

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF SPRINT NEXTEL**

Sprint Nextel Corporation (“Sprint Nextel”) hereby respectfully submits these comments on the Petitions for Reconsideration of the Commission’s *Katrina Panel Order* issued in the above-captioned proceeding. *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, FCC 07-107 released June 8, 2007. Sprint Nextel agrees with those petitioners that urge the Commission to rescind its decision that all commercial mobile radio service (“CMRS”) providers “should maintain emergency back-up power for a minimum of...eight hours for all cell sites, remote switches and digital loop carrier system remote terminals that normally are powered from local AC commercial power.” *Katrina Panel Order* at ¶77. In support thereof, Sprint Nextel states as follows.

In the wake of the Katrina disaster, the Commission convened a panel of experts (the “Katrina Panel”) “to review the impact of Hurricane Katrina on communications infrastructure in the areas affected by the hurricane and to make recommendations...regarding ways to improve disaster preparedness, network reliability and communications among first responders ...” *Id.* at ¶4. With respect to backup power, this body of experts based its recommendation on the best practice governing backup power issued by the Network Reliability and Interoperability Council (NRIC). Thus, citing NRIC VII Recommendation 7-7-5204, the Katrina Panel recommended that:

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). The emergency/backup power generators should be located onsite, when appropriate.

In its *Notice of Proposed Rulemaking* (“NPRM”) on the Katrina Panel Report, 21 FCC Rcd 7320, 7322 (2006), the Commission simply requested comment on the Panel’s back-up power recommendation. The Commission did not ask for or give any indication that it was considering the adoption of a one-size-fits-all-CMRS-carriers standard specifying the minimum number of hours of backup power that a carrier should have at all of its cell sites and other facilities -- regardless of whether such sites and facilities were necessary to maintain critical communications services during times of emergencies. Moreover, no party addressing the back-up power issue in the Katrina Panel docket even so much as suggested that the Commission consider a “one-size-fits-all” backup power standard.

Despite this lack of notice and record evidence, the Commission determined, *inter alia*, that CMRS providers should maintain emergency back-up power at their all of their cell sites and other facilities that are powered commercially, and that such back-up power should be maintained for a minimum of eight hours. The difficulty with this determination is that the Commission did not explain why it rejected the flexibility embodied in the NRIC best practice; why it concluded that every cell site – rather than solely those sites critical to network operations -- needed to have eight hours of backup power; or, for that matter, how it arrived at eight hours. Indeed, the Commission’s entire justification consists of just one sentence in which it states that it agreed with the back-up power recommendations of the National Emergency Number Association’s (“NENA”) and St. Tammany Parish Communications District I (“St. Tammany Parish”). *Katrina Panel Order* at ¶77. However, neither of these parties urged the imposition of

a back-up requirement at *every* wireless carrier cell site, much less specified any specific duration. Indeed, NENA's recommendation involved back-up power requirements at "telephone central offices." Similarly, the recommendation of St. Tammany's Parish was limited to wireline carriers and merely suggested that such carriers have "backup procedures in place." *Id.* at ¶76. *See also* CTIA Petition at 11-12 and fn. 6.

Even if the two parties upon whom the Commission relies had recommended the imposition of an inflexible standard on CMRS providers, the Commission was required to satisfy the Administrative Procedure Act's ("APA") standard for reasoned decision-making, as embodied in 5 USC §706(2). Thus, at the very least, the Commission would have had to explain why it decided to reject the Katrina Panel recommendation for a flexible approach to back-up power despite the fact that such recommendation was consistent with the variability of carriers' networks and the types of disruptive emergencies that carriers face.<sup>1</sup> The Commission would have had to justify its choice of eight hours – as opposed to any other number of hours -- so it could avoid the appearance of having simply picked a number at random.<sup>2</sup> The Commission would have had to set forth in detail its conclusion that carriers could have such generators in place in only a few months, given that federal, state and local laws require wireless carriers to obtain permits for the installation of permanent generators demonstrating, *inter alia*, that such generators would not harm the environment.<sup>3</sup> The Commission would have had to conduct a

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<sup>1</sup> *See, e.g.*, Petition of US Telecom at 2 (Given "[t]he complexity and variability of networks themselves and the [various] emergency situations that can disrupt network services.... [o]ne size does not fit all in keeping network facilities powered during emergency situations"; Petition of CTIA at 22-23 ("... different emergencies obviously require different responses" and "[d]ifferent areas of the country face different emergency risks"); PCIA Petition at 6 ("Wireless networks are enormously complex and intricate systems that rely on different sites and types of infrastructure that are not conducive to a one-size fits all back up power rule").

<sup>2</sup> *See* Petition of CTIA at 12 ("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))."

<sup>3</sup> *See, e.g.*, Petition of PCIA at 10-12.

cost/benefit analysis to ensure that carriers are not subjected to undue economic burdens.<sup>4</sup> And, the Commission would have had to explain why it rejected evidence submitted by Sprint Nextel and others that carriers take the issue of backup power seriously and given the appropriate flexibility provided in the NRIC backup power best practice, have implemented and will continue to implement a variety of approaches to help ensure the provision of wireless services to their customers in the wake of an emergency.<sup>5</sup> Because the Commission failed to provide any of these required explanations or justifications, its decision is plainly arbitrary and capricious.

Given the infirmities in the Commission's decision on backup power, the Commission at a minimum must rescind its decision that CMRS providers should maintain emergency backup power at *every* cell site and that such back-up power should be maintained for eight hours. If the Commission wants to explore whether to impose an inflexible one-size-fits-all back-up power standard on wireless carriers, it must issue a further notice of proposed rulemaking, develop a proper record and make a reasoned decision.

Respectfully submitted,

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<sup>4</sup> See, e.g., Petition of CTIA at 20-21.

<sup>5</sup> See Sprint Nextel Comments at 4.