



October 9, 2008

Nicholas A. Fraser

The Office of Management and Budget

725 17<sup>th</sup> St. NW

Washington, D.C. 20503

**Re: Information Collection regarding Emergency Backup Power for Communications Assets**

Dear Mr. Fraser,

PCIA—The Wireless Infrastructure Association (“PCIA”) and The DAS Forum write to comment on the Paperwork Reduction Act elements of the Federal Communications Commission’s (“Commission”) proposed Backup Power Order,<sup>1</sup> as published in the Federal Register<sup>2</sup>. PCIA is a non-profit national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate over 120,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless services. The DAS Forum, a membership section of PCIA, is an organization dedicated to the development of distributed antenna systems (“DAS”) as a component of the nation’s wireless network.

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<sup>1</sup> In re: *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, WC Docket No. 06-63, *Order on Reconsideration*, 22 FCC Rcd. 18013 (Oct. 4, 2007) (“Backup Power Order”).

<sup>2</sup> 73 Fed. Reg. 52354 (Sept. 9, 2008).

As the members of PCIA and The DAS Forum are directly involved with constructing and deploying the wireless networks to which the Commission's Backup Power Order applies, they have a direct interest in this proceeding. The Office of Management and Budget ("OMB") seeks comment on the following areas: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimate; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**The Information Required Will Be So Voluminous and Varied as to be Effectively Useless to the Commission**

There are approximately 220,000 wireless service sites deployed across America today, and the industry estimates that each site hosts approximately two wireless facilities. Pursuant to the Backup Power Order, there will be a report filed for the vast majority of these 500,000 facilities<sup>3</sup> due within six (6) months of the Order's effective date. Each report will provide detailed information as to why the facility fits into one of the Commission's six delineated categories for application of the Order's backup power requirements.<sup>4</sup> It is not clear how the Commission can adequately process this staggering amount of information, particularly without using any kind of standardized reporting device to automate the process. The Commission estimates that it will be receiving responses from 73 different corporations,<sup>5</sup> yet provides for no standardized forms. In fact, the only concession the Commission makes in this regard is to allow

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<sup>3</sup> The Commission has exempted certain small Local Exchange Carriers ("LECs") and Commercial Mobile Radio Service ("CMRS") providers.

<sup>4</sup> See 73 Fed. Reg. 52354 (Sept. 9, 2008).

<sup>5</sup> *Id.*

for electronic filings.<sup>6</sup> As a result, the Commission will process the details of approximately 500,00 wireless facilities in 73 different formats, which surely will add countless hours to the Commission's review in trying to compile and file the information it receives. If it is unsuccessful in his massive task, it is likely the information will never be used and thus will be a huge waste of both public and private resources.

In addition, the Commission requires LECs and CMRS providers with non-compliant sites that do not fit into an exemption category to file a compliance plan after twelve (12) months for all remaining facilities that remain non-compliant. "That plan must describe how, in the event of a commercial power failure, the LEC or CMRS provider 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."<sup>7</sup> As described, these filings will require pages of detail per site.

While CMRS providers include contingency planning for power outages as part of their network operations, it is doubtful that these providers could approach full compliance within one year. This fact will result in thousands of detailed filing from CMRS providers. It is not clear how it will be feasible for Commission staff to sort through the filings on the initial 500,000 facilities in time to receive thousands of more detailed, non-standardized reports a mere six months later (to say nothing of the burden put on the respondents to prepare such filings, as explained below). The sheer amount of information required by the Commission is so great as to render its functionality useless to the Commission.

### **The Commission Grossly Underestimates the Resource Burden of its Rule**

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<sup>6</sup> Federal Communications Commission, Supporting Statement to Office of Management and Budget re: Emergency Backup Power Report and Compliance Plan, at 3, *available at* [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200802-3060-019#section3\\_anchor](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200802-3060-019#section3_anchor) ("Supporting Statement").

<sup>7</sup> Backup Power Order, 22 FCC Rcd. at 18025.

As the Commission notes in its Supporting Statement, it received extremely negative feedback on its Backup Power Order when it was released for public comment.<sup>8</sup> As a result, the Commission has revised the time burden slightly and incorporated an associated monetary cost associated with this time burden. While these are positive revisions, the Commission's predictions on the time burden associated with this rulemaking remain woefully inadequate.

In its supporting statement, the Commission largely dismisses comments that it has undervalued the burden, concluding that "most of the Commenters base their burden estimates on all of the requirements set forth in the emergency backup power rule, not just the information collection and thereby overestimate the amount of time that will likely have to be *devoted exclusively to this task*."<sup>9</sup> The Commission's reasoning here is flawed. The Backup Power Order so intertwines the reporting requirements with the data collection requirements that it is impossible to separate the two. The Commission's assertion 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>10</sup> is flatly wrong and the Commission's record so indicates. It must be attained through detailed review of individual site data.

One member company details the process which it would need to use to gather the information in order to complete the rule's reporting requirements:

- Review customer agreements to determine what level of backup power was committed to our customers.
- Review of pole attachment agreements to understand what rights we would have to place backup power facilities on the poles. Also, structural analysis may be required depending on the equipment selection.
- Assess local regulatory approval process. It is likely that we would have to actually go through the regulatory approval process in each community to identify whether we could

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<sup>8</sup> Supporting Statement at 4-5. We will not duplicate these comments here for reasons of efficiency but we would urge the Office of Management and Budget to fully consider the comments filed with the Commission regarding the paperwork burden of the Backup Power Rule.

<sup>9</sup> Supporting Statement at 5 (emphasis added).

<sup>10</sup> *Id.* The Commission provides no citations for this assertion.

place additional backup power in the public rights of way. Further, municipalities often require a Planning or Review process first, adding additional time and effort to the process. Also, if generators were to be used, we would need to assess if they would they violate any noise or environmental ordinances.

- Undertake actual field measurements for each location to confirm how long the existing (if any) backup power would last under the actual load scenario.
- We would have to determine if our assessments and public comments received under the National Environmental Policy Act would need to be revised depending on the selection of backup equipment.
- Any private property leases would require review to ensure our backup plan is consistent with the privileges we have under the terms of the lease.
- Development of the plan itself. This would require internal meetings to develop a solution that would comply with the order yet require the least capital and O&M investment. Further, the plan would need to comply with State and Local regulations.

Not until the above has been completed, can we determine whether we have exemptions under these subparagraphs;

- An inventory listing of each asset where compliance is precluded due to risk to safety or life or health;
- An inventory listing of each asset where compliance is precluded by private legal obligation or agreement;
- An inventory listing of each asset where compliance is precluded by Federal, state, tribal or local law;

This example demonstrates that there is no possible way for the respondents to fully and accurately respond to the Commission’s reporting requirements without undergoing countless hours of research—certainly in far excess of the Commission’s estimates. The Commission dismisses this type of investigation as “misconstru[ing] the information collection aspect” and thereby dismisses this burden as a burden “incurred in the normal course of business” of complying with the rule, as opposed to complying with just the reporting requirements.<sup>11</sup> But as the example above demonstrates, the reporting process is intertwined with the investigation required to comply with the rule. To separate out the time required solely for reporting without acknowledging the time necessary to gather the reported information ignores reality.

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<sup>11</sup> *Id.* at 7.

Indeed, the U.S. Court of Appeals for the D.C. Circuit has acknowledged the importance of the reporting requirement, stating that the information contained in the reporting requirement “is crucial to the operation of the backup power rule. Without it, the Commission would have difficulty enforcing the rule, and the exemptions and alternative compliance plan might be unworkable.”<sup>12</sup> The court also noted that “the Commission, in responding to the court’s [reporting requirement concerns] has adopted the view that the reporting requirements are so integral a part of the rule that judicial consideration of the petition for review is premature.”<sup>13</sup> The Commission must acknowledge that respondents must in some way attain this crucial information it wishes to have reported, which is not possible without doing the associated investigation—the process cannot be untangled into separate components. Yet the current burden estimates do not in any way reflect this portion of the reporting requirement, and therefore they should be rejected by OMB.

## **Conclusion**

The Commission, in its assessment of the paperwork burdens associated with its backup power rules, dismisses the informed responses of those who claim it to be a much greater burden than the Commission’s estimates reflect. The Commission asserts that the burdens of the Order do not directly result from the reporting requirements. We respectfully disagree with the Commission’s conclusions here. Wireless infrastructure providers, which are in the best position to accurately assess the paperwork burden of the Order, have with a consistent voice stated that the Commission’s requirements are totally erroneous and unrealistic. PCIA and The DAS Forum respectfully request that OMB should reject the Commission’s burden assessments.

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<sup>12</sup> CTIA—The Wireless Ass’n v. FCC, 530 F.3d 984 (D.C. Cir. 2008).

<sup>13</sup> *Id.* at 990 (Rogers, J., concurring) (citing FCC Supplemental Br. at 8).

Sincerely,

PCIA—THE WIRELESS INFRASTRUCTURE  
ASSOCIATION AND THE DAS FORUM (A  
MEMBERSHIP SECTION OF PCIA)

By: \_\_\_\_\_/s/\_\_\_\_\_

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