of the particular public safety risk and sufficient facts to demonstrate substantial risk of harm.”⁵

The final requirement for affected LECs is that companies must formulate, draft and file a certified emergency backup power compliance plan subject to Commission review for certain assets, if any. The plan must describe how, in the event of a commercial power failure, the LEC intends to provide emergency backup power to 100 percent of the area covered by any non-compliant asset, relying on on-site and/or portable backup power sources or other sources as appropriate.

The Commission's PRA Analysis Ignores the Substantial Costs That Will Result from the Information Collection

Similarly, the Commission continues to effectively ignore the true annual cost estimates that will result from its requirements. Although USTelecom's member companies will incur substantial costs as a result of the Commission's requirements, the Commission continues to conclude in its current PRA analysis that estimated annual costs are “None.” Based on the overwhelming evidence contained in the record, the Commission's conclusion cannot be supported.

Clearly, even for assets that do not require visual on-site inspections to comply with the information collection it will take more than a few seconds to prepare an accurate response. Compliance with this information collection will require each of the affected companies to

⁴ USTelecom notes that some of our member companies also have large numbers of wireless assets that will be subject to these reporting requirements. Our analysis here does not try to account for the significant additional burden that will be necessary to catalog the tens or even hundreds of thousands of wireless assets that will need to be catalogued by this mandate.

⁵ 47 C.F.R. §12.2(c)(2).

reassign engineering, network and other personnel from their normal business duties to compile these reports, not to mention resources necessary to access assets spread over wide geographic areas.

Yet despite these substantial administrative and operational undertakings, the Commission somehow concludes that no costs will be incurred by companies subject to these reporting requirements. Such a position is unsupported based on the record, and OMB should therefore reject the Commission's PRA analysis submission.

The Commission's PRA Analysis Remains Procedurally Flawed

In January 2006, OMB issued guidelines concerning statistical collection procedures and methods for Federal agencies to collect information (OMB Guidelines).⁶ The OMB Guidelines discuss what should be included in the calculation of burden hours.⁷ In this regard, the OMB Guidelines state that "[a]gencies must first identify all the steps a respondent takes in order to comply with the survey request, and then estimate the time for each step to arrive at a total burden per respondent."⁸ The OMB Guidelines also state that with respect to assessing burden hours, agency surveys should include the time it takes to "locate the source data and aggregate them."⁹

The Commission's burden estimate fails in this regard. Despite the fact that affected LECs must individually survey hundreds of thousands of assets in their expansive geographic areas, the Commission analysis failed to account for the myriad number of steps that will go into conducting just the initial review, such as identifying the location of assets, assigning personnel and/or groups to review such assets, travel time between locations and recording information relevant to each asset.

* * *

In closing, USTelecom once again emphasizes its support for the Commission's public safety goals underlying this Order. We believe, however, that an appropriate understanding of the burdens associated with compliance with these information collections is important to the Commission's policies and decision-making process and is a clear Commission legal obligation.

⁶ Guidance on Agency Survey and Statistical Information Collections, (available at: http://www.whitehouse.gov/omb/infoereg/pmc_survey_guidance_2006.pdf) (visited January 8, 2008). The Commission's practice of seeking comment on PRA concerns after adopting a final rule is itself also questionable. The PRA requires a notice and comment period prior to the adoption of a new regulation, not after the fact. *See* 44 U.S.C. §§ 3506(c)(2)(A), 3507(a). Seeking comment on PRA concerns and compliance after a regulation has already been adopted by the Commission makes it unlikely that the Commission's rules will respond meaningfully to the OMB Director's concerns or public comment.

⁷ The OMB Guidelines state that burden hours are a measure of – among other things – the time it takes respondents to "search data sources." *OMB Guidelines*, p. 11. OMB notes that in certain circumstances, surveys may be more complicated since respondents "often have to search for information before answering the survey questions." *Id.*

⁸ *Id.*

⁹ *Id.*

USTelecom has submitted similar comments on this matter with the Commission. Accordingly, USTelecom urges the Commission to work with OMB to develop a more realistic estimate of the burden resulting from the information collection in the Order before allowing these rules to take effect. Please feel free to call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Reynolds". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Glenn Reynolds
Vice President, Policy
USTelecom