

**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

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

FR Doc. E8-20892

**NEXTG NETWORKS, INC.  
PAPERWORK REDUCTION ACT COMMENTS**

NextG Networks, Inc., on behalf of its operating subsidiaries, NextG Networks of NY, Inc., NextG Networks of California, Inc., NextG Networks Atlantic, Inc., and NextG Networks of Illinois, Inc., (collectively "NextG"), submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Public Information Collection concerning "Emergency Backup Power for Communications Assets as set forth in the Commission's rules (47 C.F.R. § 12.2)" (the "Information Collection").<sup>1</sup> NextG submits these comments to show: 1) the Commission has grossly underestimated the time burden imposed by this new proposed Information Collection; and 2) the proposed Information Collection will be so voluminous it likely will have no practical utility in the Commission's performance of its

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<sup>1</sup> *Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested*, FR Doc. E8-20892, 73 FR 175, pp. 52354-52355 (September 9, 2008). The DC Circuit has issued a stay of the FCC's backup power rules, and recently released an order holding its review in abeyance pending OMB rejection or approval of the information collection. *CTIA v. FCC*, No. 07-1475, 530 F.3d 984 (DC Cir. 2008). By filing these comments, NextG does not concede the legality of the Commission's backup power rules and related orders or seek Commission reconsideration thereof.

responsibilities. For these reasons, the Information Collection imposes an undue burden which falls outside of the scope of the Paperwork Reduction Act (“PRA”) and should not be approved by the Office of Management and Budget (“OMB”).

## **I. Background Concerning NextG Networks, Inc.**

NextG’s subsidiaries provide telecommunications services to wireless providers using fiber-optic cable and small antennas mounted on relatively low-height structures, such as traffic signal poles, street light poles, and utility poles, located in public rights-of-way and private utility easements. The architecture of NextG’s “Distributed Antenna System” (“DAS”) facilities consists of fiber optic lines leading to and connecting various equipment and antennas at remote “Node” locations. Like the fiber optic portion of NextG’s network, such Nodes are attached to utility poles, street light poles, and/or traffic signal poles. In order to construct its DAS networks, NextG uses either poles owned by the local utility company or poles owned by the municipality, or a combination of both. NextG owns and operates thousands of these DAS Nodes and may have to report on each of these DAS sites separately under the Commission’s new Information Collection requirement.<sup>2</sup>

## **II. The Time Burden of the Information Collection is Extensive**

The PRA requires an agency to produce “a specific, objectively supportable estimate of burden,” before submitting an Information Collection to OMB.<sup>3</sup> The FCC’s current PRA time

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<sup>2</sup> In its Petition For Reconsideration of the Commission’s June 8, 2007 Katrina Panel Order, NextG demonstrated that its Nodes are not “cell sites.” The Commission rejected NextG’s argument in its reconsideration order. *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order on Reconsideration, FCC 07-177, ¶ 38 (“We decline to exempt DAS Nodes or other sites from the emergency backup power rule.”) (rel. October 4, 2007). The issue raised by NextG is on appeal with the DC Circuit, and by filing these comments, NextG does not concede that its DAS Nodes are “cell sites” or seek Commission reconsideration of that ruling.

<sup>3</sup> 44 U.S.C. § 3506(c)(1)(A)(iv).

burden estimate of 116.64 hours and assessment that the financial burden on respondents will be “None”<sup>4</sup> is not objectively supportable or accurate and, therefore, should be rejected. The Commission’s new burden estimate is insignificantly closer to reality than its original estimate of 70.32 hours, set forth nearly a year ago.<sup>5</sup> As demonstrated below, the actual burden on NextG from the FCC’s proposed backup power rules is approximately 40,000 hours.

For a company like NextG, which has approximately three thousand eight hundred DAS Nodes either already operational or expected to be constructed in 2008, the FCC’s time burden estimate of 116.64 hours would allow for only approximately 1.8 minutes per Node for NextG to spend in responding to the Information Collection. This would be impossible. To comply with the Information Collection, NextG must determine and summarize the extent of each of its Node’s compliance or exemption from the FCC’s new rule requiring 8 hours of on-site backup power. NextG will need to conduct physical surveys of each of its Node locations, research applicable law, review existing contracts with utility or municipal owners of each pole structure, and engage in extensive analysis of compliance extent and feasibility for each of its approximately 3,800 Node locations, and then summarize its findings to determine and report its compliance at a level sufficient to comply with the backup power reporting obligation.<sup>6</sup> In order

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<sup>4</sup> *Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested*, FR Doc. E8-20892, 73 FR 175, p. 52354 (September 9, 2008).

<sup>5</sup> *See Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, FR Doc. 07-5698, 72 FR 220, pp. 64221-64222 (November 15, 2007).

<sup>6</sup> The proposed Information Collection would require NextG to compile five separate lists that capture all approximately 3,800 of its Node sites, including a list of each site that was designed to comply with the new backup power requirement, a list of each site where compliance is precluded due to risk to safety of life or health, a list of each site where compliance is precluded by a private legal obligation or agreement, a list of each site where compliance is precluded by other federal state or local law, and a list of each site that was designed with less than the emergency backup power capacity but is not precluded from compliance. *See* 47 C.F.R. §

to accurately prepare the compliance report the FCC intends to impose, NextG must conduct at least the following 10 point checklist analysis for each of its Node sites:

1. Evaluate pole attachment agreement with utility.
2. Evaluate franchise or pole attachment agreement with municipalities.
3. Evaluate private legal obligations.
4. Evaluate federal, state, tribal, and local laws including health, environmental, and zoning restrictions which may preclude placement of backup power generator or battery.
5. Evaluate each DAS Node site for existing backup power compliance.
6. Evaluate each DAS Node site for risk to safety of life or health that may arise from placement of backup power generator or battery.
7. Evaluate status of each DAS Node site designed to comply with backup power obligation but which provides less than eight hours of backup power.
8. Confirm that “methods and procedures to ensure that batteries are regularly checked and replaced when they deteriorate” are in place and regularly maintained.
9. Conduct physical evaluation of each DAS Node site not in compliance to determine feasibility of adding backup power generator or battery power.
10. Document potential Node site compliance plan, including physical design, public/private agreement feasibility, and planning/permitting feasibility.

NextG estimates that the review and analysis process will take approximately 8 hours per Node site, plus an additional 8 hours of work for each site that requires a physical inspection

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12.2(c)(1). Furthermore, for each Node identified as precluded, the Commission would require NextG to “include a description of facts supporting the basis of the.... claim of preclusion from compliance.” 47 C.F.R. § 12.2(c)(2).

(estimated at 30% of sites) producing a total actual burden of 39,520 person-hours for NextG to respond to the Information Collection.

## **II. The Volume of the Information Collection Will Be Extraordinary**

OMB also should disapprove the information collection because it lacks practical utility and is unnecessary to the Commission's functions.<sup>7</sup> NextG estimates that it would be required to submit between one and five pages of analysis per Node, depending on the complexity of the analysis, in order to comply with the proposed reporting obligations. That level of submission would result in a report between three thousand and nineteen thousand pages long. Even assuming an aggressively low average length of three pages per site, the report likely will be over ten thousand pages in length. Assuming the same page estimates applies to the estimated 200,000 cell sites in the United States,<sup>8</sup> the Commission could be facing a million or more pages of submissions. It is not realistic to expect that the FCC will timely or meaningfully use as much paper as this Information Collection will produce.

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<sup>7</sup> 44 U.S.C. § 3508; 5 C.F.R. § 1320.5(d)(1) & (e).

<sup>8</sup> See "Power Struggle: Industry Challenges FCC's Emergency Backup Power Rule," RCR Wireless News, p. 1, January 7, 2008, available online at <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20080107/SUB/3392962/1011/FREE> (last visited January 10, 2008).

### **III. Conclusion**

The time burden imposed by the proposed Information Collection will be approximately *three-hundred and forty times higher* than the Commission's estimate and likely will lead to submission of 10,000 or more pages of analysis by NextG alone. The FCC's Information Collection request is, therefore, deficient, overly burdensome, of no practical utility, and should not be approved by OMB.

Respectfully submitted,

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