

**Before the  
Federal Communications Commission  
Washington, D.C. 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	)	
	)	
	)	

**PETITION FOR RECONSIDERATION  
CTIA – THE WIRELESS ASSOCIATION®**

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**TABLE OF CONTENTS**

I. INTRODUCTION AND SUMMARY ..... 1

II. BACKGROUND ..... 4

    A. THE REPORT OF THE KATRINA PANEL..... 4

    B. THE NOTICE OF PROPOSED RULEMAKING..... 5

    C. THE ORDER ..... 6

III. THE COMMISSION SHOULD RESCIND OR SUBSTANTIALLY  
MODIFY THE BACK-UP POWER RULE ..... 7

    A. THE BACK-UP POWER RULE IS BASED ON INADEQUATE  
STATUTORY AUTHORITY ..... 8

    B. THE BACK-UP POWER RULE VIOLATES THE APA ..... 9

        1. The FCC Failed to Provide Notice of the Back-Up Power  
Rule ..... 10

        2. There Is No Record Evidence to Support the Back-Up  
Power Rule in General or the Eight-Hour Minimum in  
Particular ..... 12

        3. The FCC Failed to Consider Numerous Important Aspects  
of The Emergency Preparedness Problem It Sought To  
Address ..... 13

        4. The Back-Up Power Rule Does Not Reasonably Further,  
but Rather Undermines, the Goal of Emergency  
Preparedness ..... 22

        5. The FCC Failed To Explain Why It Rejected Less  
Restrictive Alternatives to the Back-Up Power Rule ..... 23

IV. THE COMMISSION SHOULD CLARIFY THAT THE RULE APPLIES  
ONLY TO ASSETS DIRECTLY RELATED TO THE PROVISION OF  
CRITICAL COMMUNICATIONS SERVICES ..... 25

V. CONCLUSION..... 25

## I. INTRODUCTION AND SUMMARY

CTIA shares and strongly supports the Federal Communications Commission's ("Commission" or "FCC") goals of improving disaster preparedness and network reliability. Along these lines, many wireless providers already have implemented business continuity / disaster recovery plans to enhance network reliability and resiliency, and it is clearly in the communications industry's own best interest to ensure that its networks remain operational throughout a broad variety of disaster scenarios. CTIA respectfully submits, however, that the back-up power rule adopted in the June 8, 2007 Order, *Recomm. of the Indep. Panel Reviewing the Impact of Hurricane Katrina on Comm'ns Networks*, Order, 22 FCC Rcd 10541, 10565, 10587-10588 (¶ 77 & Appendix B) (2007) ("Order"), will not advance – and actually risks undermining – carriers' efforts to achieve these important business continuity / disaster recovery goals.

Accordingly, by this Petition for Reconsideration, CTIA—The Wireless Association® ("CTIA")<sup>1</sup> respectfully requests that the Commission rescind or substantially modify its new rule requiring commercial mobile radio service ("CMRS") providers to maintain emergency back-up power sources for all assets normally powered by local AC commercial power, including eight hours of back-up power at all cell sites. *See* Order at ¶ 77 & Appendix B.<sup>2</sup> CTIA urges the Commission to take the requested

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<sup>1</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> The rule was originally scheduled to take effect on August 10, 2007. *See* Order, 22 FCC Rcd at 10580 (¶ 126); 72 Fed. Reg. 37,655 (2007). On August 2, 2007, the Commission extended the effective date of the rule to October 9, 2007, *see Recomm. of the Indep. Panel Reviewing the Impact of Hurricane Katrina on Comm'ns Networks*,

action as expeditiously as possible, so that consumers and carriers are not burdened with the ramifications of significant compliance challenges — many of which are unrelated to the preservation of essential communication service. Further, CTIA is optimistic that its productive discussions to date with Commission Staff will yield a revised back-up power rule that more consistently implements the National Reliability and Interoperability Council (“NRIC”) guidelines as stated in the Report of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (the “Katrina Report” by the “Katrina Panel”).

The FCC’s Order states that the Commission “will require . . . [CMRS] providers to have an emergency back-up power source for all assets that are normally powered from local AC commercial power including those inside central offices[] [and] cell sites.” *Id.* at 10565 (¶ 77). CTIA believes that the Commission’s adoption of the rules, in addition to likely being contrary to the ultimate goal of protecting the provision of services, is contrary to the Commission’s requirements when adopting new rules. In adopting the new rule, CTIA submits that the Commission invoked Section 1 of the Communications Act, 47 U.S.C. § 151, which merely sets forth a general grant of jurisdiction but delegates no substantive regulatory authority to the Commission, and does not give express statutory authority to effect a rule prescribing a specific amount of back-up power for all cell sites.

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Order, EB Dkt. No. 06-119, WC Dkt. No. 06-63, in order to allow consideration of the issues raised in CTIA’s Motion for Administrative Stay, *see* Motion for Administrative Stay of CTIA—The Wireless Association®, EB Dkt. No. 06-119, WC Dkt. No. 06-63 (July 31, 2007). Because no further action has been taken on the rule, and because petitions for reconsideration of the Order must be filed no later than today, *see* 47 C.F.R. §§1.06(f), 1.4(b), CTIA submits this Petition for Reconsideration to preserve the issues in its Motion for reconsideration.

In addition, the back-up power rule violates the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-559 (2000), for several reasons. First, the Commission failed to provide reasonable notice of the rule, depriving interested parties of the opportunity to comment on the rule. The Notice of Proposed Rulemaking in this proceeding, *Recomms. of the Indep. Panel Reviewing the Impact of Hurricane Katrina on Commc’ns Networks*, Notice of Proposed Rulemaking, 21 FCC Rcd 7320 (2006) (“NPRM”), failed to indicate that the Commission was considering a mandatory eight-hour back-up power requirement for all CMRS cell sites. The NPRM’s brief discussion of back-up power was framed in terms of encouraging best practices to ensure the availability of back-up power, without any indication that the Commission was considering a requirement for specific locations or a particular duration, let alone eight hours. *See id.* at 7326 (¶ 16). No party commented on the specific length of back-up power that is necessary or beneficial.

The back-up power rule is also arbitrary and capricious in several respects. For example, as stated above there is no record evidence to support the back-up power mandate in general or the eight-hour minimum in particular. Further, the Commission failed to consider several important aspects of the emergency preparedness problem it sought to address, such as: (1) the interaction of the rule with federal, state, and local environmental, safety, building, and zoning laws, including possible preemption of conflicting state and local laws, as well as carrier site leases; (2) the physical and other practical limitations of installing power sources at cell sites; (3) the potential public health and safety hazards and environmental risks of the rule; (4) the length of time it would reasonably take for CMRS providers to comply with the rule, where even possible; and (5) the economic burden the rule would impose on CMRS providers. In addition, the

rule is not rationally related to the goal of emergency preparedness because it actually hinders that aim by depriving carriers of the flexibility necessary to make intelligent and efficient plans for network resiliency as well as giving carriers the flexibility to respond to disasters in real time while remaining in compliance with the Commission's rules. The Commission also failed to consider less restrictive alternatives to the rule, such as a voluntary best practices regime, or to explain why present carrier preparedness plans are inadequate.

Finally, a literal reading of the rule would require wireless providers to maintain back-up power for "all assets" powered by AC commercial sources, such as microwave ovens in company office kitchens and wall clocks in company conference rooms. Even when read narrowly, the Order still appears to require CMRS providers to maintain a minimum of eight hours of emergency back-up power for all cell sites. *Id.*

## **II. BACKGROUND**

### **A. THE REPORT OF THE KATRINA PANEL**

In response to the devastation caused by Hurricane Katrina in 2005, the FCC convened an expert panel to review the impact of Hurricane Katrina on communications infrastructure and to make recommendations regarding ways to improve disaster preparedness, network reliability, and communications among first responders. The Katrina Report was submitted by the Katrina Panel to the FCC on June 12, 2006. Among other recommendations, the Katrina Report suggested that:

*[I]n order to ensure a more robust E-911 service, the FCC should encourage ... [s]ervice providers, network operators and property managers [to] ensure availability of emergency/back-up power (e.g., batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including*

natural and manmade occurrences (*e.g.*, earthquakes, floods, fires, power brown/blackouts, terrorism). The emergency/back-up power generators should be located onsite, when appropriate.

*Indep. Panel Reviewing the Impact of Hurricane Katrina on Commc'ns Networks*, Report and Recomm. to the FCC, 39 (June 12, 2006) (emphasis added).<sup>3</sup>

## **B. THE NOTICE OF PROPOSED RULEMAKING**

On June 19, 2006, the FCC issued the NPRM inviting comment on what actions the FCC should take to address the Katrina Panel's recommendations. The FCC sought comment on the recommendations made by the Katrina Panel generally. *See* NPRM, 21 FCC Rcd at 7322 (¶¶ 6-7). The entire discussion of the back-up power issue as regards service providers was as follows:

[T]he panel recommends that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E-911 architecture. In particular, the Independent Panel recommends that service providers and network operators ... ensure availability of emergency back-up power capabilities (located on-site, when appropriate). ... We seek comment on how the Commission can best encourage implementation of these recommendations consistent with our statutory authority and jurisdiction.

*Id.* at 7326 (¶ 16).

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<sup>3</sup> This suggestion was, in turn, based on the best practices guidelines of the NRIC. The relevant NRIC recommendation encouraged service providers to "ensure availability of emergency/back-up power ... to maintain critical communications services during times of commercial power failures." *NRIC VII Recommendation 7-7-5204*; *see id.* ("Service providers, network operators and property managers should ensure availability of emergency/backup power (*e.g.*, batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including natural and manmade occurrences (*e.g.*, earthquakes, floods, fires, power brown/blackouts, terrorism).").

In response, CRMS providers explained the detailed emergency preparedness plans they presently have in place, and the many extensive measures they take pursuant to those plans, to further network resiliency and reliability. *See, e.g.*, CTIA Comments, EB Dkt. No. 06-119 (Aug. 7, 2006) (explaining operators’ business continuity plans, including provisioning of cell sites with batteries, installation of generators at critical cell sites, storing back-up generators to recharge batteries during extended outages, and pre-positioning of crews and equipment). CMRS commenters stressed the importance of carrier flexibility in responding to emergencies, depending on the nature of the crisis, *see id.* at 9 (noting that “response plans should not contain requirements that apply to one certain type of disaster (*e.g.*, a hurricane), but not to others (*e.g.*, a terrorist attack)”), and noted the many effective ways in which they currently deal with power outages, *see id.* at 17 (explaining that, during Hurricane Katrina, wireless operators restored service despite electric power outage by deploying Cellular on Wheels (“COWs”) and Cellular on Light Trucks (“COLTS”)); Sprint Nextel Comments, EB Dkt. No. 06-119 (Aug. 7, 2006) (explaining use of Satellite Cells on Light Trucks (“SatCOLTS”)).

**C. THE ORDER**

On June 8, 2007, the FCC released the Order. While much of the Order simply adopted or rejected the recommendations of the Katrina Panel, in the area of back-up power the FCC promulgated a new rule that had not been suggested by the Panel. New Section 12.2 of the FCC’s rules provides in relevant part:

Local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have an emergency back-up power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote

switches and digital loop carrier system remote terminals. 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.

Order, 22 FCC Rcd at 10587-10588 (Appendix B). On July 11, 2007, the Order was published in the Federal Register. *See* 72 Fed. Reg. 37,655.

### **III. THE COMMISSION SHOULD RESCIND OR SUBSTANTIALLY MODIFY THE BACK-UP POWER RULE.**

The FCC adopted the back-up power rule on the basis of patently inadequate statutory authority. In addition, the Commission's action is arbitrary and capricious and violates the APA because it (1) failed to provide adequate notice, (2) did not rely on any supporting evidence in the record, (3) failed to consider important aspects of the problem it sought to redress, (4) undermined rather than advanced carriers' emergency preparedness goals, and (5) failed to explain why it rejected less restrictive alternatives. These shortcomings warrant the Commission taking steps to rescind or at least substantially modify the rule on reconsideration. Along these lines, CTIA asks that the Commission take this action forthwith, so that consumers and carriers are not burdened with the ramifications of significant compliance challenges — many of which are unrelated to the preservation of essential communication service.

“If ‘Congress has not directly addressed the precise question at issue,’ and the agency has acted pursuant to an express or implied delegation of authority, the agency's statutory interpretation is entitled to deference, as long as it is reasonable.” *Am. Library Ass'n. v. FCC*, 406 F.3d 689, 698-99 (quoting *Chevron U.S.A. Inc. v. Natural Resources*

*Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984)). But “an ‘agency’s interpretation of [a] statute is not entitled to deference absent a delegation of authority from Congress to regulate in the areas at issue.”” *Id.* (quoting *Motion Picture Ass’n of America, Inc. v. FCC*, 309 F.3d 796, 801 (D.C. Cir. 2002)). “[W]hether the agency acted pursuant to delegated authority” is a “crucial threshold consideration.” *Id.* at 699. The APA requires a court to set aside agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). This standard imposes a “requirement of reasoned decisionmaking” upon agency decisions. *Celcom Communications Corp. v. FCC*, 789 F.2d 67, 71 (D.C. Cir. 1986). As demonstrated below, the back-up power rule does not pass muster under these standards.

**A. THE BACK-UP POWER RULE IS BASED ON INADEQUATE STATUTORY AUTHORITY.**

The authority invoked by the Commission in adopting the back-up power rule simply does not provide the ability to impose on wireless carriers such a prescriptive obligation. “It is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress.” *Am. Library Ass’n.*, 406 F.3d at 691. In imposing the far-reaching back-up power rule, the Commission identified a *single* source of authority: Section 1 of the Communications Act (the “Act”), 47 U.S.C. § 151. *See* Order, 22 FCC Rcd at 10565 (¶ 77) (imposing the back-up power rule “pursuant to our authority under Section 1 of the Communications Act”).

Yet Section 1 merely sets forth the general purposes for which the Commission was created and is a “general jurisdictional grant.” *Am. Library Ass’n.*, 406 F.3d at 691. Section 1 delegates no substantive regulatory authority to the FCC, and does not delegate “express statutory authority to promulgate regulations” governing the specific amount of

emergency back-up power for all AC-powered assets or even all cell sites. *Id.* at 692. Even in cases in which the Commission has relied on Section 1 *in addition to* other provisions of Title I of the Act, such as Section 4(i), 47 U.S.C. § 154(i), to adopt regulations pursuant to its ancillary authority, the courts have routinely rejected such efforts. *See Am. Library Ass’n*, 406 F.3d at 704; *see also Motion Picture Ass’n*, 309 F.3d at 796 (rejecting FCC’s claim of authority to require video description of television programs under Sections 151, 152(a), 154(1), and 303(r)).

Section 1, standing alone, is not the type of clear expression of Congressional intent that is necessary to impose such a heavy obligation on the wireless industry. Indeed, this would be particularly anomalous in the context of CMRS, which since its inception has been largely deregulated at the federal level.<sup>4</sup>

**B. THE BACK-UP POWER RULE VIOLATES THE APA**

Under the APA, an agency must provide notice of, and an opportunity to comment on, new regulations. 5 U.S.C. § 533(b), (c). It must also produce a rule that is well-reasoned, and not arbitrary or capricious. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42, 52 (1983). Here, the Commission failed to provide adequate notice that it was considering an inflexible federal mandate that CMRS providers maintain back-up power of specific duration at all cell sites. In addition, as explained below, the rule is arbitrary and capricious in numerous respects.

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<sup>4</sup> *See, e.g., Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238, 1245 (11<sup>th</sup> Cir. 2006) (describing the “the pro-competitive, deregulatory framework for [wireless service providers] prescribed by Congress.”) (quotation omitted).

**1. The FCC Failed to Provide Notice of the Back-Up Power Rule.**

“The [APA] requires that an agency publish notice of its proposed rulemaking that includes ‘either the terms or substance of the proposed rule or a description of the subjects and issues involved,’” *Arizona Public Service Co. v. EPA*, 211 F.3d 1280, 1299-1300 (D.C. Cir. 2000) (quoting 5 U.S.C. § 553(b)(3)), and “disclose[s] in detail the thinking that has animated the form of a proposed rule,” *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977). “Otherwise, interested parties will not know what to comment on . . . .” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983). The Commission’s rules do not follow these requirements.

The NPRM was far “too general to [] adequate[ly]” support the back-up power rule ultimately adopted. *Small Refiner*, 705 F.2d at 549. The NPRM was insufficient in at least three ways. First, the NPRM never discussed the back-up power issue in terms of a potential mandate. The NPRM merely put out for comment the Katrina Panel’s recommendation that “the Commission *encourage* the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E-911 architecture” -- namely, that carriers “*should* ensure availability” of emergency power capabilities. NPRM, 21 FCC Rcd at 7326 (¶ 16) (emphasis added). The Commission merely asked “how the Commission can best *encourage* implementation of these recommendations.” NPRM, 21 FCC Rcd at 7326 (¶ 16) (emphasis added). Second, the NPRM did not suggest that the physical scope of the back-up power recommendation might extend to all cell sites. Rather, the NPRM sought input on the Katrina Report’s suggestion that service providers “ensure the availability of emergency back-up power

capabilities (*located on-site, when appropriate*)." *Id.* (emphasis added).<sup>5</sup> Third, the NPRM provided no indication that the Commission intended to select a specific durational requirement for emergency power, let alone an eight-hour standard. The NPRM, like the Katrina Report, simply asked about the "*availability* of emergency back-up power capabilities." 21 FCC Rcd 7326 (¶ 16) (emphasis added). Thus, the final rule requiring eight hours of back-up power at all cell sites "deviates too sharply," *City of Waukesha v. E.P.A.*, 320 F.3d 228, 245 (D.C. Cir. 2003), from the initial proposals to satisfy notice and comment.

Nor was the back-up power rule a "logical outgrowth" of the NPRM. "[A] final rule is a logical outgrowth of a proposed rule only if interested parties should have anticipated that the change was possible." *Int'l Union, United Mine Workers of America v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005). "[A]n agency proposing informal rulemaking has an obligation to make its views known to the public in a concrete and focused form." *Home Box Office*, 567 F.2d at 36. As explained above, nothing in the NPRM indicated in a "concrete and focused form" that the FCC was contemplating the adoption of an eight-hour back-up power requirement for all cell sites. That no CMRS provider commented on any of the numerous difficult issues that the rule creates, *see infra* Section III.B.3, is strong evidence that the rule is not a logical outgrowth of the NPRM.

Similarly, it is not possible to maintain that notice was provided by comments submitted in the proceeding. An agency "must *itself* provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment." *Small*

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<sup>5</sup> Relatedly, the underlying NRIC recommendation applies to assets necessary to maintain "critical communications services," not all cell sites. *See supra* n. 3.

*Refiner*, 705 F.2d at 549 (emphasis added); *see also Fertilizer Institute v. U.S. E.P.A.*, 935 F.2d 1303, 1312 (D.C. Cir. 1991). The comments described in the Order as proposing a back-up power rule, *see Order*, 22 FCC Rcd at 10565 (¶76), either do not concern CMRS providers at all (and even then do not suggest any mandatory minimum standard) or have nothing to do with back-up power.<sup>6</sup>

**2. There Is No Record Evidence to Support the Back-Up Power Rule in General or the Eight-Hour Minimum in Particular.**

An agency decision is arbitrary and capricious when it lacks “support in the record.” *NAACP v. FCC*, 682 F.2d 993, 997 (D.C. Cir. 1982); *see also id.* (stating that an agency “must disclose in detail the . . . data upon which [a] rule is based”). The Commission cited virtually no evidence in support of its new rule<sup>7</sup> and, in fact, the record contains no information regarding the need for a mandatory back-up power requirement, the type or duration of back-up power that would be appropriate, the proper siting of power sources, the time required to comply, or the costs of compliance.

In particular, there is no record support for the Commission’s choice of eight hours as the correct minimum standard. While the Commission has some latitude in setting numerical limits, it cannot “pluck[]” a number “out of thin air.” *Time Warner Entm’t Co. v. FCC*, 240 F.3d 1126, 1137 (D.C. Cir. 2001); *see also WorldCom, Inc. v.*

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<sup>6</sup> The comments of the National Emergency Number Association (“NENA”) addressed only wireline providers and did not discuss any specific time frame for back-up power. *See Comments of NENA*, EB Dkt No. 06-119, at 6 (Aug. 7, 2006) (“NENA recommends that the FCC . . . , as appropriate, require all *telephone central offices* to have an emergency back-up power source.”) (emphasis added). Contrary to the Order’s suggestion, the comments of St. Tammany Parish had nothing to do with back-up power but rather discussed “back-up procedures” and the importance of making those plans “readily available to field personnel.” *Comments of St. Tammany Parish Communications District 1*, EB Dkt No. 06-119, at 2 (Aug. 7, 2006).

<sup>7</sup> As noted above, the only reference to a back-up power requirement came in a single sentence in the NENA comments addressing only wireline providers. *See supra* n. 6.

*FCC*, 238 F.3d 449, 462 (D.C. Cir. 2001) (explaining that, while Commission’s numbers need not be “precisely right,” they must still be “within a zone of reasonableness”). Before the Commission can adopt a back-up power rule, it must build a proper record; the present record does not meet this threshold requirement.

**3. The FCC Failed to Consider Numerous Important Aspects of The Emergency Preparedness Problem It Sought To Address.**

In promulgating a rule, the Commission must “consider[] the relevant factors.” *Sinclair Broadcast Group*, 284 F.3d at 159. Indeed, “an agency rule [is] arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem,” *State Farm*, 463 U.S. at 43. Here, the Commission failed to consider several important aspects of the emergency preparedness problem it sought to address.

- (a) The FCC Failed to Consider the Consistency of the Back-Up Power Rule with Federal, State, and Local Laws, and Site Leases.

The Commission failed to consider the consistency of the new back-up power with numerous federal, state, and local laws, as well as site leases, that regulate the placement of power sources. In order to comply with the rule, carriers would be required to maintain a large number of battery and fuel-powered generators at cell sites. Because these power systems contain lead, sulfuric acid, oils and flammable liquids, they are subject to a host of federal, state, and local environmental and safety laws that strictly limit their placement and use.<sup>8</sup> Depending on the location of a cell site, the need to

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<sup>8</sup> For example, nationwide fire codes established by the National Fire Protection Association (“NFPA”) require stationary battery banks to have spill control and containment mechanisms to prevent exposure from leaking electrolytes, and building codes may impose specific restrictions on the weight of equipment placed on roofs and, by extension, the amount of batteries, generators, and fuel that may be stored or kept on rooftops. *See, e.g.*, NFPA § 110: Standard for Emergency and Standby Power Systems;

comply with these codes may make it impossible to comply with the new back-up power requirement.<sup>9</sup>

In addition to these safety requirements, many federal and state environmental requirements are implicated by the rule. The placement and operation of diesel generators raises a number of issues under the federal Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671(q).<sup>10</sup> Environmental Protection Agency (“EPA”) regulations require owners or operators of stationary diesel generators to install non-resettable hour meters on their generators, conduct tests on certain generators to demonstrate compliance with applicable performance standards, and potentially install pollution control technology. *See* 40 C.F.R. §§ 60.4200(a)(3), 60.4205(d), 60.4209(a), 60.4211(b)(5) & (d)(1), 60.4212, 60.4213. Further, Section 502 of the CAA makes it “unlawful for any person . . . to operate [a source] subject to standards or regulations under section [111] . . . except in compliance with a permit issued by a permitting authority.” 42 U.S.C. § 7661a(a).

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NFPA § 70: National Electrical Code, Art. 480 (defining requirements for battery storage); International Fire Code § 608 (Stationary Storage Battery Systems). These standards are imposed in all 50 states. Also, at a multi-carrier site, compliance with the requirement could require the addition of several thousand pounds of additional weight, *see, e.g.*, Declaration of Tony Kent (Ex. 1) (“Cellular South Declaration”) ¶ 6 (stating that “as much as 3,000 to 5,000 pounds of batteries would be required [at multiple-carrier cell sites]”), which would implicate local building code limitations, *see, e.g.*, New York City Admin. Code § 27-561(d)(5) (“Where equipment is placed on roofs, the design shall provide for the support of such equipment.”); *id.* at § 27-557(b)(2) (“Floors that support any items of machinery, electrical or mechanical equipment, or other concentrated live load in excess of one thousand pounds (including the weights of pads or bases) shall be designed to support such weight as a concentrated load or group of concentrated loads.”) (applicable to roofs via § 27-561(c)).

<sup>9</sup> *See* Declaration of Richard A. Craig (Ex. 2) (“Verizon Wireless Declaration”) ¶ 4 (stating that “building code restrictions, such as weight limits on rooftops, limit the ability install sufficient back-up power” to meet the rule).

<sup>10</sup> Diesel generators emit nitrogen oxides and particulate matter. These substances are designated as “criteria” air pollutants for which the EPA has established national ambient air quality standards. *See* CAA § 108; 42 U.S.C. § 7408.

Knowing violations of certain provisions of the CAA, including the foregoing permitting requirement, are a felony. *See, e.g.*, 42 U.S.C. § 7413(c)(1).<sup>11</sup>

Many state and local governments also have enacted laws and ordinances that would require carriers to obtain permits before installing new diesel generators (or any other source of regulated pollutants) at cell sites.<sup>12</sup> Further, these governments can require modifications to the proposed installation and operation of air pollutants prior to granting a permit. The issuance of such permits can be delayed for months while authorities negotiate changes to carriers' plans to address concerns about noise pollution, fuel leakage, ventilation, and other problems. In addition, many site leases contractually limit the placement of this equipment; these leases would have to be renegotiated – the possibility of which is far from certain – prior to any installation.<sup>13</sup>

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<sup>11</sup> The rule also implicates the Emergency Planning and Community Right-to-Know Act, which concerns community notification and planning relating to hazardous substances. *See* 42 U.S.C. §§ 11001-11050; *see also* Declaration of John B. Scola (Ex. 3) (“Cincinnati Bell Declaration”) ¶ 8 (stating that compliance raises issues under the National Historic Preservation Act).

<sup>12</sup> In California, for example, companies must demonstrate compliance with emission limits for stationary diesel generators prior to installing a diesel generator with a rated brake horsepower greater than 50. *See* Cal. Code Regs. tit. 17, § 93115(e)(4). And many town and city governments require permits for the installation of diesel generators of any size. *See, e.g.*, City of Rockville, Emergency Generator Installation Requirements, *available at* <http://www.rockvillemd.gov/residents/inspections/generator.htm> (last visited July 18, 2007); *see also* Verizon Wireless Declaration ¶ 6 (discussing need to obtain “permits from state and local jurisdictions to ensure compliance with zoning and air permitting regulations in the case of generators”); Declaration of Kyle Gruis (Ex. 4) (“Rural Cellular Declaration”) ¶¶ 7-9 (stating that compliance “would likely require state and local permits prior to installation” and explaining zoning and land use permitting regime in Vermont).

<sup>13</sup> *See* Cellular South Declaration ¶ 6 (stating that it “may or may not be feasible” to renegotiate leases); Rural Cellular Declaration ¶ 6 (discussing factors in renegotiating leases); Verizon Wireless Declaration ¶ 4 (stating that “the terms of lease agreements often limits the type and amount of equipment that Verizon Wireless can use on the property” and noting that “lessors who do not want back-up power equipment such as batteries or generators stored on their property would refuse to renegotiate the leases”).

In short, carriers face a host of federal, state, and local laws, as well as contractual obligations, that heavily regulate the placement, installation, and operation of generators, batteries, and fuel cells. Furthermore, insofar as providers may not be able to “comply with both state and federal requirements,” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), the Commission’s rule raises complicated and far-reaching questions of federal preemption, *see Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995).

(b) The FCC Failed To Consider the Physical and Other Practical Limitations on Compliance with the Back-Up Power Rule.

The Commission likewise failed to consider the physical and practical limitations on CMRS providers’ ability to provide eight hours of back-up power at all cell sites. First, there is not enough space at many cell sites to add additional back-up power sources. Cell transmitters are often placed in locations with limited room, such as building rooftops, church steeples, and even closets inside buildings.<sup>14</sup> These spaces are simply too small to add rows of heavy batteries and large fuel-burning generators.<sup>15</sup> Other spatial limits include the fact that fuel supplies required for emergency back-up

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<sup>14</sup> See Cincinnati Bell Declaration ¶ 9 (discussing equipment housed in utility closets in a building); Declaration of Bill Leonard (Ex. 5) (“Cricket Communications Declaration”) ¶ 6 (referring to cell sites “located in tight spaces such as closets or in church steeples”); Cellular South Declaration ¶ 7 (stating that many cell sites “are on rooftops”).

<sup>15</sup> See Cellular South Declaration ¶ 6 (stating that compliance may not be possible because “[m]any cell sites do not have sufficient space to comply with these requirements”); Cincinnati Bell Declaration ¶¶ 8-9 (discussing space limitations); Rural Cellular Declaration ¶ 6 (stating that, “at many sites, [Rural Cellular] does not currently lease sufficient space to accommodate additional batteries or generators”); Verizon Wireless Declaration ¶ 4 (stating that sometimes “there simply is not any space available to install sufficient back-up power to meet the FCC requirement”).

generators must often be placed several feet from built structures.<sup>16</sup> Even where space is sufficient to accommodate additional back-up power equipment, providers may be forced to modify structures containing cell transmitters or to build new structures.<sup>17</sup>

Second, because many cell sites are located on rooftops, there is a serious question whether such sites could accommodate the weight of additional emergency back-up power sources.<sup>18</sup> Batteries used to generate back-up power typically weigh 100-125 pounds, and as many as six to eight batteries may be needed to provide eight hours of power, which would amount to 600-1000 pounds of additional weight per transmitter.<sup>19</sup> At a multi-carrier site, compliance with the requirement could require the addition of several thousand pounds of additional weight.<sup>20</sup> To determine whether sufficient emergency batteries could be installed to satisfy the rule, wireless providers would have to conduct expensive, time-consuming engineering studies at many cell sites.<sup>21</sup>

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<sup>16</sup> See, e.g., Cellular South Declaration ¶ 6 (stating that, “in certain jurisdictions, propane tanks used to store fuel for generators must be placed 10 to 15 feet away from the generator itself as well as any other equipment”).

<sup>17</sup> See *id.* ¶ 9 (stating that “[a]t some locations” carriers would “be required to construct additional walls around generators”); Cincinnati Bell Declaration ¶ 7 (stating that installation of additional batteries “would require the installation of new battery cabinets”).

<sup>18</sup> See Cellular South Declaration ¶ 7 (stating that “many rooftop cell sites were not engineered with the additional weight requirements made necessary by the Order . . . , and many of those structures may simply not be able to physically support the weight of either additional batteries or a generator”).

<sup>19</sup> See *id.* ¶ 6.

<sup>20</sup> See *id.* (“In multiple-carrier cell sites, as much as 3,000 to 5,000 pounds of batteries would be required.”); Cincinnati Bell Declaration ¶ 7 (stating that the cabinets that normally house cell site batteries “weigh approximately 2,000 pounds” including the batteries).

<sup>21</sup> See Cricket Communications Declaration ¶ 6 (discussing need for “structural evaluations” to determine whether weight from additional power sources could be supported); see also Cellular South Declaration ¶ (same); Cincinnati Bell Declaration ¶ 7 (same); Rural Cellular Declaration ¶ 6 (same).

(c) The FCC Failed to Consider the Threat to Public Health and Safety, the Environment, and Consumer Welfare Posed by the Back-Up Power Rule.

The Commission also failed to consider that installing emergency back-up power sources at every cell site in the country could, even where technically compliant with the laws discussed above, raise serious concerns about public health and safety, the environment, and consumer welfare. For instance, the installation of a generator and its combustible fuel on the roof of a school or public building, where many transmitters are located, may not run afoul of any law or ordinance but may nevertheless pose a risk to public health and safety. This is a particular concern where a rooftop location would expose the equipment to lightning or other weather conditions that could compromise the equipment, making it more susceptible to fuel leakage and fire. Similarly, the location of such equipment in a church steeple—a popular cell site location—may not provide adequate ventilation despite satisfying applicable regulations. Finally, scientists have identified the pollutants emitted by diesel generators as leading contributors to a variety of environment and health problems. *See* EPA, Six Common Pollutants - Nitrogen Dioxide, <http://www.epa.gov/air/urbanair/nox/hlth.html> (last visited July 20, 2007).

Further, as explained above, due to legal, physical, and other practical limitations outside a carrier's control, it may be impossible for carriers to provide eight hours of back-up power at all cell sites. Accordingly, carriers may have little choice but to shut down or move certain transmitters rather than risk operating in violation of the new rule or endangering public health and safety.<sup>22</sup> This would adversely affect the coverage and

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<sup>22</sup> *See* Cellular South Declaration ¶ 11 (stating that “the company may be forced to shut down [certain] cell[] sites” and resulting loss of coverage); Cincinnati Bell Declaration ¶ 12 (explaining that inability to comply could force it to “discontinue use” of certain cell sites and resulting loss of coverage); Rural Cellular Declaration ¶ 11 (stating that “it

capacity of wireless service in the area of the decommissioned or relocated transmitter. Because wireless service is relied upon for 911 calls and other public safety purposes, and by first responders for critical communications, any reduction in the scope of service will adversely and irreparably affect public safety in general. Such a degradation of service will also adversely affect wireless customers in particular.

(d) The FCC Failed to Consider How Long It Would Reasonably Take for Wireless Providers to Comply With the Back-Up Power Rule.

The Commission also failed to consider how long it would reasonably take for wireless providers to comply with the back-up rule. As CTIA has previously explained, and the Commission acknowledged in its August 2, 2007 Order extending the effective date, the initial compliance deadline of August 10, 2007 was impossible for carriers to meet.<sup>23</sup> The Order did not choose the original effective date based on a reasoned analysis of the length of time it would reasonably take for carriers to install eight-hour back-up power at all cell sites; that date was simply the thirtieth day following publication of the Order in the Federal Register. *See* Order, 22 FCC Rcd at 10580 (¶ 126).

The effective date of any modified rule that the Commission might adopt must be predicated on such analysis, taking due account of the many legal and practical issues that installation of power sources at cell sites entails. *See supra* Sections III.B.3(a)-(b). Given that thousands of non-critical cell sites across the country currently do not have back-up power facilities, and that many of the sites that do have such power do not

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would be necessary for [Rural Cellular] to discontinue use of, or relocate, [] cell sites” where it could not comply with the Order); Verizon Wireless Declaration at ¶ 4 (noting that company may be left “with little choice but to identify and secure a new cell site location if it is to satisfy the Commission’s back-up power mandate, which could be disruptive to customer service”).

<sup>23</sup> *See* CTIA Motion for Administrative Stay, Section III.B.3.

satisfy the eight-hour standard,<sup>24</sup> compliance with any mandatory minimum standard, even where possible, is likely to take a considerable period of time. Among other things, carriers must: evaluate back-up power needs; conduct structural engineering analyses; renegotiate leases if needed; prepare necessary applications for permits and other authorizations; ensure compliance with all applicable building codes and environmental regulations; coordinate with counsel, architects, construction personnel and government officials; order and receive the necessary equipment; and properly install it.<sup>25</sup>

(e) The FCC Failed to Consider the Economic Burden on CMRS Providers Imposed by the Back-Up Power Rule.

Although the FCC asserted in the Order “that this requirement will not create an undue burden,”<sup>26</sup> it never actually considered the economic burden imposed on CMRS providers by the back-up power rule. In fact, the burden is substantial. As explained above, thousands of cell sites across the country do not have eight hours of back-up

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<sup>24</sup> See Cellular South Declaration ¶¶ 4-5 (1,400 cell sites are currently equipped with 4 hours of back-up power); Cincinnati Bell Declaration ¶¶ 4, 6 (approximately 80% of 750 cell sites do not have eight hours of back-up power); Rural Cellular Declaration ¶ 5 (approximately 20% of 1,200 cell sites do not have eight hours of back-up power); Verizon Wireless Declaration ¶ 3 (over 1,800 cell sites have less than eight hours of back-up power due to factors outside Verizon Wireless’ control).

<sup>25</sup> See Cellular South Declaration ¶ 8 (stating that obtaining necessary permits from local jurisdictions could take “as much as one month,” “it will take approximately 8 weeks to get battery cabinets, and 12 to 16 weeks to get generators installed”); Cincinnati Bell Declaration ¶ 11 (estimating an “8 to 12-week time frame”); Cricket Declaration ¶ 8 (stating that “it will take, at a minimum, 18 to 24 months for Cricket to comply”); Rural Cellular Declaration ¶ 11 (estimating time to comply as “significantly longer than 3-5 months”); Verizon Wireless Declaration ¶¶ 5, 9 (stating that timeframe from purchase of back-up equipment to installation is normally “4 to 6 months” but where space is an issue “this process can take as long as 12 months,” and that “[i]n some parts of the country . . . site search and permitting projects tak[e] as long as 18 to 24 months on average” due to local opposition to cell sites).

<sup>26</sup> Order, 22 FCC Rcd at 10565 (¶ 78).

power, and a significant number of non-critical sites have no back-up power.<sup>27</sup> The cost of equipment and installation at each of these cell sites is significant.<sup>28</sup> These costs would be compounded by the spike in demand for equipment and installation services, and a corresponding drop in supply, as providers rush to meet a new federal regulation.<sup>29</sup> Carriers would have to spend additional sums on the extensive planning requirements discussed above. *See supra* Section III.B.3(d).<sup>30</sup> Further, these planning and installation processes would divert substantial employee resources and economic investment from other pressing activities.<sup>31</sup>

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<sup>27</sup> *See supra* n. 24.

<sup>28</sup> *See* Cellular South Declaration ¶ 10 (“The cost of installing battery cabinets ... will be approximately \$25,000-\$30,000 per cell site, and ... the cost of installing generators will be approximately \$15,000-\$20,000 per cell site.”); Rural Cellular Declaration ¶ 10 (stating that “not including labor, installation, and regulatory costs, a generator costs anywhere from \$5,000 to \$15,000” and “batteries sufficient to meet the 8-hour back-up power requirement typically cost approximately \$4,500 per site (not including labor, installation, and regulatory costs)”).

<sup>29</sup> *See* Cincinnati Bell Declaration ¶ 11 (estimating that the normal “8 to 12-week time frame” “is likely to increase substantially due to the high demand for emergency back-up equipment created by the Order”); Cricket Communications Declaration ¶ 10 (stating that “scarcity of necessary equipment and contractors [due to effect of Order] may contribute to additional delays” in complying with Order); Cellular South ¶ 8 (stating that “process may take even longer due to the demand for emergency back-up equipment that the FCC’s requirement would create”); Verizon Wireless Declaration ¶ 5 (stating that normal timeframe from purchase of back-up equipment to installation is normally “would take longer given high demand for equipment caused by the new rule”); Rural Cellular Declaration ¶ 10 (anticipating that short time to comply with Order will increase delays in compliance by producing decrease in supplies and increase in demand).

<sup>30</sup> *See* Cellular South Declaration ¶ 10 (stating that “[s]tructural engineering analysis will cost approximately \$2,000 to \$4,000 per cell site” and company “likely will incur millions of dollars in additional expenses”); Cricket Communications Declaration ¶ 9 (estimating total cost of compliance at DAS sites at “over \$6.5 million” and non-DAS sites at “over \$23 million”); Rural Cellular Declaration ¶ 10 (“The costs for RCC associated with meeting the 8-hour back-up power requirement would be significant.”)

<sup>31</sup> *See* Cellular South Declaration ¶ 11 (discussing diversion of human resources to install new emergency back-up power sources; Verizon Wireless Declaration ¶ 10

**4. The Back-Up Power Rule Does Not Reasonably Further, but Rather Undermines, the Goal of Emergency Preparedness**

As stated above, CTIA and the wireless industry share the Commission's goals in this proceeding, but are concerned that as written, the rules likely will not facilitate carriers' efforts. From a legal standpoint, CTIA argues that the rule is arbitrary and capricious because it does not reasonably further, but rather undermines, the goal of emergency preparedness and thus lacks a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

By imposing a one-size-fits-all federal requirement of eight hours of back-up power at all cell sites, not to mention requiring back-up power sources for all AC-powered assets, the rule deprives wireless providers of the flexibility needed to efficiently and intelligently deploy their resources to plan for and respond to emergency situations as most appropriate. Given their unique knowledge of their own proprietary networks, providers are the parties best situated to make these decisions, and they have undertaken extensive voluntary efforts to protect those networks. They also presently employ highly effective solutions to power outages that do not require the installation of permanent power sources (which could be damaged in an emergency), such as mobile COWs, COLTS, SatCOLTS and generators.

Moreover, different emergencies obviously require different responses. Back-up generator power does little good when an operational site is under water due to flooding.

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(stating that costs associated with compliance "would be better used to expand coverage into rural areas and expand capacity in metropolitan areas").

Different areas of the country face different types of emergency risks. While hurricanes are a particularly acute problem in Florida, that is not true in Arizona; whereas California is susceptible to earthquakes, North Dakota is not; and highly populated urban areas such as New York City or Washington D.C. may face special risks of terrorism not present in other parts of the country. Carriers should have the flexibility, for example, to prioritize sites based on factors such as the degree of vulnerability to outages and likely need in an emergency (*e.g.*, evacuation routes, hospitals, evacuation centers, and the hardest hit areas). Thus, flexibility is crucial to any successful emergency preparedness plan.

Under the rule, however, wireless providers must reflexively install eight hours of back-up power at all cell sites or even install back-up power for all AC-powered assets, rather than identifying the most important links in their network for the support of critical communications (as identified in NRIC VII Recommendation 7-7-5204), determining how best to strengthen them, and adjusting plans based on the nature of an emergency. By diverting manpower and resources away from more appropriate efforts to tailor emergency communications plans, and by denying carriers the ability to move resources away from areas not impacted to those that have been impacted, the rule undermines rather than promotes the important goal of public safety.<sup>32</sup>

**5. The FCC Failed To Explain Why It Rejected Less Restrictive Alternatives to the Back-Up Power Rule.**

The Commission had a duty to consider less restrictive alternatives to the back-up power rule and to explain why it rejected such alternatives. *City of Brookings Mun. Tel.*

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<sup>32</sup> Further, enforcement of the rule could result in health, safety, and environmental risks to the public. *See supra* Section III.B.3(c). Enforcement could also lead to the termination or disruption of wireless cell sites, threatening the availability of E-911 service. *See id.* Thus, the rule, purportedly adopted in the interest of public safety, irrationally hinders rather than promotes that interest for these additional reasons.

*Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (“[A]n agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.”) (internal quotations omitted).

The Commission never considered the adequacy of the voluntary best practices NRIC regime on emergency back-up power that the Katrina Panel actually recommended, despite the fact that numerous commenters argued that a federal mandate in this area was unnecessary and counterproductive. Nor did the FCC explain why a mandatory obligation on this issue, alone among all the numerous issues addressed by the Panel, was needed or why present CMRS preparedness practices are inadequate.<sup>33</sup> The Commission also failed to explain why any back-up power requirement should not be limited to “critical communications services,” as suggested by the Katrina Panel, and why an eight-hour minimum—or indeed any single, inflexible minimum period—was a better solution than simply requiring the reasonable availability of back-up power at critical cell sites. *But see Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986) (stating an agency’s failure to consider “obvious alternatives” has led to reversal.).

Thus, because the Commission enacted the back-up power rule on the basis of patently inadequate statutory authority and violated APA requirements, the Commission should expeditiously rescind or substantially modify the rule.

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<sup>33</sup> Indeed, the reasons the Commission gave for encouraging but not requiring the other two recommendations of the Katrina Panel regarding E-911 infrastructure apply with equal force to the back-up power issue. Like implementation of diverse 911 circuits, mandatory minimum back-up power is “cost-prohibitive in certain cases.” Order, 22 FCC Rcd at 10564-10565 (¶ 75).

**IV. THE COMMISSION SHOULD CLARIFY THAT THE RULE APPLIES ONLY TO ASSETS DIRECTLY RELATED TO THE PROVISION OF CRITICAL COMMUNICATIONS SERVICES**

The Commission’s new back-up power rule states that “commercial mobile radio service (CMRS) providers must have an emergency back-up power source for all assets that are normally powered from local AC commercial power, including those inside central offices [and] cell sites.” Order, 22 FCC Rcd at Appendix B. Read literally, the new rule appears to require CMRS providers to maintain back-up power for “*all* assets” normally powered by local commercial AC power, such as microwave ovens in company kitchens and wall clocks in conference rooms, which are not even remotely related to the provision of communications services, let alone to emergency communications services.

CTIA does not believe that the Commission intended this result and that the use of “all assets” amounts to a “scrivener’s error.”<sup>34</sup> Thus, CTIA respectfully petitions the Commission, at a minimum, to correct this issue on reconsideration by making clear that any back-up power requirement that it chooses to retain applies only to CMRS assets that are directly related to the provision of critical communications services.

**V. CONCLUSION**

For the foregoing reasons, CTIA respectfully petitions the FCC to rescind or substantially modify the back-up power rule for “all assets” and the eight-hour mandate for all cell sites.

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<sup>34</sup> Accordingly, this Petition focuses on the back-up power rule as applied to all cell sites. CTIA’s Motion for Administrative Stay sets forth an analysis based on the more expansive – and, CTIA believes, unreasonable – interpretation of the rule. CTIA hereby preserves those arguments for any necessary reconsideration by incorporation here.

Respectfully submitted,

/s/ Christopher Guttman-McCabe

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August 10, 2007

**Exhibit 1**  
**Cellular South Declaration**

**Before the  
Federal Communications Commission  
Washington, D.C. 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	)	
	)	

**Declaration of Tony Kent**

I, Tony Kent, hereby declare as follows:

1. My name is Tony Kent and I am Senior Vice President, Engineering and Network Operations, at Cellular South, Inc. I have been employed at Cellular South for over 12 years with responsibilities including engineering, building and operating the wireless network, switches and cell sites. As part of my responsibilities, I led the restoration of Cellular South’s network following Hurricane Katrina. Prior to joining Cellular South, I worked for BellSouth for 14 years.
2. This declaration is intended to support the *Petition for Reconsideration* filed by CTIA – The Wireless Association® in EB Docket No. 06-119 and WC Docket No. 06-63. The *Petition for Reconsideration* requests reconsideration of that portion of the FCC decision (“Order”) adopting a new rule to require commercial mobile radio service (“CMRS”) providers to have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including eight hours of back-up power for assets located at all cell sites. CMRS carriers with more than 500,000 subscribers must comply with this requirement

by no later than 30 days from publication of the Order in the Federal Register (*i.e.*, August 10, 2007).

3. Cellular South is a licensed CMRS carrier with more than 500,000 subscribers in Mississippi and portions of Alabama, Tennessee and Florida and, therefore, it must comply with the FCC Order.
4. Cellular South currently has approximately 1,400 cell sites throughout Mississippi and portions of Alabama, Tennessee and Florida. The vast majority of Cellular South's cell sites are collocated with those of other CMRS providers that are also subject to the FCC Order.
5. Cellular South's cell site facilities are currently equipped with up to 4 hours of back-up battery power. In addition, approximately 40% of Cellular South's cell site facilities are equipped with back-up generators. In order for Cellular South to comply with the Commission's requirement that CMRS providers maintain emergency back-up power for a minimum of 8 hours for all cell sites, Cellular South would have to either install additional batteries at most of its cell sites or install generators at those cell sites that currently do not have a generator. However, Cellular South may not be able to install additional batteries or generators at a number of its cell sites, and certainly could not do so by the August 10, 2007 deadline. At a minimum, the new requirements contained in the Order will cause Cellular South to have to negotiate with cell site owners and other collocated carriers for the space necessary to meet these requirements, perform structural analyses for a substantial number of its cell sites to determine the feasibility of installing new batteries or a generator, obtain permits and other

necessary authorizations, ensure compliance with all state and local building codes as well as federal and state environmental regulations, and install the necessary new equipment.

6. For example, in a single-carrier cell site, to provide 8 hours of back-up power, 600 to 1,000 pounds of batteries would be required. In multiple-carrier cell sites, as much as 3,000 to 5,000 pounds of batteries would be required. For some cell sites located on towers with adjacent ground space, Cellular South, along with other collocated carriers, will need extra space on the ground adjacent to the tower for the batteries or a generator. To obtain such space, Cellular South will have to renegotiate its leases with cell site owners in an effort to lease additional space, which may or may not be feasible depending on the availability of additional space, the landlord's contractual obligations to other tenants, and the landlord's willingness to make additional space available for the placement of batteries or generators. Even where Cellular South is the cell site owner, it will nevertheless have to deal with collocated carriers in most cases, and in some instances, it simply may not own or lease sufficient ground space adjacent to the tower to accommodate the new space requirements. The installation of a generator would require even more space than batteries, and in certain jurisdictions, propane tanks used to store fuel for generators must be placed 10 to 15 feet away from the generator itself as well as any other equipment. Many cell sites do not have sufficient space to comply with these requirements, and Cellular South would still have to obtain the necessary permits and authorizations, even assuming the availability of sufficient space.

7. A number of Cellular South's cell sites are on rooftops. In addition to space limitations, the placement of additional batteries or a generator adjacent to these cell sites raises structural issues as well. Cellular South will have to perform a structural engineering analysis prior to installation to determine whether the rooftop can support the added weight. Many rooftop cell sites were not engineered with the additional weight requirements made necessary by the Order in mind, and many of those structures may simply not be able to physically support the weight of either additional batteries or a generator.
8. Cellular South also has antennas located within church steeples or on other pre-existing structures. Often, cell site equipment is located in buildings, basements or other enclosed spaces for such cell sites, which simply do not have sufficient additional space to accommodate the batteries necessary to provide for 8 hours of back-up power or a generator and its fuel supply. Of course, even if the space is physically available at such sites, Cellular South will need to re-negotiate its lease with the landlord in these instances as well, and the landlord may or may not agree to make such space available to Cellular South.
9. Given these issues and concerns, the August 10, 2007 deadline is particularly problematic. Where additional space might be available but negotiations with cell site owners and/or other colocated carriers are necessary, securing the permission necessary to place additional batteries or a generator at the cell site will take some time. Where a structural engineering analysis is needed, a minimum of two weeks will be required for each cell site. After completion of negotiations and any necessary structural analysis, assuming that the structure can accommodate

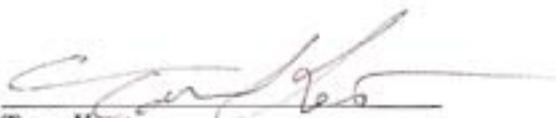
the additional equipment and weight, Cellular South will have to obtain permits from local jurisdictions for the installation of battery cabinets, generators and oil tanks, which may take from as little as a few days to as much as one month. Once permits are successfully obtained, we estimate that it will take approximately 8 weeks to get battery cabinets, and 12 to 16 weeks to get generators installed from the date that a purchase order is submitted to our vendors. This process may take even longer due to the demand for emergency back-up equipment that the FCC's requirement has created. At some locations, due to local regulations (especially in residential areas), we will also be required to construct additional walls around generators for noise abatement purposes, which will further delay the installation of the back-up equipment.

10. The Order will create an undue financial burden on Cellular South. In addition to any increase in rental payments made necessary by the additional space requirements, we estimate that for medium-sized cell sites, the cost of installing battery cabinets, if needed, will be approximately \$25,000 to \$30,000 per cell site, and we estimate that the cost of installing generators will be approximately \$15,000 to \$20,000 per cell site. The annual maintenance cost for a generator is approximately \$1,000 to \$2,000. Structural engineering analysis will cost approximately \$2,000 to \$4,000 per cell site. Thus, Cellular South likely will incur millions of dollars in additional expenses in order to comply with the FCC Order.
11. To comply with the Order, Cellular South will also have to divert significant human resources to work on the installation of emergency back-up power sources.

Such diversion of resources could place at risk efforts to ensure the reliability and resiliency of the network infrastructure and preparation for the current hurricane season.

12. At a few cell site locations, for the reasons mentioned above, we anticipate that it will be impossible for Cellular South to install back up power generators or batteries. In those instances, we will attempt to seek an alternative suitable location. However, if we are unable to secure such a location, the company may be forced to shut down the affected cell site. Such action could and probably would have an adverse effect on coverage in the affected areas, which would in turn impact quality of service and the ability of customers to make calls during times of emergency.

I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.



Tony Kent

Executed August 1, 2007

**Exhibit 2**  
**Verizon Wireless Declaration**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**Declaration of Richard A. Craig**

I, Richard A. Craig, hereby declare as follows:

1. My name is Richard A. Craig, and I am Director of Engineering and Operations Support at Verizon Wireless, Inc. (“Verizon Wireless”). I have been employed at Verizon Wireless for 11 years. My responsibilities include ensuring network compliance with Federal, state and local regulations and providing design standards and oversight for network building projects.
2. This declaration is intended to support the *Petition for Reconsideration* filed by CTIA – The Wireless Association® in EB Docket No. 06-119 and WC Docket No. 06-63. The *Petition for Reconsideration* requests reconsideration of that portion of the FCC decision (“Order”) adopting a new rule to require commercial mobile radio service (“CMRS”) providers to have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including eight hours of back-up power for assets located at all cell sites. CMRS carriers with more than 500,000 subscribers must comply with this requirement

by no later than 30 days from publication of the Order in the Federal Register (*i.e.*, August 10, 2007).

3. Verizon Wireless is a national CMRS carrier with more than 500,000 subscribers. It has approximately 26,000 cell sites throughout the United States. Virtually all of Verizon Wireless's cell sites currently have some form of emergency back-up power employing generators, batteries or a combination of the two. However, more than 1,800 of these sites have less than 8-hours of back-up power today. These sites do not have 8 hours of back-up power primarily due to factors beyond Verizon Wireless' control. As a result, bringing them into compliance with the new FCC standard, as explained below, will be extremely difficult, if not impossible, and cannot in any event be accomplished by the August 10 effective date for the FCC requirement.
4. Purchasing and installing additional emergency back-up power presents many difficulties. Many of Verizon Wireless's cell sites are located on property leased from third parties. In some cases, there simply is not any space available to install sufficient back-up power to meet the FCC requirement. In other cases, building code restrictions, such as weight limits on rooftops, limit the ability to install sufficient back-up power. Even where space or building code restrictions do not limit back-up power installation, the terms of lease agreements often limits the type and amount of equipment that Verizon Wireless can use on the property. While Verizon Wireless could seek to renegotiate these leases, this would be a time consuming and potentially costly exercise that could not be completed by the August 10, 2007 deadline. In fact, I expect that lessors who do not want back-up

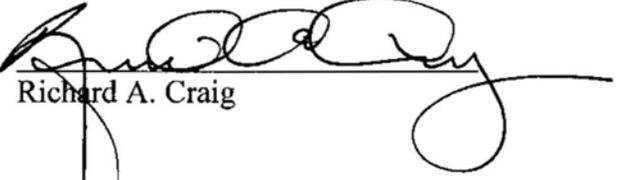
- power equipment such as batteries or generators stored on their property would refuse to renegotiate the leases, leaving Verizon Wireless with little choice but to identify and secure a new cell site location if it is to satisfy the Commission's back-up power mandate, which could be disruptive to customer service.
5. Under normal circumstances, and assuming none of these limitations apply, it can take anywhere from 4 to 6 months from the time a purchase order is placed for back-up power equipment to the time it is actually installed at a single cell site. If there are space limitations, this process can take as long as 12 months, assuming additional space is available, which is not always the case. Verizon Wireless purchases back-up power equipment from third parties. I expect the FCC mandate that the entire telecommunications industry install emergency back-up power sources for all assets normally powered by local AC commercial power, even if limited to cell sites, will lead to an unprecedented demand for emergency back-up equipment. This demand will likely place a severe strain on the supply chain for batteries and generators and lead to backlogs that would cause even further delays.
  6. Furthermore, Verizon Wireless cannot simply purchase and install emergency back-up power equipment without obtaining the necessary permits from state and local jurisdictions to ensure compliance with zoning and air permitting regulations in the case of generators. Local zoning laws can limit the amount of equipment that can be installed at a particular site, restrict the size of generators that can be used, and impose other restrictions that affect Verizon Wireless's ability to comply with the Commission's mandate in a timely manner or at all. Although

the time required to obtain local permits and comply with zoning regulations varies from jurisdiction to jurisdiction, local zoning boards and other regulatory agencies are likely to be flooded with applications for permits as a result of the Commission's action, which would make compliance with the mandatory back-up power requirements unfeasible for several years. Furthermore, some states such as California, which has 35 different air quality districts, have strict air pollution and noise abatement controls. Compliance with such controls will take a significant amount of time depending on the number of cell sites affected by those standards.

7. With respect to the approximately 1,800 Verizon Wireless cell sites that currently lack 8-hours of back-up power, the factors discussed above make it difficult, if not impossible, to modify these cell sites in order to provide 8 hours of back-up power as required by the FCC's new rule. To avoid violation of the FCC requirement at these sites, Verizon Wireless would have to pursue other locations where compliance with the FCC requirement would be feasible.
8. Even if Verizon Wireless took the drastic step of attempting to relocate these sites, there may be few, if any, alternative cell site locations in certain dense metropolitan markets served by Verizon Wireless that could satisfy the coverage requirements for the network and not present the same set of challenges and limitations that prevent meeting the 8-hour back-up requirement today. One example is Manhattan, where space limitations are severe, individual cell site density may be no greater than ¼ square mile and Verizon Wireless's ability to locate alternative cell site locations is significantly constrained.

9. In some parts of the country, local opposition to cell sites has lead to cumbersome zoning rules, restrictions and delays, which result in the site search and permitting projects taking as long as 18 to 24 months on average. I have personally been involved in a number of projects that have taken as long as four to six years to complete due to the repeated trial and error process of selecting the best candidate site from a list of potential locations within the search area, negotiating a lease for the property, preparing design documents and submissions for the permitting process, only to be delayed and denied in zoning and having to begin anew. I would expect Verizon Wireless to encounter even more significant delays if the company were forced to simultaneously relocate a significant number of cell sites, which could be disruptive to customer service.
10. The cost associated with relocating approximately 1,800 cell sites would be significant. These financial resources would be better used to expand coverage into rural areas and expand capacity in metropolitan areas.

I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.

  
Richard A. Craig

Executed August 1, 2007

**Exhibit 3**  
**Cincinnati Bell Wireless Declaration**

**Before the  
Federal Communications Commission  
Washington, D.C. 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	)	
	)	

**Declaration of John B. Scola**

I, John B. Scola, hereby declare as follows:

1. My name is John B. Scola. I am Director, Real Estate Management & Network Operations, at Cincinnati Bell Wireless, Inc. (“Cincinnati Bell”). I have been employed at Cincinnati Bell for 12 years. My responsibilities include the following: (a) wireless construction management; (b) wireless network operations; (c) wireless site portfolio management; and (d) wireless site acquisition management.
2. This declaration is intended to support the *Petition for Reconsideration* filed by CTIA – The Wireless Association® in EB Docket No. 06-119 and WC Docket No. 06-63. The *Petition for Reconsideration* requests reconsideration of that portion of the FCC decision (“Order”) adopting a new rule to require commercial mobile radio service (“CMRS”) providers to have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including eight hours of back-up power for assets located at all cell sites. CMRS carriers with more than 500,000 subscribers must comply with this requirement by no later

than 30 days from publication of the Order in the Federal Register (*i.e.*, August 10, 2007).

3. Cincinnati Bell is a CMRS carrier that provides wireless services to more than 500,000 subscribers located in Ohio, Kentucky and Indiana.
4. To provide coverage for its subscribers Cincinnati Bell utilizes approximately 750 cell sites. These cell sites include: cellular towers; rooftop antennae; “repeaters,” which are small sites intended to amplify outdoor signals for improved reception in buildings and other enclosed locations; “microcells,” which are small base stations mounted on utility poles or other similar structures and are used to extend coverage in areas such as valleys or more remote locations; and, finally, “picocells,” which are small cellular base stations designed to improve coverage in indoor areas such as office buildings and shopping centers where outdoor signals do not reach well.
5. All of Cincinnati Bell’s cell sites have back-up battery power, although the amount available at each site varies. Because Cincinnati Bell serves a relatively small geographic area, the company has 17 mobile generators that it deploys to a particular cell site location when electrical power has been disrupted. As a result, cell sites that can readily be served by a mobile generator in the event of a loss of power are not equipped with extensive back-up battery power. By contrast, cell sites in hard to reach areas, such as rooftop antennae, that cannot readily be served by mobile generators are engineered for longer battery life. In addition, some sites, particularly microcells and picocells, are located in areas where it is not practical to install numerous back-up batteries, such as utility poles and building utility closets; as a result, these sites have minimal back-up battery power available.

6. Cincinnati Bell estimates that approximately 80% of its cell sites, including its repeater, microcell, and picocell sites, would not meet the FCC's 8-hour back-up power requirement. It would be impractical, if not impossible, for Cincinnati Bell to reengineer its network so that every cell site complies with this requirement, and it certainly could not do so by the August 10, 2007 deadline.
7. Cincinnati Bell would be unable to install additional batteries at a number of its cell sites due to weight limitations. Typical cell site batteries are housed in cabinets. These cabinets (including the batteries) weigh approximately 1,500 pounds. Based on a preliminary review of the company's network records, I believe many of Cincinnati Bell's cell sites would require the installation of new battery cabinets in order to meet the FCC's 8-hour back-up power requirement and many rooftop cell site locations would not be structurally capable of sustaining the weight of an additional cabinet. Of course, a new cabinet could not be installed until Cincinnati Bell has conducted an engineering study with the landlord's approval, which takes time and money.
8. The absence of space to add additional batteries presents a second limitation. At its leased cell tower locations; for example, Cincinnati Bell has constructed concrete pads that house existing equipment used to operate the company's 2G and 3G networks. These pads typically house three or four existing equipment cabinets, each of which has its own back-up batteries. In order to add additional back-up batteries, Cincinnati Bell would be required to purchase and install additional cabinets, which are unlikely to fit on the existing pads occupying the space currently leased by Cincinnati Bell. Consequently, it would be necessary for

Cincinnati Bell to rent additional space, although there are no guarantees that such space is even available. At least five or six wireless carriers compete in Cincinnati Bell's market, and many of these carriers lease space at the same cell tower locations. Thus, space is at a premium, and it is unlikely that a property owner would be able to accommodate requests by multiple carriers for the additional space at a cell tower location required to comply with the FCC's 8-hour back-up power requirement. Even assuming such space were available to expand existing compounds, Cincinnati Bell would have to renegotiate its existing lease with each property owner. Furthermore, expansion outside the originally approved compound space could trigger the FCC's environmental compliance regulations, which would require Cincinnati Bell to engage in Section 106 consultations under the National Historic Preservation Act and file applications with the appropriate State Historic Preservation Officers for review and comment on the potential impact on historic properties. *See* 47 C.F.R. § 1.1307. Compliance with these requirements can take considerable time and resources.

9. In other locations, the lack of space is even more pronounced. For example, cell site equipment housed in utility closets in a building have minimal back-up battery power, at least in part because of space constraints. The batteries required to provide 8-hours of back-up power to these cell sites would require a significant amount of space that is nonexistent in a typical building utility closet.
10. The installation of additional batteries or generators also would require compliance with existing building codes, zoning restrictions, and environmental rules. Although Cincinnati Bell has not had sufficient time to assess the impact of these

requirements on the company's compliance with the FCC's Order, it is impossible for Cincinnati Bell to satisfy all applicable building codes, zoning restrictions, and environmental rules that would be implicated by the company's installing additional batteries or generators by the FCC's August 10, 2007 deadline.

11. The August 10, 2007 deadline also is impossible to meet given the time it routinely takes to acquire and install back-up power equipment. Before the FCC adopted its Order, Cincinnati Bell was in the midst of an extensive upgrade and battery replacement project. As part of this project, Cincinnati Bell is proactively identifying and replacing batteries that may be subject to failure. This project has been ongoing for approximately three years, during which time it has taken 8 to 12 weeks from the time Cincinnati Bell placed an order for batteries to the installation of the batteries. This 8 to 12-week time frame is likely to increase substantially due to the high demand for emergency back-up equipment created by the Order.
12. Even if the Commission were to give the industry additional time to comply with the Order, Cincinnati Bell estimates that it would be unable to meet the 8-hour back-up power requirement at approximately 20% of its cell sites. So as not to be in violation of the FCC's Order, Cincinnati Bell would have little choice but to discontinue use of these cell sites. Doing so would inconvenience our customers, who would experience decreased coverage, or even no coverage at all in some areas.

I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
John B. Scola

Executed August 1, 2007

**Exhibit 4**  
**Rural Cellular Declaration**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**Declaration of Kyle Gruis**

I, Kyle Gruis, hereby declare as follows:

1. My name is Kyle Gruis. I am Senior Director of Engineering at Rural Cellular Corporation (“RCC”). I have been employed in this position with RCC since 1998. I am responsible for the design and performance of over 1200 cell sites.
2. This declaration is intended to support the *Petition for Reconsideration* filed by CTIA – The Wireless Association® in EB Docket No. 06-119 and WC Docket No. 06-63. The *Petition for Reconsideration* requests reconsideration of that portion of the FCC decision (“Order”) adopting a new rule to require commercial mobile radio service (“CMRS”) providers to have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including eight hours of back-up power for assets located at all cell sites. CMRS carriers with more than 500,000 subscribers must comply with this requirement by no later than 30 days from publication of the Order in the Federal Register (*i.e.*, August 10, 2007).

3. RCC is a CMRS carrier that provides wireless services to more than 700,000 subscribers located in the Midwest, Northeast, Northwest and the Southern regions of the United States.
4. To provide coverage for its subscribers RCC utilizes over 1200 cell sites. The vast majority of RCC's cell sites have some back-up power, either dry cell batteries or generators.
5. However, RCC estimates that approximately 20% of its cell sites do not have 8-hours of back-up power. Moreover, RCC believes that it would be impractical, if not impossible, for RCC to reengineer its network so that these cell sites comply with the Commission's 8-hour back-up power requirement, and it certainly could not do so by the August 10, 2007 deadline.
6. Weight, space, and ventilation issues present serious, if not insurmountable obstacles to compliance with the Commission's Order. Many of RCC's cell sites are located on rooftops. Structural studies would have to be conducted to determine if a location is presently capable, or could be made capable, of sustaining the weight imposed by the addition of batteries or generators. Additionally, at many sites, RCC does not currently lease sufficient space to accommodate additional batteries or generators. At those cell sites, RCC would have to renegotiate its leases with the property owners in order to install the necessary equipment or secure additional space, even assuming it were available. The ability of RCC to renegotiate these leases to place such equipment at each of the sites will hinge on site specific variables including the availability of additional space, a landlord's contractual obligations to other tenants, and the

landlord's willingness to negotiate a new lease to accommodate space for additional batteries or generators. Finally, some of RCC's cell sites do not have sufficient ventilation to accommodate an increase in the number of batteries necessary to meet the 8-hour back-up power requirement. Inadequate ventilation may present serious safety concerns that would have to be addressed prior to the installation of additional dry cell batteries.

7. In many of the regions where RCC maintains cell sites, the addition of generators, or the expansion of equipment space to accommodate additional batteries, would likely require state and local permits prior to installation.
8. Vermont provides an example of the obstacles RCC would face in order to make the necessary changes to cell sites in that state that currently do not meet the 8-hour back-up power requirement. On the local level, each Town and City in Vermont has a different zoning law governing wireless communications facilities, each requiring separate analysis and an engagement with local officials. 24 V.S.A. § 4414(12). While in some instances the municipality might require only a building permit, in other cases municipal officials will require site plan review or an amendment to a conditional use approval, meaning that an elected / appointed board will review the application at a public meeting after some public notice period prior to RCC being able to obtain a building permit. Typically, the local permitting approval process can take anywhere from a month to three months following submission of the permit application. Longer times may result depending on the level of opposition a project encounters (*e.g.*, if proximity of a

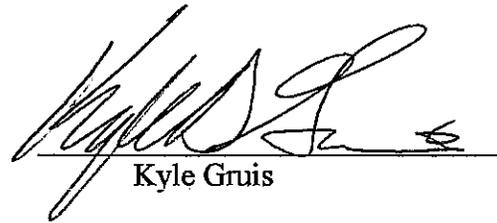
- new generator to an existing residential neighborhood generates concern regarding noise or safety of the propane tanks).
9. Many RCC sites in Vermont also are subject to a state land use permitting regime, known as Act 250, 10 V.S.A. § 6001 *et seq.* An Act 250 permit amendment would be required for each covered site. Even assuming a global permit amendment application could be submitted to add generators at each site in all the nine Act 250 “districts,” we anticipate that regulators would request detailed information to assess impacts on noise, power consumption, soil erosion (due to ground disturbances), and other matters prior to issuing the permit, and may even require hearings with the appointed district commissions. Even under a best case scenario, Act 250 permit amendments can take three months from the filing of an application. State regulators frequently will wait until the conclusion of the municipal land use permitting process before processing a state land use permit application, resulting in further delay. A very similar state-based land use permitting regime applies to those RCC sites located in a large region of upstate New York known as the Adirondack Park.
  10. The costs for RCC associated with meeting the 8-hour back-up power requirement would be significant. RCC does not have on hand a sufficient number of batteries and generators for compliance and would have to purchase the requisite batteries and generators in a market that will certainly face a shortage of supply relative to the increased demand resulting from the Commission’s Order. In normal circumstances, and not including labor, installation, and regulatory costs, a generator costs anywhere from \$5,000 to \$15,000 (depending

on the number of carriers present at a site and how costs are apportioned).

Batteries sufficient to meet the 8-hour back-up power requirement typically cost approximately \$4,500 per site (again, not including labor, installation, and regulatory costs).

11. Under the circumstances, the August 10, 2007 deadline for compliance with the Commission's 8-hour back-up power requirement is unreasonable. The number of cell sites that RCC would have to reengineer to meet the 8-hour back-up requirement together with the space, lease, and structural issues as well as the permitting obstacles described above would make it impossible for RCC to meet the Commission's deadline. The studies, construction, permitting, and installation process that must be completed would take, in the best of circumstances, at least 3 months to install additional batteries at a site and 5 months to install a generator. Because of the large volume of sites that RCC would need to reconfigure, together with the expectation that the necessary batteries and generators will be in short supply resulting from the Commission's Order, RCC anticipates that the time necessary to come into compliance at all possible sites will actually be significantly longer than 3-5 months.
12. Even if the Commission were to give CMRS providers additional time to comply with the Order, RCC believes that it would be unable to meet the 8-hour back-up power requirement at all of its cell sites. Rather than risk being in violation of the Commission's rules, it would be necessary for RCC to discontinue use of, or relocate, these cell sites. Doing so would inconvenience our customers, who would experience decreased coverage, or even no coverage at all in some areas.

I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.



Kyle Gruis

Executed August 1, 2007

**Exhibit 5**  
**Cricket Communications Declaration**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**Declaration of Bill Leonard**

I, Bill Leonard, hereby declare as follows:

1. My name is Bill Leonard, and I am Vice President of Technical Operations at Cricket Communications, Inc. (“Cricket”), a wholly owned subsidiary of Leap Wireless International, Inc. I have been employed at Cricket for six and a half years. I am responsible for regional radio frequency engineering, construction, site acquisition, fixed network engineering, network operations and maintenance, and interconnection engineering for Cricket.
2. This declaration is intended to support the *Petition for Reconsideration* filed by CTIA – The Wireless Association® in EB Docket No. 06-119 and WC Docket No. 06-63. The *Petition for Reconsideration* requests reconsideration of that portion of the FCC decision (“Order”) adopting a new rule to require commercial mobile radio service (“CMRS”) providers to have an emergency back-up power source for all assets that are normally powered by local AC commercial power, including eight hours of back-up power for assets located at all cell sites. CMRS carriers with more than 500,000 subscribers must comply with this requirement

by no later than 30 days from publication of the Order in the Federal Register (*i.e.*, August 10, 2007).

3. Cricket is a CMRS carrier with more than 500,000 subscribers and, therefore, it must comply with the FCC requirement. At present, Cricket maintains and operates equipment at approximately 4,800 cell sites across the United States. Approximately 4,500 of these cell sites utilize either batteries or generators for back-up power. For those cell sites with back-up power, the average amount of available back-up power is approximately 4 to 5 hours under normal operating conditions. None of these sites has 8 hours of back-up power, and Cricket would have to install additional batteries or generators to satisfy the FCC's 8-hour back-up power requirement.
4. Further, approximately 300 sites in the San Diego market do not have any back-up power. These sites are part of Cricket's innovative Distributed Antenna System (DAS) network. The DAS network consists of wireless telecommunications links, or "nodes," that are mounted on street lights and utility poles along municipal right-of-way and utility assets and connected via fiber optics. This technology allowed Cricket to bring competing wireless service to the San Diego market quickly while meeting the desire of local residents for unobtrusive, low-impact antennas that blend into the landscape. The DAS network also allows Cricket to expand its network capabilities without engaging in lengthy permitting requirements for the construction or use of traditional cellular towers.

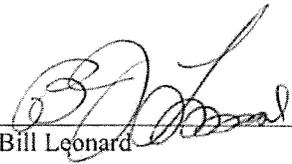
5. At some of Cricket's cell sites that currently have back-up power, it would be impossible to install additional batteries or generators due to space and weight limitations. At the very least, it will be necessary for Cricket to conduct structural evaluations of these cell sites to determine whether additional weight can be supported and, if so, whether structural improvements would be required.
6. Roughly 100 of Cricket's cell sites, including those located in tight spaces such as closets or in church steeples, do not have sufficient space to add batteries or install generators. In other cases, the additional space may be available to Cricket but only if it renegotiated its current leases. Landlords' obligations to other tenants and a willingness to negotiate in good faith may present serious obstacles to Cricket's ability to acquire the additional space necessary to meet the FCC's 8-hour back-up power requirement.
7. Property use laws and permitting laws also pose a substantial obstacle to Cricket's compliance with the Order. For instance, Cricket spent years negotiating with the legal and land use departments of the utility companies and municipalities in San Diego County for the deployment of the DAS sites. While Cricket's contractor was able to secure approvals to install nodes to street lights and utility poles, the approvals were based on the limited visual impact that the nodes would have in the area. The technical solution that exists for battery back-up at each DAS site would effectively triple the size of the equipment necessary on each street light and utility pole. As a result, Cricket will have to secure permits to install the additional equipment. I estimate it will take 18 months to 2 years to obtain approvals. Alternatively, Cricket would have to pursue negotiations to increase

the volume and square footage of each one of the DAS sites. I anticipate this process would take years, not months, to be resolved.

8. Cricket cannot comply with the Order's August 10, 2007 deadline, if at all. Cricket estimates that, for those cell sites where it is technically feasible to install additional batteries or a generator to provide sufficient back-up power, it will take, at a minimum, 18 to 24 months for Cricket to comply with the Order. Furthermore, because all CMRS providers will be concurrently seeking to comply with the order, batteries, generators, and the contractors often utilized to prepare cell sites will be in short supply. The scarcity of necessary equipment and contractors may contribute to additional delays.
9. Cricket will be financially burdened by the Order. The cost associated with purchasing and installing additional battery cabinets at each one of the DAS sites, including zoning/building application fees and engineering studies, would be over \$6.5 million. The cost associated with bringing all of Cricket's non-DAS sites into compliance with the Order would be over \$23 million.
10. Because Cricket will not be able to fully comply with the FCC 8-hour back-up power requirement, Cricket's present financing arrangements and ability to procure financing in the future could be adversely impacted. Lenders typically require the company to certify that it is in compliance with all applicable regulations, including FCC regulations, as a condition to financing. Enforcement of the 8-hour back-up power requirement could prevent Cricket from satisfying the conditions necessary to obtain new financing or increase the cost of the financing Cricket is able to obtain. The inability to secure financing at favorable

rates could jeopardize current and future business ventures that Cricket is funding or would otherwise fund via such financial instruments.

I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.

  
Bill Leonard

Executed August 1, 2007