

**Before the  
OFFICE OF MANAGEMENT AND BUDGET  
and the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

Notice of Public Information	)	
Collection(s) Being Submitted for	)	
Review to the Office of Management	)	
and Budget, Comments Requested	)	
	)	FR Doc. E8-20892
Information Collection regarding Emergency	)	
Backup Power for Communications Assets as	)	
set forth in the Commission's Rules	)	
(47 C.F.R. § 12.2)	)	
	)	
	)	

**COMMENTS OF T-MOBILE, USA INC.  
ON INFORMATION COLLECTION REQUIREMENTS**

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In October 2007, the Federal Communications Commission (“FCC” or “Commission”) adopted a rule requiring that wireless carriers and other communications providers equip cell sites and other communications assets with eight hours of backup power.<sup>1/</sup> In connection with that rule, the Commission imposed significant information collection and reporting requirements on carriers. The Paperwork Reduction Act (“PRA”) mandated that those requirements be submitted to the Office of Management and Budget (“OMB”) for approval, and the Commission set the effective date of the rule to be 30 days from OMB approval. The wireless carrier industry association (“CTIA”) and Sprint appealed the order; T-Mobile and others intervened in support

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<sup>1/</sup> See Order on Reconsideration, *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 18,013 (2007) (“*Order on Reconsideration*”), appeal held in abeyance, *CTIA-The Wireless Ass’n v. FCC*, 530 F.3d 984 (D.C. Cir. Jul. 8, 2008).

of the appeal. These parties sought, and the D.C. Circuit granted, a stay of the rule pending appeal. In light of that stay, OMB asked the Commission not to submit the information collection requirement parts for review, and the Commission agreed.<sup>2/</sup> After briefing and oral argument, the United States Court of Appeals for the District of Columbia Circuit held that the challenge to the rule was not ripe at this time in light of the Commission's failure to submit the rule to OMB and accordingly held the appeal in abeyance.

The Commission has now submitted the information collection aspects of its rule to OMB for review. T-Mobile provides these comments to show that the Commission has severely underestimated the burden – both in time and cost – that these requirements would impose and that they accordingly violate the PRA's mandate “to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal Government.” 5 C.F.R. § 1320.1.

## **INTRODUCTION AND SUMMARY**

In conjunction with the Backup Power Rule, the Commission seeks to impose two new information collection and reporting requirements on wireless carriers:

*First*, the new rule requires CMRS providers to conduct an exhaustive, site-by-site audit of *every* one of the thousands of cell sites in their networks within six months of the rule's effective date. To complete this audit, carriers will be required to compile, review, copy, and submit tens of thousands of pages of site leases, as well as thousands of local, state, and federal laws and ordinances that affect the use of various types of power sources.

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<sup>2/</sup> The D.C. Circuit's stay of the Backup Power Rule remains in effect pending resolution of that appeal, which has been held in abeyance until OMB completes its review of these information collection requirements.

After completing this massive undertaking, the collection would require CMRS providers to file an Emergency Backup Power Report (“Backup Power Report”) with the Commission synthesizing this information and describing whether each cell site (1) is designed to comply with the backup power requirement; (2) is precluded from complying due to risk to safety or life or health; (3) is precluded from complying due to a private legal obligation or agreement; (4) is precluded from complying by Federal, state, tribal or local law; or (5) is not designed to comply with the backup power rule and is not precluded by one of the exceptions above. *See* 47 U.S.C. § 12.2(c). As part of this report, carriers would be required to describe in detail the basis for any claim that a site is exempted from compliance with the rule due to safety risks, legal obligations, or other obstacles and furnish documentation to support such claims. *Id.*

*Second*, the rule requires wireless providers to formulate and file a Certified Compliance Plan (“Compliance Plan”) within one year of the rule’s effective date for every asset or site that is not exempt or already designed to comply with the rule. *Id.* These Compliance Plans must “certify and describe how, in the event of a commercial power failure, the LEC or CMRS provider will 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.” Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested, 73 Fed. Reg. 52354, 52355 (Sept. 9, 2008) (“*September 2008 Public Notice*”).

As described below, the Commission has dramatically underestimated the burden these information collection requirements will impose on carriers. The FCC initially estimated that preparing a response to the information collection requirement would take only 70.32 hours. *See* Notice of Public Information Collection(s) Being Reviewed by the Federal Communications

Commission, Comments Requested, 72 Fed. Reg. 64221, 64222 (Nov. 15, 2007) (“*November 2007 Public Notice*”). Following input from affected wireless carriers, the Commission increased this estimate slightly to 96 hours for the Backup Power Report and 192 hours for the Compliance Plan (a weighted average of 116.64 hours per respondent). *September 2008 Public Notice* at 52355. But these new estimates still grossly understate the time required. Indeed, they are facially erroneous: for example, the 96 hours per carrier the Commission assumes for the Backup Power Report would leave T-Mobile less than *nine seconds* per cell site to complete the detailed information collection and analysis for its more than 40,000 cell sites. The Commission’s estimates also directly contradict the evidence presented to the Commission by the affected carriers. As T-Mobile and a number of other carriers explained, it would take “*tens of thousands of hours*” to comply with the rule’s reporting requirements.<sup>3/</sup>

Likewise, the Commission’s latest estimate of the costs associated with this collection is grossly understated. The Commission estimates a total cost of \$312,600 for all carriers to compile, review, and submit the required information – which amounts to about \$2,770 to prepare a Backup Power Report and \$5,540 for a Compliance Plan. *See FCC Backup Power Rule, Paperwork Reduction Act Supporting Statement* at 8 (Sept. 3, 2008) (“Supporting Statement”). While this estimate constitutes an improvement over the Commission’s initial

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<sup>3/</sup> Paperwork Reduction Act Comments of Verizon and Verizon Wireless at 3 (Jan. 14, 2008) (“Verizon Wireless PRA Comments”) (emphasis added); *see also, e.g.*, Paperwork Reduction Act Comments of T-Mobile USA, Inc. at 8-9 (Jan. 14, 2008) (“T-Mobile PRA Comments”); Paperwork Reduction Act Comments of NextG Networks at 4 (Jan. 14, 2008) (“NextG PRA Comments”) (estimating that it would take NextG 39,520 hours to comply with the reporting requirements); Paperwork Reduction Act Comments of MetroPCS Communications at 16 (Jan. 14, 2008) (“MetroPCS PRA Comments”) (estimating that it would take between 10,992 and 11,991 hours for MetroPCS to comply); Paperwork Reduction Act Comments of AT&T at 4 (Jan. 14, 2008) (“AT&T PRA Comments”) (estimating that compliance would require “thousands of hours”).

“zero” cost estimate, it still vastly understates the costs to collect, review, and compile the required information and simply ignores the evidence provided by affected carriers. Among other things, complying with the audit and report obligations will require the deployment of a significant number of personnel, including engineers, project managers, support staff and lawyers, as well as contractors to manage the analysis and the database. The associated costs will almost certainly necessitate expenditure of millions of dollars by wireless carriers.

All this time and expense is wholly unnecessary for the “proper performance of the functions of the Commission” and will not have “practical utility.”<sup>4/</sup> Contrary to the requirements of the PRA and associated regulations, the Commission has failed to formulate a plan for the use of the requested information to ensure compliance. Nor could it do so: The information, which will be in myriad, carrier-specific formats and consist of tens of thousands of pages, will be virtually unreviewable. Finally, the Commission never explained why other, less burdensome methods of ensuring compliance would not have been acceptable. The cost and time involved in this reporting are unprecedented and unnecessary. The FCC routinely requires carriers to comply with network-wide regulatory obligations without imposing corresponding information collection requirements that require the regulated entities to file lengthy reports demonstrating their compliance, and it is unclear what purpose the reporting requirement serves here, or how it would materially advance the public interest.

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<sup>4/</sup> *November 2007 Public Notice* at 64,222; *see also* Paperwork Reduction Act, Pub. L. No. 104-13, 109 Stat. 163 (May 22, 1995) (codified at 44 U.S.C. § 3501(1)-(2)) (directing agencies to “minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government” and to “maximize the utility of the information created, collected, maintained, used, shared and disseminated by or for the Federal Government”); 5 C.F.R. § 1320.1 (calling upon agencies to “reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared, and disseminated by or for the Federal Government.”).

Accordingly, OMB should disapprove these information collection requirements because the FCC has failed to comply with the requirements of the PRA.

### **ARGUMENT**

The information collection requirements adopted in connection with the Backup Power Rule are antithetical to the PRA's central purpose to "*minimize the paperwork burden* for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons . . . ." 44 U.S.C. § 3501(1) (emphasis added). The FCC's requirements also conflict with the purpose of the regulations implementing the PRA, which direct agencies to ensure that information collection requirements be "implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond," 5 C.F.R. § 1320.9(e), and "to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal Government." 5 C.F.R. § 1320.1. The information collection requirements adopted by the FCC in this instance fail on all counts.<sup>5/</sup>

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<sup>5/</sup> The Commission also failed to comply with the requirements of the PRA to provide notice and seek comment before adopting new information collection requirements. *See* 44 U.S.C. §§ 3506(c)(2)(A); 3507(a). The Commission adopted these requirements in the *Order on Reconsideration* on October 4, 2007, without providing any opportunity for comment on them; in fact, the Commission neglected to submit these requirements to OMB for review until it released an *Erratum* on October 9, 2007. It then failed to seek comment on the information collection requirements until November 15, 2007. *See November 2007 Public Notice* at 64,222. Yet the PRA makes clear that agencies should not conduct or sponsor collections of information unless, "*in advance of the adoption . . . of the collection of information,*" the agency has "evaluated the public comments received" regarding the proposed information collection. 44 U.S.C. § 3507(a)(1)(B) (emphasis added). This failure to follow the procedures of the PRA casts serious doubt on the information collection requirements adopted in association with the Backup Power Rule.



The FCC has dramatically understated the burden that the new information collection requirements will present for carriers. And, despite the overwhelming burden that will result from these obligations, the information yielded will be of no practical utility: submission of the requested information is unnecessary to effectively ensure the provision of the mandated levels of backup power. In fact, by demanding time and resources be devoted to recordkeeping for recordkeeping's sake, the proposed information collection requirements will divert scarce carrier resources from providing service, upgrading and maintaining the network, and, of course, from responding to real and present disasters like Hurricanes Ike and Gustav.

**A. THE COMMISSION DRAMATICALLY UNDERESTIMATES THE BURDEN ASSOCIATED WITH THE PROPOSED REQUIREMENTS**

The PRA requires that, in calculating the burden associated with the proposed information collection requirements, the Commission consider the “time, effort, or financial resources expended by persons to generate, maintain or provide [the] information.” 44 U.S.C. § 3502(2). The Commission’s estimates of these burdens are completely unsupported, contradicted by directly relevant evidence submitted by affected carriers, and wrong on their face.

*1. Time*

The Commission estimates that the time required to respond to the information collection requirements will average 96 hours for the Backup Power Report and 192 hours for the Compliance Plan (a weighted average of 116.64 hours per respondent). *September 2008 Notice* at 52354. Although this represents a slight improvement from the Commission’s initial estimate that preparing a response to the information collection requirements would take 70.32 hours, *November Public Notice* at 64222, the revised figures find no more basis in reality than the earlier one. To the contrary, the Commission’s latest estimate contradicts the evidence that has been provided by affected carriers.

As affected wireless carriers made clear in comments to the Commission,<sup>6/</sup> the proposed information collection and reporting requirements would require wireless carriers to audit tens of thousands of cell sites throughout their networks. T-Mobile's network alone now includes over 40,000 cell sites. Thus, to complete the required Backup Power Report in 96 hours, T-Mobile would have to complete all the required steps within less than *nine seconds per site*.

That is obviously impossible. The Backup Power Report would require on-site inspections of individual cell sites, as well as location-specific analysis of relevant regulatory restrictions. That information is not contained in readily searchable systems and databases. The Commission's estimated time would not be sufficient even to physically visit just a small fraction of T-Mobile's cell sites, let alone conduct the related safety, lease, and legal assessments. For example, T-Mobile has more than 2,000 cell sites in Pennsylvania alone: visiting those sites in 96 hours would require driving to and inspecting more than 20 sites per hour, or one site every three minutes.

In place of the Commission's unsupported allegations, T-Mobile sets forth here – as it did before the Commission – concrete evidence regarding the *thousands* of hours of work that the rules would entail:

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<sup>6/</sup> See, e.g., Paperwork Reduction Act Comments of CTIA at 7 n.12 (Jan. 14, 2008) (“CTIA PRA Comments”) (estimating that its member wireless carriers would be required to file reports on 209,900 cell sites); Verizon Wireless PRA Comments at 2 (Verizon has more than 50,000 assets subject to the inventory requirement, while Verizon Wireless has over 30,000 assets that would need to be audited); MetroPCS PRA Comments at 4 (estimating that MetroPCS would be required to audit and inspect 3,397 cell sites); NextG PRA Comments at 3 (estimating that NextG would be required to inventory and audit approximately 3,800 sites); T-Mobile PRA Comments at 4.

a) Backup Power Report

In order to complete the Backup Power Report, a carrier would have to go through a number of time-consuming steps:

*First*, to compile the initial cell site-by-cell site report, T-Mobile would be required to assess via database searches and site visits whether each of its sites is compliant with the backup power rule, and then conduct a more extensive physical assessment of all sites that appear to be non-compliant to determine whether the addition of backup power at each such cell site is feasible. If the addition of backup power is determined to be feasible, an assessment would have to be made as to what sort of backup power would be most suitable.

The unavoidable requirement to engage in such site visits in order to comply with the Commission's rules is particularly onerous. As noted, T-Mobile expects that it will be required to physically inspect a *substantial* portion of its 40,000 cell sites – which by definition will entail a significant investment of time and resources.<sup>27</sup> Assuming, purely for the sake of argument, that a technician could inspect each site in as little as *15 minutes* per site – and optimistically assuming that only 30% of T-Mobile's sites would require an individual inspection – it would take T-Mobile technicians approximately *3,000 hours* just to conduct an initial physical

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<sup>27</sup> T-Mobile faces a particularly heavy burden because the characteristics of its network require the deployment of more cell sites – which in turn means more site visits and a larger reporting obligation. T-Mobile's PCS (1.9 GHz) and AWS (17/2.1 GHz) spectrum blocks have different propagation characteristics than the 850 MHz networks of many of T-Mobile's industry peers; this difference in spectrum characteristics requires T-Mobile to deploy a higher number of cell sites in its network even as compared to some of its larger competitors. While the Commission has lumped all carriers together in making its (incorrect) burden assessment, T-Mobile urges OMB to recognize that, in fact, some carriers will bear a disproportionate share of this outsized burden. That disparate impact compounds the unfairness of the information collection requirements, imposing costs and burdens that could have potential competitive consequences. *See* T-Mobile Comments in Support of Petitions for Reconsideration, EB Docket No. 06-119, WC Docket No. 06-63, at 8 n.11 (filed Sept. 4, 2007) (“T-Mobile Comments on Reconsideration”).

evaluation of T-Mobile's sites, leaving aside the "drive time" required to travel from site to site – many of which are in rural areas and far-flung.

*Second*, after visiting and physically evaluating the various sites that are not equipped with the required eight hours of backup power, T-Mobile will be required to research, analyze, and document the thousands of potential legal restrictions that could preclude compliance with the backup power rule at individual sites. As T-Mobile and other carriers have made clear, the potential legal restrictions on backup power are widely varied and far-reaching, including fire and building codes, environmental regulations, and zoning regimes that vary from locality to locality.<sup>8/</sup> T-Mobile estimates that it could take over 350 hours for its legal counsel to assess and document the applicability and effect of just the federal environmental laws. Yet that is only the tip of the iceberg. In the central United States alone, T-Mobile estimates that it would be required to analyze local ordinances governing the storage of hazardous materials and restricting noise for over 2000 jurisdictions to determine the viability of adding either generators or backup batteries to cell sites – an undertaking that would require over 4,000 hours of review and analysis. Analysis of local zoning laws would also take significant time. For example, in Pennsylvania alone, T-Mobile could be required to review and analyze the zoning regimes of

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<sup>8/</sup> See T-Mobile Comments on Reconsideration at 12-16; PCIA – The Wireless Infrastructure Association Petition for Reconsideration, EB Docket No. 06-119, WC Docket No. 06-63, at 10-12 (Aug. 10, 2007) ("nationwide fire codes, state and local building codes, noise abatement rules, permitting laws and federal environmental regulation are all implicated by the installation of the generators and 600-1000 pound batteries that are necessary to comply with the requirement"); CTIA – The Wireless Association Motion for Administrative Stay, EB Docket No. 06-119, WC Docket No. 06-63, at 22-32 (July 31, 2007) (required batteries or generators would be "subject to a host of federal, state, and local environmental and safety laws that strictly limit or significantly impact their installation and use").

2,565 separate municipalities.<sup>9/</sup> The Commission's 96 hour estimate falls to pieces when measured against even this isolated component of the rule.

*Third*, T-Mobile would have to review and analyze the leases for the sites where it does not currently have the requisite backup power so that it can identify and provide documentation to the Commission regarding lease terms that preclude or restrict the installation of 8 hours of backup power. This would be a hugely time-consuming undertaking given that approximately 90% of T-Mobile's sites are leased. In the Northeast region of the country alone, T-Mobile leases approximately 15,000 cell sites – and the majority of the leases for these sites are unique, party-specific agreements of fifteen to thirty pages in length. T-Mobile estimates that it would require, on average, one hour per lease to conduct an initial assessment as to whether the lease permits it to locate additional equipment at the site, what steps are required to do so, etc. Beyond that, time would be required to provide a site-by-site catalogue of these lease restrictions, as the proposed information collection rules require.

*Fourth*, T-Mobile's engineering and compliance groups will be required to analyze and document whether installation of backup power at a particular site is precluded by public safety or health risks. Such an assessment may require complex structural analyses to determine, for example, whether a rooftop would be capable of supporting the weight of additional batteries. That assessment could require specialized analyses in many cases, requiring secondary or prolonged site visits to provide the documentation required by the Commission.<sup>10/</sup>

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<sup>9/</sup> T-Mobile Comments on Reconsideration at 13 n.21.

<sup>10/</sup> T-Mobile would have to conduct each of these analyses for all sites without the requisite 8 hours of backup power because, even if it were to conclude that a lease term precludes compliance, there is no guarantee that the Commission would agree and it therefore would be important to know whether legal or public safety constraints also exist.

*Finally*, T-Mobile will be required to pull together all of this information – gathered from all areas of the country by dozens of teams of personnel, including engineers and lawyers – into the required Backup Power Report. Producing the report, even standing alone, is a substantial undertaking: it must classify each of T-Mobile’s more than 40,000 sites, complete with an explanation and documentation for any site that falls within one of the rule’s exceptions.

b) Compliance Plan

Completing a Compliance Plan for the non-exempt sites also would involve significant time and expense. While the Commission estimates that only 20 of the 73 carriers it assumes are subject to these obligations will be required to submit a Compliance Plan, that itself is almost certainly a gross underestimate. Wireless carriers have made clear that *most* carriers will have many sites that are non-compliant yet non-exempt, thus triggering their obligation to complete Compliance Plans.<sup>11/</sup>

In addition to adopting an unsupported assessment with respect to the number of carriers who will be forced to file a plan – the Commission has ignored the amount of time and effort that will be involved. While the Commission estimates that preparing Compliance Plans will require only about 192 hours, *see* Supporting Statement at 6, the evidence submitted by affected wireless carriers makes clear that this estimate is unreasonably low.<sup>12/</sup> Many sites within carrier networks will be implicated: T-Mobile estimates that these backup power compliance plans may be required for *thousands* of its cell sites. T-Mobile explained that it might need to visit and assess each of these sites individually to determine whether and how a site can be covered through an alternative compliance plan. For example, without an in-person visit, it is not possible to assess

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<sup>11/</sup> See, e.g., T-Mobile PRA Comments at 2; Paperwork Reduction Act Comments of Sprint Nextel at 9 (“Sprint Nextel PRA Comments”); AT&T PRA Comments at 3.

<sup>12/</sup> See, e.g., T-Mobile PRA Comments at 4-8; AT&T PRA Comments at 2; Verizon Wireless PRA Comments at 2-4.

whether a site is situated to make use of a mobile power source – e.g., how accessible the site likely will be in the case of an emergency.<sup>13/</sup> In short, the separate and additional information gathering exercise required to compile the Compliance Plan is time-consuming and burdensome in its own right.

\* \* \*

The Commission reached the unsupportable conclusion that the Backup Power Report and Compliance Plan could be prepared in the span of 288 hours. But the real time burden is likely to run in the *thousands* of hours per carrier. Thus, the burden associated with the Commission’s information collection requirements is immense and, as discussed below, with little or no justification or benefit.

The Commission ignored the record evidence of this burden in reaching its estimates based solely on the assertion that “[s]tatements made during the rulemaking proceeding indicate that the process of obtaining much, if not all, of the information necessary for the backup power information collection is readily accessible to LECs and CMRS providers.”<sup>14/</sup> Among the cited Comments is a reference to T-Mobile’s Comments – which state no such thing. The Commission apparently cites a portion of T-Mobile’s Comments which say only that it has determined that certain cell site locations (e.g., near the Gulf) are particularly vulnerable to service disruption and that it therefore has installed additional backup power at those sites. *See*

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<sup>13/</sup> It is not clear that this can practically be done on the initial assessment visits, described above, because this secondary assessment becomes necessary only *after* a determination is made that no exemptions apply: it could be more efficient to make secondary visits only to those sites that turn out to be both non-compliant and non-exempt. But even if this could be wrapped into the initial set of assessment site visits, it will necessarily lengthen such visits, adding time and requiring an additional level of expertise and internal reporting.

<sup>14/</sup> Supporting Statement at 5 (citing various Comments including those of T-Mobile).

T-Mobile Comments on Reconsideration at 5-9.<sup>15/</sup> That provides no support for the Commission's assertion that carriers like T-Mobile already have the information requested by the Commission at their fingertips. It shows only that T-Mobile was able to perform a general, high level assessment of its assets in a focused area. That limited exercise is by no means equivalent to having catalogued, compiled, and analyzed information concerning the availability and viability of adding backup power to each of T-Mobile's over 40,000 cell sites.

The burden of the information collection requirements is far greater than the Commission portrays. The relevant regulations mandate that the Commission's burden estimate should take into account "the total time, effort, or financial resources expended by persons to *generate, maintain, retain, or disclose or provide* information to or for a Federal agency."<sup>16/</sup> This burden includes, among other things, the time and expense necessary to search data sources to compile the required information;<sup>17/</sup> to process and maintain the required information;<sup>18/</sup> and to provide the required information.<sup>19/</sup> The evidence shows that the time needed for these tasks is in the thousands of hours and far outweighs any benefit the information collection might bring.

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<sup>15/</sup> The Commission cites only "T-Mobile Comments at 5-9," so it not entirely clear which T-Mobile Comments the Commission is citing. However, the only other Comments T-Mobile submitted in the underlying proceeding also offer no support for the Commission's assertion that T-Mobile or other carriers have admitted to having the information needed for the reports in question. In those Comments, T-Mobile expressed a willingness to work with the government in coordinating *outage* reports during disasters or emergencies, but that obviously is wholly distinct from the detailed analysis the Commission has required in its rules for all cell sites wholly apart from any actual disaster or emergency. See Reply Comments of T-Mobile USA, Inc., *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, at 6-8 (Aug. 21, 2006).

<sup>16/</sup> 5 C.F.R. § 1320.3(b)(1).

<sup>17/</sup> 5 C.F.R. § 1320.3(b)(1)(vii).

<sup>18/</sup> 5 C.F.R. § 1320.3(b)(1)(iii).

<sup>19/</sup> 5 C.F.R. § 1320.3(b)(1)(iv).



## 2. Cost

The Commission also woefully underestimates the costs that its information collection requirements would impose. The Commission initially asserted that the costs would be “None.” 72 Fed. Reg. at 64222. The Public Notice inviting the current comments repeats the estimated cost as “None,” 73 Fed. Reg. at 52354. The Commission’s Supporting Statement now asserts that “each respondent would spend \$312,600.” *See* Supporting Statement at 8. In fact, however, the Commission’s actual calculations make clear that it is estimating that *all respondents* in the aggregate will spend a total of \$312,600.<sup>20/</sup> Its actual estimate for each carrier, based on the methodology it uses in the Supporting Statement, amounts to about \$2,770 to prepare a Backup Power Report and \$5,540 for a Compliance Plan, which includes nothing more than the portion of the salary of an employee working 96 hours and 192 hours.<sup>21/</sup>

That estimate is unquestionably wrong. As described above, the time needed to complete the reports will be orders of magnitude higher than 96 or 192 hours, so even limiting costs to just employee salaries, the Commission’s estimate is much too low. Moreover, the Commission’s notion that the information collection can be accomplished by “a full-time employee who works 2080 hours annually” is oversimplistic and understated. In fact, as T-Mobile and others made clear in their comments, preparing the required reports will require T-Mobile to deploy a host of personnel including network engineers, site managers, subject matter experts, environmental and

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<sup>20/</sup> The Commission arrives at the \$312,600 figure by estimating the cost of a full-time employee devoting 10,848 hours to the information collection. *See* Supporting Statement at 8. As the Commission’s earlier calculations make clear, the 10,848 hours is the sum of the hours it estimates (wholly unrealistically as explained above) it would take all respondents to complete the Backup Power Report and 20 respondents to complete the Compliance Report. *See id.* at 6.

<sup>21/</sup> The Commission estimates 96 hours to produce a Backup Power Report; dividing that by 2080 hours of annual work time and then multiplying by a \$60,000 salary – the figures used by the Commission – yields approximately \$2,770. Similarly, 192 hours for the Compliance Plan divided by 2,080 annual hours multiplied by \$60,000 yields a cost estimate of approximately \$5,540.

zoning lawyers, and real estate lawyers familiar with the varied legal regimes in T-Mobile’s service territories throughout the nation.<sup>22/</sup> In a number of cases, T-Mobile anticipates that it will be required to retain outside consultants – such as outside lawyers to evaluate legal and leasing issues that must be reflected in the required initial reports. The proposed reporting obligations also would require carriers to invest in modifications to their internal systems, which are not now configured to store or provide the required information or to generate the reports – or to retain an outside consultant to assemble the required database. And the information collection will impose numerous additional expenses on carriers, such as travel to thousands of sites.

As the applicable regulations make clear, the Commission must account for all the “financial resources” and “effort” carriers will be forced to expend to comply with the rule.<sup>23/</sup> The Commission cannot ignore the burden and expense required to train personnel to be able to respond to the collection;<sup>24/</sup> to adjust existing information collection methods to comply with new requirements;<sup>25/</sup> to acquire, install, and develop systems and technology to collect, validate, and verify the requested information;<sup>26/</sup> to process and maintain the required information;<sup>27/</sup> and to provide the required information.<sup>28/</sup>

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<sup>22/</sup> See, e.g., CTIA PRA Comments at 6 (noting that “carriers may be forced to hire additional personnel and outside consultants to meet all of these obligations”); Sprint Nextel PRA Comments at 7 (noting, for example, that “Sprint Nextel will have to assemble an interdisciplinary team including site development personnel, structural engineers, contract specialists and lawyers (both in-house and outside counsel in each state who specialize in real estate, zoning and environmental law) in order to gather the necessary information for Sprint Nextel’s six month report”).

<sup>23/</sup> 5 C.F.R. § 1320.3(b)(1).

<sup>24/</sup> 5 C.F.R. § 1320.3(b)(1)(vi).

<sup>25/</sup> 5 C.F.R. § 1320.3(b)(1)(v).

<sup>26/</sup> 5 C.F.R. § 1320.3(b)(1)(ii).

<sup>27/</sup> 5 C.F.R. § 1320.3(b)(1)(iii).

<sup>28/</sup> 5 C.F.R. § 1320.3(b)(1)(iv).

The Commission's cost estimates of \$2,770 to prepare a Backup Power Report and \$5,540 for a Compliance Plan fail to include these costs and are premised on a fundamental mistake as to the time required to compile the information needed to complete the required reports. As a result, these estimates substantially understate the actual cost of the information collection requirements.

**B. THE PROPOSED INFORMATION COLLECTION WILL HAVE LITTLE OR NO PRACTICAL UTILITY**

Despite the substantial cost and burden to the wireless industry, the proposed information collection will have little or no practical benefit and represents little more than an added paperwork burden for CMRS providers. The PRA defines "practical utility" as "the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion."<sup>29/</sup> The Commission, however, has provided no indication that it has a plan to use the required reports in a timely and effective fashion. Nor is it clear why a massive reporting requirement is necessary for the backup power rule – as compared to many other rules – in order to ensure compliance.

As described above, the proposed information collection requirement will require each wireless carrier to furnish the Commission with *thousands* of pages of information – organized cell site-by-cell site – aimed at documenting whether every cell site in a wireless carrier's portfolio complies with the backup power rule: first, at the six month mark, when carriers must provide a site-by-site report on every cell site in their network and, second, at the one year mark, when carriers must certify full scale backup power Compliance Plans for each site that is not equipped with eight hours of on-site backup power and not covered by an exemption.

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<sup>29/</sup> 44 U.S.C. § 3502(11); *see also* 5 C.F.R. § 1320.8(a)(7) (calling upon the agency to provide for "A plan for the efficient and effective management and use of the information to be collected.").

However, it is unclear what purpose these reports serve. It is not even clear that the Commission has a plan to – or even could – review, analyze, and digest in a timely manner the six month Emergency Backup Power Reports in any meaningful or useful way. As a result of the broad scope of the proposed information collection requirements, the Commission will be deluged with thousands of pages of information from communications providers across the nation providing detailed information about the availability of backup power at every single cell site in their networks.<sup>30/</sup> The proposed rules require that these reports must include supporting documentation regarding every claim of an exemption from the backup power requirements, including copies of the relevant pages of leases that prohibit the addition of backup power, documentation of the specific federal, state, local laws that prohibit compliance at a site, and sworn affidavits or declarations.<sup>31/</sup> Thus, each carrier’s report could well be enormous and – because of the Commission’s lack of clarity as to the proper format and organization of the required reports – each report will be provided in a unique format and accompanied by a variety of divergent and potentially unwieldy attachments. Even if the Commission had sufficient staffing or expertise to review these reports, and even if it had established a clear goal it hoped to accomplish using the information in those reports, it has provided no basis to conclude that it could even review and analyze the vast quantity of raw data contained in each report in the few months between the initial Backup Power Reports and the time for submission of a Compliance

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<sup>30/</sup> CTIA has estimated that the Commission will receive “a minimum of 5,000 pages of cell site lists” with an additional five to ten pages of paperwork per exempt cell site. CTIA PRA Comments at 7; *see also* NextG PRA Comments at 5 (estimating that NextG will likely be required to produce a report of between ten thousand and nineteen thousand pages long and that the Commission may be faced with a million or more pages of reports to cover the over 200,000 cell sites in the U.S.).

<sup>31/</sup> *See* 47 C.F.R. § 12.2(c), as amended by the *Katrina Order on Reconsideration* (2007).

Plan for other sites. The same is likely true with respect to the Compliance Plans which are required to address all of a carrier's non-compliant sites.

The Commission has provided no realistic plan to review, analyze, and put to practical use the required mountains of data. That is evident from its estimate of the burden the reports would place on the Federal government: it allots only one-quarter of a single engineer's and a single lawyer's time to review 93 reports – which amounts to a little more than 5 hours for each of them to review, understand, evaluate, and take whatever actions are needed in response to the thousands of pages in each report. That time does not permit any meaningful review and action – further evidence that the reports themselves will have no practical utility.

Requiring submission of this mountain of data is simply unnecessary as a tool to further the “proper performance of the functions of the Commission” and will not have “practical utility” in ensuring the provision of backup power.<sup>32/</sup> In fact, the proposed information collection requirements are wholly unnecessary to further the central purpose of the Backup Power Rule – ensuring that carriers provide sufficient levels of backup power at their cell sites. This crushing burden of time and expense will divert resources (including the time and effort of network engineers and other crucial staff) away from ensuring that adequate backup power is available at cell sites during emergencies such as Hurricanes Katrina, Gustav, and Ike and other natural and man-made disasters. As CTIA noted in its initial Comments, “the network engineers responsible for overseeing and/or coordinating the site analyses and reports are also responsible for upgrading providers' networks, resolving interference concerns, and managing the networks' communications.”<sup>33/</sup> These engineers are also responsible for coordinating disaster response

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<sup>32/</sup> 72 Fed. Reg. at 64,222; *see also* Paperwork Reduction Act, 44 U.S.C. § 3501(1); 5 C.F.R. § 1320.1.

<sup>33/</sup> CTIA PRA Comments at 6; *see also* Verizon Wireless PRA Comments at 4.

activities in the aftermath of hurricanes and other disasters. As a result of the proposed information collection requirements “these network engineers may be forced to divert attention from these important tasks to overseeing and/or compiling reports, which may limit carriers’ ability to address other issues.”<sup>34/</sup>

These reporting requirements will do nothing to further carrier compliance with the Backup Power Rule. Put simply, carriers already are obligated to comply with the Commission’s rules. Thus, to the extent carriers are required to install particular amounts of backup power under a valid rule, they will do so. The proposed requirements amount to little more than recordkeeping for recordkeeping’s sake and thus should be disapproved. Especially in these tough economic times, the FCC should not be allowed to act so unreasonably and unrealistically in the application of what amounts to an ill-conceived mandate.

**C. OMB HAS REJECTED OTHER PROPOSED FCC INFORMATION COLLECTIONS THAT POSE LESS OF A BURDEN THAN THE EMERGENCY BACKUP POWER RULE.**

On July 9, 2008, OMB disapproved a request by the FCC to revise a collection requirement pertaining to the Commission’s Commercial Leased Access rules. OMB disapproved that revision for a number of reasons, including the Commission’s failure to “demonstrate[] they have taken reasonable steps to minimize the burden on respondents who will be required to hire new staff in order to maintain the capacity to comply with the reduced deadline for leased access requests,” *see* Notice of Office of Management and Budget Action, OMB Control No. 3060-0568, at 1 (July 9, 2008), and failed to “demonstrate[] they have taken reasonable steps to minimize the burden on respondents.” *Id.* at 2.

That decision disapproved the FCC’s proposal to reduce from fifteen days to three days the time in which cable TV system operators would be required to respond to requests from

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<sup>34/</sup> CTIA PRA Comments at 6.

potential programmers for leased access information and an increase in the number of inquiries to which cable system operators will have to respond as a result of the decrease in rates. *Id.*

OMB determined that these proposed changes would have posed a substantial and undue burden for cable TV system operators; however, that burden pales in comparison to the potential burden posed by the information collection requirements associated with the backup power rule.

As detailed above, the proposed information collection requirements at issue here will require affected wireless carriers to spend thousands of hours and impose substantial associated costs to produce the requested information. Yet the compilation and submission of these reports will do nothing to improve the availability of backup power at cell sites during emergencies. On the contrary, the substantial resources that carriers will be required to devote to producing the required reports will directly affect the availability of resources necessary to address disaster response and the addition of backup power to cell sites.

## **CONCLUSION**

T-Mobile and other industry participants have already shown a clear commitment to ensuring that critical communications services are available to the public in times of emergency.<sup>35/</sup> To that end, T-Mobile and other carriers have made considerable efforts to ensure the resiliency of their networks in a way that takes into account factors such as the needs of particular sites and the vulnerabilities of communities, including those in the hurricane zone in the Southeast and Gulf regions.<sup>36/</sup>

The added expense and burden associated with the proposed information collection requirements will divert substantial resources from these efforts for no good reason. The Commission's minimal time and cost estimates are clearly contradicted in the record – the audit

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<sup>35/</sup> See T-Mobile Comments on Reconsideration at 4, 6-7.

<sup>36/</sup> *Id.* at 3.

and reporting requirements will be extremely burdensome and costly. And the required information will be of little or no practical value as evidenced by the fact that the Commission appears to have made no plan to put it to timely use.

Accordingly, T-Mobile respectfully requests that the OMB disapprove the proposed information collection requirements for failure to comply with the requirements of the Paperwork Reduction Act.

Respectfully submitted,

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