Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Recommendations of the Independent Panel	)	EB Docket No. 06-119
Reviewing the Impact of Hurricane Katrina on	)	WC Docket No. 06-63
Communications Networks	)	
	)	

To: The Commission

COMMENTS OF PCIA IN SUPPORT OF STAY REQUESTS

PCIA – The Wireless Infrastructure Association ("PCIA")[1] submits these comments in support of requests to stay the Commission's new back-up power rule (as codified at 47 C.F.R. § 12.2) for all assets normally powered by local commercial AC power, including cell sites.[2] As the representative of the wireless infrastructure industry, this proceeding is of vital importance to PCIA's members as it affects back-up power at cell sites and other locations.

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[1] PCIA is the trade association representing the wireless telecommunications infrastructure industry. PCIA's members own and manage more than 111,000 towers and antenna facilities across the country that support all types of wireless, broadcasting and telecommunications services. PCIA seeks to facilitate the deployment of widespread dependable communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.

[2] *See* 47 C.F.R. § 1.45; Motion for Administrative Stay of CTIA – The Wireless Association ("CTIA"), EB Docket No. 06-119 (filed July 31, 2007) ("CTIA Motion"); NextG Networks, Inc. ("NextG") Request for Partial Stay of Commission's Back Up Power Rule, EB Docket No. 06-119 (filed July 31, 2007) ("NextG Request"); *see also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, FCC 07-107, ¶ 77 (rel. June 8, 2007) ("Order"); 47 C.F.R. § 12.2.

At the outset, PCIA applauds the Commission's continuing efforts to consider new ways to improve disaster preparedness, network reliability and first-responder communications. In the aftermath of Hurricane Katrina and the events of 9/11, the need to address these items has become all the more apparent. While PCIA commends the Commission's determination to focus on these issues, it nonetheless is concerned that the new emergency back-up power rule will have a number of unintended adverse consequences. Accordingly, PCIA supports the grant of a stay of the new rule to allow the FCC time to examine new information and reassess its policy approach.

DISCUSSION

In the Order, the Commission established a "back-up power rule," which states that "LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that are normally powered from local AC commercial power."[3] If not stayed, the new rule will become effective on August 10, 2007.

As a threshold matter, PCIA is concerned that the rule lacks a reasoned basis and record support.[4] In the Order, the Commission considered the Katrina Panel's recommendation to *encourage* the implementation of three best practices issued by the

[3] 47 C.F.R. § 12.2; *see Order* at ¶ 77.

[4] *See* CTIA Motion at 11-21; 5 U.S.C. § 706; *see also Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("The agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.") (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (an agency "must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based").

Network Reliability and Interoperability Council ("NRIC").[5] The Commission expressly agreed with the goals underlying the first two proposals[6] and, citing the absence of record support for mandates, recommended only that these best practices be encouraged. Nevertheless, the Commission went further with NRIC's third best practice recommendation – that "service providers, network operators and property managers should ensure availability of emergency/backup power" – and imposed an 8 hour back-up power mandate.

The Commission seemed to base the back-up power rule solely upon the comments of two parties: the National Emergency Number Association ("NENA"), which recommended that in the *wireline* context, "all telephone central offices [should] have an emergency back-up power source,"[7] and St. Tammany Parish Communications District 1, which suggested that wireline and wireless providers "have backup *procedures* in place."[8] Throughout these and other comments, however, there is no discussion of, or support expressed for, a back-up power requirement at all cell sites or other assets. Significantly, the record also lacks any discussion of the duration for such a requirement. Indeed, the Order offers no basis for the 8-hour mandate.[9] Had there been further

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[5] *See* Order at ¶ 74.

[6] These two best practice proposals call for (i) placing 911 circuits over diverse interoffice transport facilities and (ii) establishing alternative methods of communication for critical personnel. *See id*.

[7] *See* Comments of NENA, EB Docket No. 06-119 at 6 (filed Aug. 6, 2006).

[8] *See* Comments of St. Tammany Parish Communications District 1, EB Docket No. 06-119 at 2 (filed Aug. 4, 2006) (emphasis added). The Order also references the comments of AT&T and Verizon, but those comments refer to back-up power in wireline central offices and *critical* components of the network. *See* Comments of AT&T, EB Docket No. 06-119, at 13 (filed Aug. 7, 2006); Comments of Verizon, EB Docket No. 06-119, at 7 (filed Aug. 7, 2006).

[9] *See, e.g., Telocator Network of America v. FCC*, 691 F.2d 525, 549-50 (D.C. Cir. 1982) (predictive judgment must have "ascertainable foundation in the record" showing

consideration of this requirement, it is likely that the significant burden upon CMRS and other providers, as well as the environmental risk and potential conflicts with other federal, state and local laws, would have been explored.[10]

Additionally, PCIA is concerned that interested parties did not have adequate notice that the FCC was considering the adoption of an 8-hour back-up power mandate.[11] The Katrina NPRM did not suggest that a back-up power mandate could be forthcoming and did not invite input on the duration for which emergency power should be made available at cell sites.[12] Rather, the NPRM asked only for input on the "availability of emergency back-up power capabilities."[13]

The lack of adequate notice is evidenced by the absence of valuable input from wireless infrastructure providers, carriers or other interested parties about the many unintended consequences such a rule could have. Had parties been aware, they would have advised the Commission that the back-up power rule would create situation where compliance is impossible. First, as a practical matter, providing 8 hours of back-up power at all cell sites will require a dramatic and burdensome commitment of resources. The sheer quantity of generators, batteries and hours of labor is significant by any

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"thoughtful consideration duly attentive to the comments received"); *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752, 760 (6th Cir. 1995) (predictive judgment without record support is "highly suspect").

[10] *See generally* CTIA Motion.

[11] *See* CTIA Motion at 12; 5 U.S.C. § 553(b)(3) (agencies must provide notice of proposed rulemaking that includes "either the terms of substance of the proposed rule or a description of the subjects and issues involved.").

[12] *See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Notice of Proposed Rulemaking, EB Docket No. 06-119, 21 FCC Rcd 7320, 7326 ¶ 16 (2006) ("Katrina NPRM").

[13] *See id*.

estimation and literally impossible to deploy in advance of the Commission's deadline.[14] Equally important, the rule overlooks the placement circumstances of many cell sites. In order to provide ubiquitous service with little environmental impact, cell sites are placed in a wide variety of situations, including on roof-tops, lamp-posts, water towers, and in stealth configurations. Many sites are difficult to access and simply may not be able to support additional equipment including back-up power supplies.

Furthermore, the rule could unnecessarily bring cell tower owners and/or CMRS providers' network practices into conflict with existing regulation. As CTIA notes, nationwide fire codes, state and local building codes, noise abatement rules, permitting laws and federal environmental regulation are implicated by the installation of the generators and the 600-1000 pound batteries that are necessary to comply with the requirement.[15] As CTIA has further indicated, carriers may face increased political resistance in some localities and even violate the terms of their siting agreements (*i.e.* permitting, building, leasing, state compliance).[16]

In sites where compliance by August 10, 2007 is impossible, the only alternative to ensure non-compliance would be shutting down cell sites. As a result, wireless service and access to 911 may be degraded for all wireless users resulting in a negative impact for public safety services and the public at large. Clearly this was not the Commission's intent. A stay will avoid this result while allowing a comprehensive evaluation of the issues involved.

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[14] *See* CTIA Motion at 22-32, Exs. 1-5.
[15] *See* CTIA Motion at 22-32; *see also* NextG Request at 9-10.
[16] *See* CTIA Motion at 26; *see also* NextG Request at 10.

CONCLUSION

For the foregoing reasons, PCIA respectfully supports requests that the Commission stay the effect of the eight hour back-up power rule, 47 C.F.R. § 12.2.

Respectfully submitted,

PCIA – THE WIRELESS
INFRASTRUCTURE ASSOCIATION

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