

Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

In the Matter of)	
)	
Information Collection Regarding Emergency)	ICR Reference No:
Backup Power for Communications Assets as)	200802-3060-019
Set Forth in the Commission's Rules)	
(47 CFR 12.2))	OMB Control No: None
)	

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its subsidiaries (collectively, “Leap”), hereby submits the following comments in response to the Federal Communication Commission’s notice of submission to the Office of Management and Budget for review of the above-captioned information collection.¹

This review arises from the FCC’s proceeding on the impact of Hurricane Katrina.² In its *Katrina Order* the Commission unexpectedly introduced a requirement that all local exchange carriers (“LECs”) and commercial mobile radio service (“CMRS”) providers provide backup power supplies for all assets normally powered by local AC commercial power.³ In response to strong protests from throughout the telecommunications industry, the Commission issued its

¹ Notice of Public Information Collections Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 52354 (Sept. 9, 2008).

² See Recommendation of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Order*, EB Docket No. 06-119 and WC Docket No. 06-63, 22 FCC Rcd 10541 (2007) (“*Katrina Order*”); Recommendation of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Order on Reconsideration*, EB Docket No. 06-119 and WC Docket No. 06-63, 22 FCC Rcd 18013 (2007) (“*Recon Order*”).

³ *Katrina Order* at 10565.

Recon Order, in which it introduced several exceptions to the backup power rule, as well as an alternative emergency backup power compliance plan.⁴ In connection with these modifications of the backup power rule, the Commission introduced two information collections. The *Recon Order* requires that each LEC and CMRS provider file an inventory report listing all of their assets subject to the backup power rule and make a factual showing for any assets falling within one of the exceptions. Additionally, to the extent that every asset is not either in compliance with the rule or covered by an exception, LECs or CMRS carriers must file a certified emergency backup power compliance plan detailing how the LEC or CMRS provider will provide backup power to 100 percent of the area covered by non-compliant assets in the event of an emergency.

Several parties petitioned for review of the *Recon Order* in the United States Court of Appeals for the District of Columbia Circuit, and the court granted a stay of the backup power rule pending the outcome of the appeal.⁵ While the FCC had solicited public comment on the above-mentioned information collections in the *Recon Order* itself,⁶ the FCC did not initially submit the collections to the Office of Management and Budget for review. On July 8, the D.C. Circuit held that the appeal of the *Recon Order* would not be ripe until OMB had completed its review under the Paperwork Reduction Act.⁷ The Commission's submission of these collections for review followed thereafter.

⁴ *Recon Order* at 18024–25.

⁵ *CTIA – The Wireless Assoc. v. Federal Communications Comm’n*, No. 07-1475, Order (D.C. Cir. Feb. 28, 2008).

⁶ *Recon Order* at 18032.

⁷ *CTIA – The Wireless Assoc. v. Federal Communications Comm’n*, No. 07-1475, slip op. (D.C. Cir. Jul. 8, 2008).

For the following reasons, the Commission's information collection efforts are massively deficient. Leap respectfully requests that the Director disapprove the information collections at issue.

I. THE COMMISSION HAS VASTLY UNDERESTIMATED THE BURDEN OF THESE INFORMATION COLLECTIONS

The Commission estimates that these information collections will require a total of 10,848 hours. In light of the undisputed facts of record, it is hard to understand how the Commission could stand by that estimate. There are literally hundreds of thousands of cell sites (not to mention the facilities of wireline service providers), each of which must be separately reported in the information collections here. And the data to be reported in connection with each asset are far from trivial. Service providers subject to the collections will have to assess local laws and safety standards and review technical details and siting contracts for each cell site. This review process will undoubtedly require considerably more time than the approximately two minutes per site⁸ that the FCC has estimated it will take.

Additionally, each service provider that is unable to comply with the backup power requirement at all sites will be required to submit a certified emergency backup power compliance plan. The FCC's assessment of this burden is equally flawed. The Commission substantially underestimates the number of providers that will be required to file a compliance plan. While the FCC claims that only 20 compliance plans will be filed, in reality there will be many more than that. It is far more realistic to expect that all or nearly all wireless providers will have to file such plans, as the backup power requirement is virtually impossible to satisfy at

⁸ The FCC has estimated that the inventory report will require 7008 hours. There are known to be approximately 200,000 cell sites in the United States. This breaks down to 2 minutes, 6 seconds per cell site.

every site, and the Commission's permitted exceptions are far too narrowly drawn. These plans will require substantial technical and business analysis, necessitating the involvement of many parties at each affected service provider, and the time for their development will almost certainly be well beyond the Commission's estimates.

II. THE COMMISSION IS ATTEMPTING TO SIDESTEP THE PAPERWORK REDUCTION ACT BY REDEFINING THE BURDEN OF COMPLIANCE

The FCC has dismissed concerns over the inaccuracy of its estimates by attempting to reclassify these burdens as relating to the substantive requirements of the backup power rule rather than the collection of information.⁹ This cannot be a valid approach to compliance with the Paperwork Reduction Act. Under this model, the FCC apparently believes that it may require regulated entities to compile and maintain any record the agency desires by substantive regulation, with a separate requirement that from time to time the records must be submitted to the Commission, and then count only the time spent placing the records in the mail as the cognizable burden under the Paperwork Collection Act.

This strained attempt to understate the information collection burdens on carriers triggered by the FCC's rule is plainly at odds with the intent of Congress. While the information collections under review obviously are related to the underlying backup power regulation, it is precisely the part of that regulation that requires regulated entities to gather, compile, analyze, and submit information to the agency that the Paperwork Reduction Act is intended to scrutinize. And the Commission has, by its own admission, excluded significant parts of this equation from its calculations.

⁹ Federal Communications Commission Supporting Statement at 5, ICR Reference No. 200802-3060-019 (submitted Sept. 3, 2008).

III. THE COMMISSION HAS FAILED TO CONSIDER ALTERNATIVE METHODS OF REDUCING THE COMPLIANCE BURDEN

The Commission has required an inventory of all assets of local exchange carriers and commercial mobile radio service providers necessary to maintain communications that are normally powered from local commercial power. While it is understandable that the Commission should require notice of assets that will not be brought into compliance with the backup power rule, the Commission has offered no justification for requiring an inventory of assets that are in compliance with the rule. Reporting these assets needlessly increases the burden on reporting parties.

Additionally, the Commission has failed to clearly state its expectations with respect to the contents of a certified emergency backup power compliance plan. The Commission has offered no guidance as to what must be included in such a plan, nor the scope of emergencies that the plan must address. Consequently, any parties filing such a plan will likely err on the side of caution in order to avoid being the subject of an enforcement proceeding. This will result in inefficiency and waste that could be avoided by a clear statement by the FCC of what a certified emergency backup power compliance plan must consist of.

CONCLUSION

For the above-stated reasons, Leap respectfully requests that the Director disapprove these information collections.

Respectfully submitted,

-/s/-

Robert J. Irving Jr.
Senior Vice President and
General Counsel
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121

James H. Barker
Barry J. Blonien
Joseph A. Bissonnette
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304
(202) 637 2200

Counsel for
Leap Wireless International, Inc.