

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF THE
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE
IN SUPPORT OF PETITIONS FOR RECONSIDERATION**

To the Commission:

The Independent Telephone and Telecommunications Alliance (ITTA) supports the Petitions for Reconsideration (collectively, Petitions) filed by numerous industry parties in the above-captioned proceeding.¹ Specifically, the Petitions seek reconsideration of the new “back-up power” rule, which requires certain incumbent local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers to maintain “an emergency backup 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.”² ITTA applauds the Commission’s zeal to ensure reliable communications capabilities in emergencies, but supports the Petitioners’ collective assertion that reconsideration of the rules is necessary.

¹ Petitioners include American Association of Paging Carriers (AAPC); CTIA – The Wireless Association (CTIA); MetroPCS Communications; NextG Networks, Inc.; PCIA – The Wireless Infrastructure Association; DAS Forum; and United States Telecom Association (USTelecom).

² *Recommendations of an Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Network: Order*, EB Docket No. 06-119, WC Docket 06-63, FCC 07-107, 22 FCC Rcd 10,541, paras. 76-78 and Appendix B (2007) (*Katrina Order*).

The Petitioners argue, variously, that the Commission’s imposition of a “one-size fits all” solution does not address fully the goals intended to be fulfilled,³ risks unintended adverse consequences,⁴ and could potentially run afoul of local and state zoning and other regulations.⁵ The parties also argue that proper notice for the rule was not provided: the Petitions, separately and collectively, reveal a chasm between the Commission’s notice and the final rule.⁶ The argument that adequate notice was not provided is buttressed by the wealth of information now provided by the Petitioners. This information, which addresses infrastructure requirements and issues related to zoning and safety issues, speaks directly to the feasibility of the new rule, and would likely have been provided by the Petitioners and others in the initial comments cycle had the Commission indicated in the Notice of Proposed Rulemaking⁷ that it was considering requirements akin to the final rule that eventually emerged.

For example, USTelecom provides information regarding battery life and notes that even if battery life could be assured, sufficient space necessary to accommodate those power sources might not be available.⁸ CTIA explains that physical and practical limitations arise out of wireless facilities placement on rooftops, church steeples, or

³ See, i.e., PCIA at 13, 14.

⁴ See, i.e., CTIA at 20, 21; USTelecom at 9.

⁵ See CTIA at 14, 15; DAS Forum at 6-8; MetroPCS at 8.

⁶ See CTIA at 10, 11; MetroPCS at 6; PCIA at 18, 19; USTelecom at 10-12.

⁷ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks: Notice of Proposed Rulemaking*, EB Docket No. 06-119, FCC 06-83, 21 FCC Rcd 7320 (2006) (NPRM).

⁸ USTelecom at 8.

closets;⁹ the installation of adequate back-up power facilities in those locations may likely be infeasible. CTIA also notes that Federal law and Environmental Protection Agency regulations are implicated, since sources of back-up power can contain “lead, sulfuric acid, oils, and flammable liquids.”¹⁰ MetroPCS warns of spatial limitations arising out of collocation requirements, specifically, that numerous carriers sharing small spaces would each be required to install adequate back-up equipment.¹¹ And, PCIA notes probable conflicts arising out of state and local zoning regulations that would affect the ability of a carrier to deploy adequate equipment.¹²

This sort of information speaks directly to the feasibility of the Commission’s new requirements, and is information that could have informed the Commission’s decision-making process had it been available to the Commission previously. But, as the Petitioners note, the original notice did not adequately inform the parties that a rule such as that which emerged was being contemplated at that time. Accordingly, the submission of such relevant information was apparently not submitted. As noted by several of the Petitions, the NPRM read:

[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.¹³

⁹ CTIA at 16.

¹⁰ CTIA at 13.

¹¹ MetroPCS at 9.

¹² PCIA at 10.

¹³ NPRM at para. 16.

As the Petitioners explain, this notification was inadequate to inform parties of a potential requirement to maintain eight hours of back-up power.¹⁴ Consequently, sufficient record evidence was not developed.¹⁵ MetroPCS characterizes the rule as being based on a “mistake of fact,” since the Final Regulatory Flexibility Act Analysis in the *Katrina Order* stated the Commission’s expectation that the rule would not “create an undue burden.”¹⁶ MetroPCS argues that the Commission “misperceived the operative facts when it adopted the rule.”¹⁷ ITTA submits that such “misperception” was attributable to the fact that sufficient relevant facts upon which the Commission could base a reasoned decision were simply not in the record; parties were not adequately on notice that such facts would have a determinative effect in this proceeding.

The Commission took the right step when it delayed the implementation deadline.¹⁸ That action, predicated upon the receipt of new information, evidences the Commission’s proper incorporation of industry-supplied information in its processes. That step having been taken, the Commission must now use this instant hour of reconsideration to reexamine the “power back-up” rule. The breadth of information provided by the Petitioners now provides the Commission with adequate justification to reopen the proceeding in order to develop a sufficient record upon which a reasoned decision can be based. ITTA applauds the Commission’s efforts to ensuring reliability in

¹⁴ See CTIA at 10; DAS at 6, 7; MetroPCS at 6, 7; NextG at 17, 18; PCIA at 18, 19; USTelecom at 10.

¹⁵ See, i.e., CTIA at 12, 13; DAS at 7, 8; NextG at 18, 19; USTelecom at 11, 12.

¹⁶ MetroPCS at 7.

¹⁷ MetroPCS at 7.

¹⁸ See, *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks: Order*, EB Docket No. 06-119, WC Docket No. 06-63, FCC 07-139 (Aug. 2, 2007).

telecommunications networks, and urges the Commission to reopen the record for refreshment of all data relevant to the back-up power rule.

Respectfully submitted,

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