



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

October 9, 2008

VIA E-MAIL

Nicholas A. Fraser
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

*Re: Information Collection regarding Emergency Backup Power for
Communications Assets as set forth in the Commission's Rules (47
C.F.R. § 12.2)*

Dear Mr. Fraser:

The Independent Telephone & Telecommunications Alliance ("ITTA")¹ respectfully submits these comments in response to the request by the Federal Communications Commission ("FCC") for the Office of Management and Budget ("OMB") to approve, pursuant to the Paperwork Reduction Act ("PRA"), a new information collection relating to the FCC's backup power rule.² ITTA supports the underlying purpose of the backup power rule, which is to ensure that Americans have continued access to communications in an emergency when there is a power failure. The FCC, however, has greatly underestimated the burden of complying with the reporting obligations that are included in the backup power rule and has not adequately considered less burdensome alternatives that would accomplish the same goal of ensuring compliance. ITTA therefore urges the OMB to disapprove the proposed collection for information.

Introduction

The FCC proposes to require Class A local exchange carriers ("LECs") and nationwide commercial mobile radio service providers with more than 500,000

¹ ITTA is a national trade association representing mid-size local exchange carriers that provide a broad range of high quality wireline and wireless voice, data, Internet and video telecommunications services to more than 31 million customers in 45 states.

² 73 Fed. Reg. 52354 (Sept. 9, 2008); 44 U.S.C. §§ 3501-3520.

subscribers to file two reports that contain detailed information on the filer's state of compliance with the FCC's backup power requirements.³ The operations of certain ITTA members fall within the scope of the FCC's backup power reporting obligations, and these members are quite concerned by the substantial reporting burden that is being proposed, especially given that there are less burdensome alternatives available.

The FCC first proposes that covered carriers file within six months of the effective date of the rule a report, referred to as the Inventory Report, which identifies each asset that is necessary to maintain communications and indicates whether the asset is designed to comply with the applicable backup power requirement.⁴ For non-compliant assets, the filer must then identify whether the asset is precluded from compliance, and thus exempt from compliance, due to: a risk to safety of life or health; conflict with a private legal obligation or agreement; or conflict with Federal, state, tribal or local law. Claims of preclusion must be supported by a description that includes – depending on the nature of the preclusion claimed, citations to relevant laws, the relevant agreement terms, or “facts that demonstrate a substantial risk of harm.”⁵ Filers must separately identify those assets that are not in compliance and are not precluded from compliance.

Within twelve months of the effective date, filers must submit a second report, referred to as the Backup Power Compliance Plan. The report must include a certification and a description of how the filer “will provide emergency backup power to 100 percent of the area covered by any non-compliant asset” that is not precluded from compliance in the event of a power failure. Both the Inventory Report and the Backup Power Compliance Plan “must be supported by an affidavit or declaration under penalty of perjury” that is signed by a duly authorized representative “with personal knowledge of the facts contained therein.”⁶

The FCC's burden estimate is materially inaccurate.

The FCC has failed to provide a “specific, objectively supported estimate of burden” for the proposed information collection.⁷ As the legislative history of the PRA shows, “burden estimates serve an invaluable role as markers along the road to

³ Recommendation of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119 and WC Docket No. 06-63, *Order on Reconsideration*, 22 FCC Rcd 18013, 18035-18038 (Appendix B, Section 12.2(c)) (2007). The FCC's backup power rule requires carriers to “have emergency backup power for all assets necessary to maintain communications” with a minimum of twenty-four hours of backup power for assets in central offices and eight hours of backup power for “assets at other locations, including cell sites, remote switches and digital loop carrier system remote terminals.” *Id.* (Section 12.(a)).

⁴ *Id.* (Section 12.2(c)(1)-(3)).

⁵ *Id.* (Section 12.2(c)(2)).

⁶ *Id.* (Section 12.2(c)(5)).

⁷ 44 U.S.C. § 3506(c)(1)(A)(iv); 5 C.F.R. § 1320.8(a)(4).

paperwork reduction.”⁸ Without an estimate that is materially accurate, the FCC cannot demonstrate that “it has taken every reasonable step” to ensure that the proposed collection “is the least burdensome necessary for the proper performance of the agency’s functions.”⁹ Moreover, without a materially accurate estimate, OMB cannot perform its function as the “overseer” of Federal agencies to reduce paperwork burden.¹⁰

The FCC estimates that for the Inventory Report each carrier will take, on average, 96 hours to collect all the necessary information and prepare the report. This estimate is based on the FCC’s assumption that carriers will have most of the information readily available as part of the records they routinely keep in the normal course of business.¹¹ The FCC estimates that for those carriers that will have to file a Backup Power Compliance Plan for non-compliant assets, it will take 192 hours for each carrier to complete.

The FCC further estimates that a full-time employee with an annual salary of \$60,000 (working 2080 hours annually) can perform all the tasks necessary to complete both the Inventory Report and Backup Power Compliance Plan and that no outside consultants will be needed.¹² Based on the estimated total number of hours (10,848) and the annual labor cost, the FCC then concludes that the total estimated cost for both reports is \$312,600.¹³ These estimates reflect slightly higher revisions to the FCC’s earlier figures that were also considered grossly underestimated by commenters.¹⁴

The FCC’s revised burden estimate fails take into account the “total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information.”¹⁵ Per the OMB’s rules, the “burden” includes not only reviewing instructions but also: developing and implementing systems to collect, validate, verify,

⁸ H. Rep. No. 104-37 (1995), as reprinted in 1995 U.S.C.C.A.N. 164, 186.

⁹ 5 C.F.R. § 1320.5(d)(1)(i); 44 U.S.C. § 3508.

¹⁰ Congress adopted the PRA to, *inter alia*, “minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government.” 44 U.S.C. § 3501(1); see also *Dole v. United Steelworkers of America, et al.*, 494 U.S. 26, 32 (1990) (“Congress designated OMB the overseer of other agencies with respect to paperwork and set forth a comprehensive scheme designed to reduce the paperwork burden.”).

¹¹ See Supporting Statement, Emergency Backup Power Report and Compliance Plan (Sept. 9, 2008) §§ A.8, A.12.

¹² *Id.* § A.12.

¹³ While the FCC states that this is the estimated cost per carrier, the actual mathematical equations provided by the agency show that this amount is actually the total estimated cost for all of the carrier reports that are expected to be filed. *Id.*

¹⁴ Earlier in this process, the FCC estimated that it would take each carrier 70.32 hours to complete both reports (6,540 hours for all responding carriers) at an estimated total cost of \$0. 72 Fed. Reg. 64221, 64222 (Nov. 15, 2007).

¹⁵ 5 C.F.R. § 1320.3(b); 44 U.S.C. § 3502(2).

and maintain information; training personnel on how to respond and collect information; completing and reviewing information collection requests; and transmitting or otherwise disclosing the information.¹⁶ The agency “must first identify all the steps a respondent takes in order to comply . . . , and then estimate the time for each step to arrive at a total burden per respondent.”¹⁷

As pointed out by commenters earlier in the process, the FCC’s estimate does not take into account the total number of assets that will need to be reviewed and categorized. For example, the United States Telecom Association (“USTelecom”) stated that on average more than 25,000 assets will need to be reviewed by each of its surveyed members, many of which will entail on-site inspections.¹⁸ Even with the FCC’s revised hourly burden of 96 hours for just the Inventory Report, carriers would still just have about 14 seconds to collect and review information on each asset and to research applicable claims of preclusion for non-compliant assets, not to mention the time needed to actually prepare the report.¹⁹ AT&T estimated that even if it took five minutes to review and categorize each of its 170,000 assets, the time burden would take more than 14,000 hours to complete.²⁰ Verizon also estimated that 80,000 assets would need to be inventoried, which would take tens of thousands of hours to complete.²¹ The ITTA members that responded to an informal survey estimated that, *on average*, each member will have more than 10,000 assets that are subject to the reporting requirement.

The FCC’s estimated burden also fails to take into account all of the steps necessary to collect the requested information. Larger carriers, like other businesses, typically have information on the assets that they own and lease as part of doing business, but this information is often spread throughout central, regional, and local offices and is mingled with other non-relevant data. To comply with the proposed collection, personnel (mostly engineers) throughout a given company will need to create the requested asset inventory. Employees will need to be trained to identify, and separate from other non-relevant data, information on the carrier’s assets and available backup power. Information on facilities that is not up-to-date will require additional site audits to confirm, which may require the help of outside consultants. Information that is not in an electronic format (or in an incompatible electronic format) will also need to be located and manually inputted into a database.

After the asset inventory is compiled, carriers will need to conduct a second layer of review to categorize the assets. For those assets not designed to comply with the

¹⁶ 5 C.F.R § 1320.3(b)(1)(i)-(ix).

¹⁷ Guidance on Agency Survey and Statistical Information Collections (Jan. 2006) at 11, www.whitehouse.gov/omb/inforeg/pmc_survey_guidance_2006.pdf.

¹⁸ USTelecom PRA Comment at 2 (dated Jan. 14, 2008).

¹⁹ This figure is based on an average number of 25,000 assets as stated by USTelecom.

²⁰ AT&T PRA Comment at 4 (dated Jan. 14, 2008).

²¹ Verizon and Verizon Wireless PRA Comment at 2-3 (dated Jan. 14, 2008).

FCC's requirements, legal agreements will need to be reviewed, relevant laws will need to be researched, and relevant facts will need to be gathered in the field to determine whether an asset is precluded from compliance. Once the inventory is compiled and the second layer of review is completed, carriers can then put the Inventory Report together along with the descriptions supporting claims of preclusion, and file the Inventory Report with the FCC.

Surveyed ITTA members stated that just to collect the asset information and to determine which assets are designed to comply (excluding the review of whether compliance is precluded) would take each carrier 2,253 hours *on average* and would cost at least \$229,000 per carrier. Members also reported that engineers, technicians, managers, in-house, and outside counsel and consultants would be needed to complete the Inventory Report with an hourly loaded labor cost of \$35 to \$80 per hour, not including the annual salaries of in-house counsel or the hourly billable rates of outside counsel. This per-hour cost greatly exceeds the FCC's estimate of approximately \$29 per hour.²² Accordingly, the estimated burden just based on the information reported by ITTA's members shows that the FCC's 96 hour per carrier estimate for the Inventory Report, and the total cost estimate of \$312,600 for all covered carriers to complete both reports, is woefully inadequate.

The source of the discrepancy is likely due to the fact that the FCC has excluded the time necessary to collect, review, and categorize the asset data and to determine whether a claim of preclusion applies. The FCC erroneously assumes that carriers will already have this information readily available as a result of their normal business operations. The FCC specifically states that carriers should already have much of this information in connection with preparing their emergency contingency plans, which most carriers already have in place, or in complying with the FCC's backup power requirement.²³ Citing Section 1320.3(b)(2) of the OMB's rules, the FCC excludes from the burden estimate the time and effort needed to collect and inventory such data.²⁴

Section 1320.3(b)(2) of OMB's rules allows agencies to exclude from the burden estimate the:

time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.*, in compiling and maintaining business records) . . . if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.²⁵

²² The FCC estimated an hourly cost based on an employee making \$60,000 annually for working 2080 hours – approximately \$29 per hour. Supporting Statement, § A.12.

²³ *Id.* §§ A.8, A.12.

²⁴ *Id.* § A.12.

²⁵ 5 C.F.R. § 1320.3(b)(2).

As stated above, carriers do not typically have all of the information requested by the FCC in a readily available centralized database. Moreover, the FCC's backup power requirement will not be effective until if and when OMB approves the proposed collection. The carriers have thus not had cause to collect, categorize, and review the comprehensive, standardized asset inventory information requested by the FCC.²⁶ Even if and when the rule becomes effective, carriers would not necessarily need to create a centralized database, which will be needed to prepare the Inventory Report, and would not necessarily need to compile the same level of information requested by the FCC.²⁷

In addition, while carriers do have contingency plans in place in the event of a power failure, these plans were not designed with the FCC's backup power requirement in mind and therefore do not follow the Inventory Report format mandated by the FCC. A carrier's emergency plans would provide for a flexible mix of on-site and mobile backup power options for those facilities that are most critical to maintaining communications in a crisis situation. The plans would not typically include a single comprehensive inventory list of each and every conceivable asset necessary to maintain communications and whether sufficient back-up power is available for each of these assets. These plans also would not include an analysis of whether a claim of preclusion from compliance applies.

Carriers do not routinely keep the information sought by the FCC's proposed information collection in the normal course of their business. The FCC has therefore failed to make the requisite showing required by Section 1320.3(b)(2) and has inappropriately excluded the time and effort associated with the collection, review, and categorization of asset data from the burden estimate. Without a burden estimate that is materially accurate, the FCC cannot show that it has "taken every reasonable step to ensure that the proposed collection . . . is the least burdensome for the proper performance of the agency's functions."²⁸

The FCC has not adequately considered less burdensome alternatives that will accomplish the same goal.

FCC states that it will use information received "to determine compliance with the emergency backup power rule and to ensure that carriers have sufficient backup

²⁶ Moreover, given that the D.C. Circuit has stayed the effective date of the backup power rule pending judicial review of the underlying FCC order, it is unlikely carriers would risk potentially wasting resources in collecting such information in advance of the rule becoming effective. *See CTIA v. FCC*, Case No. 07-1475, *Order* (D.C. Cir. rel. Feb. 28, 2008).

²⁷ Carriers will likely choose to go above and beyond in a report filed with the FCC to eliminate any agency doubt of impropriety.

²⁸ 5 C.F.R. § 1320.5(d)(1)(i).

power.”²⁹ The FCC has failed, however, to consider whether less burdensome alternatives exist to accomplish this same goal as required by OMB’s rules.³⁰

The FCC could eliminate the six month report altogether. The Backup Power Compliance Plan would still give the FCC the information that it requires while allowing carriers to focus their engineering resources on ensuring the provision of back-up power, rather than the production of associated reports.

Alternatively, at a minimum, the FCC could institute separate requirements for LEC reporting on central office assets (“CO assets”) and off-site remote switches and digital loop carrier system remote terminals (“Remote assets”). For CO assets, the FCC could require carriers to provide a detailed asset inventory that categorizes the assets as compliant, precluded from compliance, or non-compliant and not precluded from compliance. For Remote assets, the FCC could require carriers instead to provide a blanket certification that all such Remote assets are either designed to comply, precluded from compliance, or that the assets will either be brought into compliance or covered in an Emergency Backup Power Compliance plan by the twelve month deadline.

This approach will lessen the reporting burden on LECs while still providing the FCC with assurances of compliance through a detailed asset inventory for CO assets and a carrier certification for Remote assets. LECs typically have fewer CO assets than Remote assets; surveyed ITTA members stated that they have five to ten times as many Remote assets as CO assets. Because there are fewer CO assets and the assets are often the most critical to a carrier’s network, the information is generally more standardized and centrally or regionally located and thus more readily available. Information on Remote assets, on the other hand, is typically more spread out in a given company and may require on-site visits to verify. Carriers will therefore need additional time, and will incur additional cost, to inventory Remote assets as compared to CO assets. A carrier certification for Remote assets will lessen the asset inventory burden on carriers while giving the FCC assurances of compliance by the six-month deadline.

²⁹ Supporting Statement, § A.2.

³⁰ 5 C.F.R. § 1320.5(d)(1)(i).

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Conclusion

ITTA does indeed support the FCC's goal of ensuring that Americans have continued access to communications in an emergency. However, the FCC's proposed collection to ensure compliance with the backup power rule is based on a materially inaccurate burden estimate and does not adequately consider less burdensome alternatives. Accordingly, the FCC has failed to show that it has "taken every reasonable step" to ensure that the proposed collection is the "least burdensome" to accomplish the FCC's stated objective. ITTA therefore urges the OMB to disapprove the information collection proposed by the FCC.

Sincerely,

s/Curt Stamp

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