within the extended period of reimbursement. In no case will reimbursement be provided after 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion.

§ 207.10 Review of management cost rates.

(a) FEMA will review management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(b) In order for FEMA to review the management cost rates established, and in accordance with part 13 of this chapter, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). After review of this documentation, FEMA will determine whether the established management cost rates are adequate for the administration and closeout of the PA and HMGP programs.

Dated: October 4, 2007.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–20035 Filed 10–10–07; 8:45 am]

BILLING CODE 9110–49–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[EB Docket No. 06–119; WC Docket No. 06–63; FCC 07–177]

Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) considers petitions for reconsideration and/or clarification (Petitions) of the Order that adopted the Commission's rule, which required that certain local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers have an emergency backup power source for all assets that are normally powered from local AC commercial power. The Commission modifies its rules to address several meritorious issues raised in the petitions. These modifications will facilitate carrier compliance and reduce the burden on LECs and CMRS providers, while continuing to further important homeland security and public safety goals.

DATES: The rules in 47 CFR 12.2 contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Deputy Division Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–2792. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in EB Docket No. 06–119 and WC Docket No. 06–63, FCC 07–177, adopted October 2, 2007, and released October 4, 2007. The full text of this document is available for public inspection and copying on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, fax (202) 488–5563; or via e-mail *FCC@BCPIWEWEB.COM*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432.

Synopsis of the Order on Reconsideration

Background

In January 2006, Chairman Kevin J. Martin established the Katrina Panel pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended. The mission of the Katrina Panel was to review the impact of Hurricane Katrina on communications infrastructure in the areas affected by the hurricane and to make recommendations to the Commission regarding ways to improve disaster preparedness, network reliability and communications among first responders such as police, fire fighters, and emergency medical personnel. The Katrina Panel submitted its report on June 12, 2006. The Katrina Panel's report described the impact of the worst natural disaster in the Nation's history, as well as the overall public and private response and recovery efforts. The Commission's goal is to take the lessons learned from that disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness.

The Commission issued a Notice of Proposed Rulemaking (*NPRM*) on June 19, 2006 inviting comment on what actions the Commission should take to address the Katrina Panel's recommendations. On July 26, 2006, the Commission issued a public notice asking commenters to address the applicability of the Katrina Panel's recommendations to all types of natural disasters (*e.g.*, earthquakes, tornadoes, hurricanes, forest fires) as well as other types of incidents (*e.g.*, terrorist attacks, influenza pandemic, industrial accidents). The public notice also asked parties to address whether the panel's recommendations are broad enough to take into account the diverse topography of our Nation, the susceptibility of a region to a particular type of disaster, and the multitude of communications capabilities a region may possess. The Commission received over 100 comments and reply comments in response to the *NPRM*. In June 2007, the Commission released the *Katrina Panel Order* directing the Public Safety and Homeland Security Bureau (PSHSB) to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel). Among other things, the Commission adopted a rule requiring some communications providers to have emergency/backup power. The backup power rule adopted specifically states:

Local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have 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. LECs and CMRS providers should maintain emergency backup 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. LECs that meet the definition of a Class B company as set forth in § 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

On August 2, 2007, the Commission released an Order that extended the effective date of § 12.2 of the Commission's rules, the backup power rule adopted in the *Katrina Panel Order*, to October 9, 2007. The Commission did so on its own motion in order to provide additional time to consider the issues raised by CTIA in its Motion for Administrative Stay and to hear from other concerned parties on the issues raised in that motion.

As indicated above, seven petitions were filed seeking reconsideration and/or clarification of the backup power rule adopted by the Commission in the *Katrina Panel Order*. The petitioners assert that the Commission should rescind, modify and/or clarify the backup power rule adopted in the *Katrina Panel Order*. The Commission also received five timely comments to these petitions and several additional *ex parte* comments.

Discussion

Petitioners argue that the Commission should rescind or substantially modify the backup power rule. Among other things, several petitioners assert that the rule should be modified to implement the Network Reliability and Interoperability Council (NRIC) best practice as recommended by the Katrina Panel and that the Commission should clarify that the rule applies only to assets directly related to the provision of critical communications services. Finally, some petitioners argue that, if the Commission wants to pursue implementation of a backup power rule, it should issue a Notice of Inquiry or Notice of Proposed Rulemaking.

Administrative Procedure Act (APA) Notice and Comment. Several petitioners contend that the Commission's adoption of the backup power rule violated the Administrative Procedure Act (APA) by failing to provide adequate notice that it was considering the adoption of that rule and failing to provide opportunity to comment. They argue that the *NPRM* was too general to adequately support the backup power rule ultimately adopted and that the final rule deviates too sharply from the initial proposals to satisfy the notice and comment requirements. Petitioners contend that the *NPRM* never discussed the backup power issue in terms of a potential mandate and only asked how the Commission could best encourage implementation of the Katrina Panel's backup power recommendation that the Commission encourage the implementation of NRIC VII Recommendation 7–7–5204. Petitioners also assert that the *NPRM* did not suggest that the physical scope of the backup power recommendation might extend to all cell sites other remote assets or that the Commission intended to select a specific durational requirement for emergency power, let alone an eight- or twenty-four hour standard.

Section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rule making that includes ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' and to give interested parties an opportunity to submit comments on the proposal. The notice ''need not specify every precise proposal which [the agency] may ultimately adopt as a rule''; it need only ''be sufficient to fairly apprise interested parties of the issues involved.'' In particular, the APA's notice requirements are satisfied where the final rule is a ''logical outgrowth'' of the actions proposed.

In this instance, the Commission provided adequate notice in compliance with the APA regarding the backup power rule. The Katrina Panel Report repeatedly stated that the lack of adequate backup power for communications facilities was a critical problem after Katrina that caused communications network interruptions and hampered recovery efforts. These findings provided the context for the Report's recommendation that the Commission encourage the NRIC best practice that states: ''[s]ervice 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. * * *'' In the *NPRM*, the Commission noted that the Katrina Panel observed significant challenges to maintenance and restoration of communications services after Hurricane Katrina, due in part to problems with access to key resources such as power and/or generator fuel. The Commission also noted that the Katrina Panel recommended that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E911 architecture, including a recommendation that service providers and network operators should ''ensure'' availability of emergency backup power capabilities (located on-site, when appropriate). The Commission sought comment on how the Commission can best encourage implementation of these recommendations consistent with its statutory authority and jurisdiction and welcomed further suggestions on measures that could be taken to strengthen 911 and E911 infrastructure and architecture. The Commission also invited ''broad comment on the Independent Panel's recommendations and on the measures the Commission should take to address the problems identified'' and to build upon the lessons learned from Hurricane Katrina and promote greater resiliency and reliability of communications infrastructure, heightened readiness and preparedness, and more effective, efficient response and recovery efforts, in the future.

Further, in the *NPRM*, the Commission sought comment on whether it should rely on voluntary consensus recommendations or whether it should rely on other measures for enhancing readiness and promoting more effective response efforts. The *NPRM* also invited comment on whether the Katrina Panel's observations warranted additional measures or steps beyond the report's specific recommendations and welcomed suggestions and recommendations of different actions or additional measures beyond the Katrina Panel's recommendations. In its report and recommendations, the Katrina Panel found that the lack of power and/or fuel was one of three main problems that caused the majority of communications network interruptions and significant impediments to the recovery effort in the aftermath of Hurricane Katrina. The Katrina Panel Report also noted that during and after the hurricane, the power needed to support the communications networks was generally unavailable throughout the region and that backup batteries and generators were required for communications systems to continue to operate. The Katrina Panel further noted that ''the majority of the adverse effects and outages encountered by wireless providers were due to a lack of commercial power or a lack of transport connectivity to the wireless switch.'' Additionally, the Katrina Panel Report stated that ''[w]ireless providers cited security for their personnel, access and fuel as the most pressing needs and problems affecting restoration of wireless service'' and that the loss of power in the wireline telephone network also had a huge impact on the

ability of public safety systems to function. The Katrina Panel noted that electric utility networks had a high rate of survivability following Hurricane Katrina due, in part, to the fact that they were built with significant onsite backup power supplies (batteries and generators). Although the Katrina Panel found that ''the communications industry has generally been diligent in deploying backup batteries and generators and ensuring that these systems have one to two days of fuel or charge,'' it also noted that not all locations had such backup batteries or generators installed and that, because all locations were not able to exercise and test the backup equipment in any systemic fashion, some generators and batteries did not function during the crisis. Although the power outages during and after Hurricane Katrina were exceptionally long, the Panel's observations clearly emphasized the importance of power supply to resiliency of communications networks.

Taken together, the questions raised in the *NPRM* as well as the Katrina Panel Report's findings regarding the lack of emergency power were sufficient to put interested parties on notice that the Commission was considering how to address the lack of emergency backup power, including through the possible adoption of an emergency backup power rule. Specifically, the *NPRM* sought comment on how the Commission could best encourage implementation of various NRIC best practices, including ensuring the availability of emergency backup power. Even if that language were not read to propose a mandatory rule, the *NPRM* still gave ample notice that this was a possibility. The *NPRM* specifically inquired about ''whether [the Commission] should rely on voluntary consensus recommendations, as advocated by the [Katrina] Panel, or whether [it] should rely on other measures for enhancing readiness and promoting more effective response efforts,'' a line of inquiry that the Commission reiterated in the July 26 public notice. Moreover, the DC Circuit has held that the ultimate adoption of a mandatory rule can constitute the logical outgrowth of a voluntary standard. Thus, because parties could have anticipated that the rule ultimately adopted was ''possible,'' it is considered a ''logical outgrowth'' of the original proposal, and there is no violation of the APA's notice requirements.

Indeed, the Commission notes that the National Emergency Number Association (NENA) did propose a backup power requirement in response to the *NPRM.* In addition, St. Tammany Parish Communications District 1 told the Commission that ''[v]oluntary consensus measures * * * have fallen short many times'' and that ''it is imperative that [wireline] and wireless telephone providers be required to demonstrate they have adequate backup procedures in place.'' Carriers also commented on the importance of having backup power. CTIA observed that wireless carriers ''must ensure network reliability and reliance'' and that, to do so, they ''provision their cell sites and switches with batteries to power them when electrical grids fail'' and ''maintain permanent generators at all of the switches and critical cell sites, as well as an inventory of backup power generators to recharge the batteries during extended commercial power failures.'' USTA likewise gave examples of telephone companies that had already deployed backup power capabilities that enabled their cell networks to remain in operation for several days after a loss of main power. In light of these comments, the Commission does not find credible the argument that the *NPRM* failed to apprise parties that the Commission would address the issue of backup power in this proceeding.

Petitioners' argument that the Commission did not give adequate notice that it might select a specific durational requirement for emergency power, such as twenty-four or eight hours, also lacks merit. Had the Commission adopted a general backup power requirement that did not require a minimum amount of backup power, it would have risked creating an illogical and meaningless requirement that would have allowed providers to have only one minute of backup power. Thus, parties should have realized that an emergency backup power mandate would inevitably include a specific durational requirement.

Statutory Authority. PCIA asserts that section 1 of the Communications Act, the statutory authority upon which the Commission adopted the backup power rule, is patently inadequate statutory authority. PCIA contends that section 1 of the Communications Act, as amended, (the ''Act'') is only a general grant of jurisdiction that, absent other specific authority, does not authorize the Commission to impose requirements to maintain backup power at cell sites. PCIA argues that the Commission's ancillary authority under section 1 of the Act does not empower it to act where such action would be ''ancillary to nothing.''

The Commission's section 1 ancillary jurisdiction covers circumstances where: (1) The Commission's general jurisdictional grant under Title I covers the subject of the regulations, and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities. This two-part test for ancillary jurisdiction was developed by the Supreme Court in *Southwestern Cable.*

To fulfill the first prong of the ancillary jurisdiction test, the subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act, which encompasses ''all interstate and foreign Communication by wire or radio.'' In the instant rule making, this first prong of the ancillary jurisdiction test is met because the backup power rule adopted by the Commission in the *Katrina Panel Order* pertains to the provisioning of ''interstate and foreign commerce in communication by wire and radio.'' The second prong of the ancillary jurisdiction test requires that the subject of the regulation must be reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities. It cannot seriously be disputed that the backup power requirement is ''reasonably ancillary to the effective performance'' of the Commission's responsibilities to promote public safety. Section 1 itself makes clear that one of the Commission's missions is to ''make available * * * [a] wire and radio communication service with adequate facilities * * * for the purpose of *promoting safety of life and property* through the use of wire and radio communications.'' 47 U.S.C. 151 (emphasis added). Section 1 thus requires the Commission to ''consider public safety'' and to ''take into account its *duty* to protect the public.'' *Nuvio Corp.* v. *FCC,* 473 F.3d 302, 307 (2006); *see also id.* at 311 (Kavanaugh, J., concurring) (''the FCC possesses statutory authority * * * to address the public safety threat by banning providers from selling voice services until the providers can ensure adequate 911 connections''). And as this Court has recognized, it is well ''within the Commission's statutory authority'' to '' 'make such rules and regulations * * * as may be necessary in the execution' '' of its section 1 responsibilities.'' Section 303(r) also provides ample authority to support the Commission's action here. Section 303(r) provides that the Commission may ''[m]ake such rules and regulations * * * as may be necessary to carry out the provisions of this Act.

The presence of a backup power source installed by all local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs

(CLECs), as well as commercial mobile radio service (CMRS) providers for all assets that are normally powered from local commercial power including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals will facilitate communication for the purposes of national defense and the promotion of ''safety of life and property'' during emergencies. Communications networks cannot operate without a power source. The Commission must therefore be mindful of an adequate power supply, particularly in emergencies, if it is to discharge its core responsibilities under section 1 of the Communications Act to regulate communications for the promotion of national defense, public safety and the protection of property. If commercially supplied power is incapacitated, the communications network will also fail. The backup power rule adopted by the Commission is a short-term attempt to sustain communication in a severe emergency for the purposes of promoting the Commission's salient purpose pursuant to section 1 to regulate interstate communications by wire and radio.

PCIA's reliance on the broadcast flag ruling by the U.S. Court of Appeals for the District of Columbia (Court) is misplaced. In that case, the Court found that the Commission had not satisfied the second prong of the ancillary jurisdiction test because the restriction on recording digital television programs that were transmitted by cable or over-the-air broadcast exceeded the Commission's authority to regulate the transmission of communications by wire and radio given that the restriction pertained to a regulation imposed outside the course of the act of transmitting the communication. In this case, by contrast, backup power is necessary for the communication to be transmitted at all.

Arguments Regarding Lack of Record Support, Consideration of Important Factors or Reasoned Basis for Rule. Petitioners contend that the backup power rule is arbitrary and capricious because the Commission failed to explain why a mandatory obligation including an inflexible minimum 8 or 24 hour period was necessary and why it rejected less restrictive alternatives to the rule, such as a voluntary best practices regime as recommended by the Katrina Panel. Several petitioners also allege that the Commission failed to consider the impact of the rule, failed to consider important aspects of the very problem it sought to redress, and failed to explain why present carrier preparedness plans are inadequate. Additionally, several petitioners argue that the backup power rule adopted lacks record support.

Petitioners argue that there is no record evidence to support the backup power mandate in general, or the eight or 24-hour minimum in particular. Some petitioners note that the comments described in the Order when discussing the backup power rule do not concern CMRS providers at all, do not suggest any mandatory minimum standard, or have nothing to do with backup power. However, the rule adopted by the Commission enjoyed strong factual support. First, as described *supra,* the Katrina Panel repeatedly emphasized the importance of power supply to resiliency of communications networks. Further, it noted that backup generators and batteries were not present at all facilities. Additionally, the Katrina Panel Report stated that power for radio base stations and battery/chargers for portable radio devices are carefully planned for public safety systems; however, ''generators are typically designed to keep base stations operating for 24 to 48 hours.'' This language, along with the Katrina Panel's recognition that 24–48 hours is generally a sufficient time to permit the restoration of power in most situations, clearly provides support for requiring LECs and CMRS providers to maintain backup power for a minimum of 24 hours for assets located inside central offices. The 24 hour requirement imposes relatively less burden while still generally providing sufficient time for restoration of commercial power or for carriers to allocate additional power sources. Further, the Commission recognized the burdens of ensuring longer durations of backup power at other locations, which have subsequently been detailed by petitioners, and reasonably required only 8 hours of backup power for such locations, including, but not limited to, cell sites, remote switches and digital loop carrier system remote terminals. This will provide at least eight hours for commercial power restoration or carrier actions to obtain additional backup power sources.

Additionally, the Katrina Panel's recommendation was that the Commission encourage the implementation of the NRIC VII Recommendation 7–7–5204. That recommendation states that ''[s]ervice providers, network operators and property managers should ensure availability of emergency/backup power * * *'' The terms ''service providers'' and ''network operators'' clearly include CMRS providers. In the *Katrina Panel Order,* the Commission noted that NENA recommended that ''the FCC or state commissions, as appropriate, require all telephone central offices to have an emergency backup power source.'' NENA states that, in its comments in the Katrina Panel Docket, it chose to mention telephone central offices as emblematic, not exhaustive, of critical switching points in wire and wireless networks, and it also endorsed the broader scope of NRIC Recommendation 7–7–5204.

The Commission determined that a mandatory backup power requirement would be in the public interest. Although several carriers described their backup power plans, the Katrina Panel Report made clear the importance of backup power for resilient communications and restoration of communications services that have been disrupted. The report further made clear that, although many carriers do have backup power or backup power plans, not all locations have backup power. The Katrina Panel also noted that because those communications providers did not necessarily test and exercise their backup power sources in a systematic fashion, generators and batteries might not function during the crisis. Imposing a backup power rule would ensure that more communications assets have backup power and that providers ensure the availability of this power. Access to communications technologies during times of emergency is critical to the public, public safety personnel, hospitals, and schools, among others. Therefore, because the benefits of ensuring resilient communications during times of crises are so great, the Commission determined that a backup power rule was in the public interest. Moreover, it is important that both LEC and CMRS providers have backup power, because the public, public safety personnel, and hospitals, among others, rely heavily on both types of providers. In fact, many Americans now rely on only a wireless phone and public safety entities, hospitals and others are increasingly relying on wireless technologies. As the Katrina Panel Report and commenters note, lack of commercial power was one of the main causes of wireless outages during Hurricane Katrina, access to fuel was one of the wireless providers' most pressing needs during that catastrophe, and it is important that both wireless and wireline carriers ensure network reliability and resiliency by provisioning their sites with back up power.

Petitioners also allege that the Commission failed to consider burdens and important matters, some of which affect the ability of carriers to comply

with the rule. They contend that legal impediments, including contractual obligations and inconsistency with federal, state and local environmental, safety, building and zoning laws will make compliance with the rule difficult, if not impossible and could result in preemption issues regarding state and local laws. Petitioners note that carriers have site leases with contractual obligations that regulate the placement, installation and operation of power sources. Additionally, petitioners assert that compliance with the backup power rule could result in threats to public health and safety. For instance, petitioners state that the installation of a generator and its combustible fuel on the roof of a school or public building, where many transmitters are located, may pose a risk to public health and safety even when in compliance with law. Further, petitioners assert that the Commission failed to properly consider the length of time it would reasonably take for providers to comply with the rule. They contend that compliance will take a significant amount of time and the time allowed by the *Katrina Panel Order* is insufficient, because providers must obtain permits, do site inspections, conduct structural engineering analysis, renegotiate leases, obtain permits, ensure compliance with legal requirements, evaluate backup power needs, and order and install the necessary equipment. Petitioners also assert that compliance will take time because thousands of ''non-critical'' sites do not have backup power and many of the sites that do have backup power do not have the amount required. As discussed in greater detail below, petitioners also argue that physical and other practical limitations make it difficult or impossible to comply with the backup power rule. Finally, petitioners argue that the Commission did not adequately consider the economic burden the rule will impose.

The Commission finds that Petitioners' arguments regarding legal impediments and threat to public health and safety to be compelling and modify § 12.2 to state that LECs and CMRS providers are not required to meet the backup power requirement if they demonstrate, through the reporting requirement described below, that such compliance is precluded by: (1) Federal, state, tribal or local law; (2) risk to safety of life or health; or (3) private legal obligation or agreement. With respect to private legal obligations or agreements, LECs and CMRS providers should make efforts to revise agreements to enable rule compliance where possible, for example through renegotiations or renewals. Obviously, the Commission will disapprove of attempts to circumvent the rule through private agreements. The Commission believes such exemptions are warranted because those impediments create a substantial burden for LECs and CMRS providers to overcome in order to comply with the rule that in some cases may be insurmountable. In the case of risk to safety of life or health, such an exemption is obviously in the public interest. As noted, *supra,* some petitioners assert that the Commission should clarify that the backup power rule applies only to assets directly related to the provision of critical communications services. The Commission agrees that the requirement should be clarified to apply only to assets necessary to the provision of communications services and modify the rule accordingly. The Commission declines, however, to limit the rule to ''critical'' communications services, because, although that term was included in the NRIC best practice recommended by the Katrina Panel, it is not well defined and the Commission believes, for public safety and public interest reasons, all assets necessary to the provision of communications services should have backup power. The Commission also agrees with AT&T that on-site power sources satisfy the requirement of this rule if such sources were originally designed to provide the minimum backup power capacity level required herein and the provider has implemented reasonable methods and procedures to ensure that batteries are regularly checked and replaced when they deteriorate. Finally, the Commission finds that the requirement should not be limited to assets normally powered from local ''AC'' commercial power. Regardless of the type of commercial power used, assets necessary to maintain communications should have backup power and be as reliable and resilient as possible. The Commission also notes that the NRIC best practice recommended by the Katrina Panel did not limit its recommendation in this way. Accordingly, the Commission deletes the reference to ''AC'' in the rule.

While today the Commission addresses concerns raised by LECs and CMRS providers regarding their obligation to ensure emergency backup power, given the importance of backup power reserves during times of emergency, the Commission will seek information regarding the extent to which LECs and CMRS providers are in compliance with this rule. Accordingly, the Commission also modifies § 12.2 to require LECs and CMRS providers to file reports with the Commission that identify the following information: (1) An inventory listing of each asset that was designed to comply with the backup power mandate; (2) an inventory listing of each asset where compliance is precluded due to risk to safety or life or health; (3) an inventory listing of each asset where compliance is precluded by private legal obligation or agreement; (4) an inventory listing of each asset where compliance is precluded by Federal, state, tribal or local law; and (5) an inventory listing of each asset designed with less than the required emergency backup power capacity and that is not otherwise precluded from compliance for one of the three reasons identified above. LECs and CMRS providers must file these reports within six months of the effective date of this requirement, and must include a description of facts supporting the basis of the LEs or CMRS provider's claim of preclusion from compliance. For example, claims that a LEC or CMRS provider cannot comply with the backup power mandate due to a legal constraint must include the citation(s) to the relevant laws and, in order to be deemed precluded from compliance, the law or other legal constraint must prohibit the LEC or CMRS provider from complying with the backup power requirement. The mere need to obtain a permit or other approval will not be deemed to preclude compliance with the backup power requirement. Claims that a LEC or CMRS provider cannot comply with the backup power mandate with respect to a particular asset due to a private legal obligation or agreement must include the relevant terms of the obligation or agreement and the dates on which the relevant terms of the agreement became effective and are scheduled to expire. Claims that a LEC or CMRS provider cannot comply with the backup power mandate with respect to a particular asset due to risk to safety of life or health must include a description of the particular public safety risk and sufficient facts to demonstrate substantial risk of harm. The Commission directs the Public Safety and Homeland Security Bureau to develop an appropriate auditing program to ensure that carriers' exclusion filings are reasonable and accurate.

LECs or CMRS providers identifying assets designed with less than the required emergency backup power capacity and not otherwise precluded from compliance for one of the three reasons listed above must comply with

the backup power requirement or file, within 12 months from the effective date of the rule, a certified emergency backup power compliance plan that is subject to Commission review. That plan must describe how, in the event of a commercial power failure, the LEC or CMRS provider intends to provide emergency backup power to 100 percent of the area covered by any non-compliant asset, relying on on-site and/or portable backup power sources or other sources as appropriate. The emergency backup power must be sufficient for service coverage as follows: A minimum 24 hours of emergency backup power for assets inside central offices and eight hours for other assets such as cell sites, remote switches, and digital loop carrier system remote terminals. The provider must be able to ensure backup power is available for 100 percent of the area covered by any non-compliant asset pursuant to the emergency backup power compliance plan on the date that the plan is filed. All reports and plans required by § 12.2 of the Commission's rules will be automatically afforded confidentiality, because the information in those reports and plans is sensitive, for both national security and/or commercial reasons. This reporting requirement should not be burdensome in light of many LEC and CMRS provider arguments that they already have business continuity plans that address the issue of backup power and in light of the fact that the plan is not due until 12 months after the effective date of the modified rule which will require Office of Management and Budget approval before going into effect. In any event such burdens are outweighed by the importance of having backup power for communications assets.

Petitioners argue that the Commission failed to consider the length of time it would reasonably take for CLECs and CMRS providers to comply with the rule and that it will take significant time to evaluate backup 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 the backup power source. The Commission notes that the *Katrina Panel Order* was released on June 8, 2007, almost four months ago, and LECs and CMRS providers have known of the backup power requirement since that time. Further, the modified backup power rule adopted in the Order on Reconsideration will not go into effect until OMB approves the new information collection, giving providers additional time to come into compliance. To the extent LECs and CMRS providers identify non-compliant assets, they will receive even more time to file emergency backup power compliance plans. In addition, the modifications to the rule mitigate these concerns by exempting assets from compliance when precluded by law, private legal obligation or agreement, or risk to safety of life or health and by allowing an emergency backup power compliance plan in cases where assets do not comply with the 8–24 hour rule and are not subject to the exceptions. As such, the Commission believes that it will be feasible for providers to comply with the rule.

Several petitioners argue that compliance with the backup power rule is burdensome due to physical and other practical limitations, that the required space might not be available at many sites, and that providers may be forced to modify structures containing cell transmitters or to build new structures. They assert, for example, that roofs and floors need to be designed to support the weight of power sources, that many rooftop cell sites were not engineered with the additional weight requirements made necessary by the backup power rule, and that many of those structures may simply not be able to physically support the weight of additional batteries or a generator. Petitioners also argue that there is not enough space at many cell sites to add additional backup power sources and note that cell transmitters are often placed in locations with limited room, such as building rooftops, church steeples and inside buildings. USTelecom notes that some remote terminals are physically too small to support a backup battery or a battery over a certain size. T-Mobile reports that, in the case of liquid propane-fueled generators, Occupational Safety and Health Administration requirements mandate a 10-foot radius clearance between the liquid propane fuel tank and its ignition source. T-Mobile argues that this could substantially increase the amount of space needed to install a backup power source.

The Commission is not convinced that LECs and CMRS providers should be excused from having emergency backup power solely because they have chosen to place their assets at locations with limited weight or space capacities. The ultimate goal of this rule is to ensure that carriers have sufficient emergency backup power, particularly during times of emergencies. The Commission recognizes that, in order to comply with the rule, some carriers may have to modify sites to accommodate additional equipment or, in some cases, find other, more suitable, locations for their assets. The Commission believes, however, that any such burdens are far outweighed by the ultimate goal of this rule. For similar reasons, the Commission also rejects the notion that carriers should be excused from complying with the rule for vague ''practical'' reasons. Having said this, however, a carrier could be excused from the rule to the extent that the carrier can demonstrate that an asset with purported physical constraints fall into one of the three exceptions listed above. Additionally, where assets do not comply with the 8–24 hour rule and are not subject to the exceptions, the Commission now allows an emergency backup power compliance plan.

Although petitioners argue that the economic burden that the backup power rule will impose is substantial, the record before the Commission showed that several carriers have already deployed back-power power capabilities, some of which allow them to remain in operation for several days in the event of a loss of main power. In any event, the Commission finds that the benefits of ensuring sufficient emergency backup power, especially in times of crisis involving possible loss of life or injury, outweighs the fact that carriers may have to spend resources, perhaps even significant resources, to comply with the rule. Petitioners assert that compliance may be costly; however, the record does not show that it is ''cost-prohibitive'' for carriers. Moreover, the rule modifications, including new exemptions described above and the provision that providers file an emergency backup power compliance plan to ensure 100 percent coverage in areas covered by non-compliant assets, will decrease any economic burden substantially. Finally, the Commission finds that the goal of ensuring that carriers' networks have sufficient emergency backup power outweighs the economic burden described by petitioners and particularly the reduced economic burden in light of the rule modifications adopted herein. The need for backup power in the event of emergencies has been made abundantly clear by recent events, and the cost of failing to have such power may be measured in lives lost.

Some Petitioners argue that, contrary to the ultimate goal of protecting the

provision of services, the backup power rule will not advance, but will actually risk undermining, carriers' emergency preparedness goals and efforts to achieve important business continuity and disaster recovery goals. Petitioners contend that the rule deprives 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 Commissions rules. Petitioners assert that, 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.

The Commission recognizes that carriers need some level of flexibility in the design and deployment of their networks. This need, however, must be balanced with the critical goal of ensuring that communications networks has sufficient backup power, particularly during times of disaster. The modifications made today strike a fair and equitable balance of these two interests. The modified rule adopted today will ensure that LECs, including ILECs and CLECs, as well as CMRS providers maintain sufficient level of emergency backup power for assets that are necessary to maintain communications and that are normally maintained by commercial power. At the same time, the modifications adopted in the Order on Reconsideration provide some level flexibility, both in terms of the exceptions provided and the requirements for submission of an emergency backup power compliance plan in cases where providers are not compliant. Moreover, inclusion of on-site back up power does not preclude the ability of carriers to maintain strategic stores of fuel, batteries or other backup equipment in other localities as a further layer of redundancy. Petitioners argue that enforcement could also lead to the termination or disruption of wireless cell sites, threatening the availability of service, including E–911 service. Petitioners further contend that 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. NENA disagrees and contends that these arguments suggest that cellular providers should be immune from any disruptive regulatory discipline. The Commission believes that the exemptions now provided along with the requirement to develop an emergency backup power compliance plan in cases where assets do not comply with the 8–24 hour rule and are not subject to the exceptions described herein will mitigate these concerns.

Paging Carriers. The American Association of Paging Carriers (AAPC) argues that the Commission did not intend to apply the backup power rule to paging carriers and should so clarify. Alternatively, AAPC asserts that, if the Commission did intend for this rule to apply to paging carriers, the Commission should reconsider and exclude paging carriers or instead adopt the Katrina Panel's actual recommendation on this issue, as set forth in the Katrina Panel Report. The backup power rule adopted in the *Katrina Panel Order* requires commercial mobile radio service (CMRS) providers to have emergency backup power. CMRS providers that have no more than 500,000 subscribers are exempt from this rule. Therefore, paging carriers that are CMRS providers with more than 500,000 subscribers must comply with the rule. Paging services are a critical part of emergency response. Many first responders, hospitals and critical infrastructure providers rely on paging services during emergencies. Therefore, it is critical that these services be available during crises. Backup power at paging carrier facilities will help ensure the availability of these services. The importance of paging services is further demonstrated by the fact that paging carriers participate in the Commercial Mobile Service Alert Advisory Committee and are subject to the Commission's part 4 outage reporting rules. For these reasons and those set forth below, the Commission modifies § 12.2 to clarify that the rule applies to CMRS providers, *as defined in Section 20.9 of the Commission's rules.*

AAPC argues that the Commission intended to exclude paging carriers from this backup power rule. AAPC asserts that the *Katrina Panel Order* bases the CMRS classification in § 12.2 on a definition developed for the *E–911 Proceeding* and, because paging carriers do not provide E–911 service, the inference is that the Commission intended to exclude paging carriers from this rule. The parts of the *Katrina Panel Order* cited by AAPC, however, do not define CMRS providers, but instead provide an exemption for non-nationwide CMRS providers with no more than 500,000 subscribers. In a footnote, the Commission merely stated that this exemption is based on the Tier III CMRS definition. AAPC contends that the etymology of the backup power rule supports a finding that the Commission intended to exclude paging carriers and to apply the rule only to entities that are required to provide E–911 service as defined in Section 20.18 of the Commission's rules. AAPC notes that the Katrina Panel made its backup power recommendation ''in order to ensure a more robust E–911 service'' and that, when requesting public comment on this recommendation, the Commission explained that the Panel ''recommends that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E911 architecture.'' However, the backup power rule includes no such limitations and, in the *NPRM,* the Commission specifically sought comment on whether the Katrina Panel's observations warranted additional measures or steps beyond the report's specific recommendations and welcomed suggestions and recommendations regarding additional measures or actions beyond the Panel's recommendations. The Commission also sought comment on whether it should rely on voluntary consensus recommendations, as advocated by the Katrina Panel, or whether it should rely on other measures for enhancing readiness and promoting more effective response efforts. Further, AAPC argues that the deliberate use of the term ''cell sites'' in the rule supports the conclusion that the Commission did not intend that the rule apply to paging carriers because paging carriers do not operate cell sites in their networks. The reference to cell sites, however, is only one example of an asset that is normally powered from local commercial power and the assets identified in the rule are not an exhaustive list.

AAPC requests, in the event that the Commission did intend to apply the backup power rule to paging carriers, that the rule be modified to ensure that it does not apply to paging carriers. AAPC argues that it is unreasonable to lump paging networks together with other types of CMRS networks for purposes of this rule without considering the particular engineering and cost characteristics of paging networks themselves. Although AAPC argues that applying the requirement to all paging base stations and terminals would be particularly troubling for paging carriers, the burden will be mitigated by the rule modifications adopted herein. Additionally, the burden for paging carriers would not necessarily be any more onerous for

paging carriers than for other CMRS providers. Paging providers use a variety of facilities to provide coverage which are, in most cases not that different from the facilities of other CMRS providers. The fill-in facilities employed by paging providers are similar in size and power requirements as those used by other CMRS providers. In many instances, paging providers use high-powered transmitters that are located in multiple transmitter sites. While there may be challenges to overcome such as space, zoning and structural limitations for these facilities, they are no more onerous than those faced by other CMRS providers. In addition, the backup power rule might be less burdensome for paging carriers than for other CMRS providers, because the number of fill-in paging sites that paging carriers deploy is likely less than the more extensive deployment of assets required by other CMRS providers. AAPC asserts that the Commission should define CMRS as those services that are identified in § 20.18(a) of the Commission's rules, as it did for purposes of section 605(a) of the WARN Act, where the Commission defined the statutory phrase ''commercial mobile service.'' That definition, however was limited to section 605(a) of the WARN Act and was done for specific purposes of that section of the Act that are not relevant to the backup power rule. Further, the membership of the Commercial Mobile Service Alert Advisory Committee established pursuant to the WARN Act includes paging carriers. In light of these factors, the Commission declines to modify the rule as suggested by AAPC, and clarify that paging carriers are required to comply.

Distributed Antenna System (DAS) Nodes and other non-traditional sites. NextG, MetroPCS and other petitioners ask the Commission to clarify that DAS Nodes and other ''non-traditional'' sites, such as cellular repeater sites, micro-cell and pico-cell locations, electric poles, light poles, and flagpoles, are not ''cell sites'' as the term is used in the Commission's new backup power rule. In the alternative, these petitioners request that the Commission reconsider and amend the rule to eliminate the backup power requirement for DAS Nodes and other ''non-traditional'' sites. Other petitioners make similar arguments for ''non-traditional'' sites and emphasize the burden of complying with the backup power rule due to physical constraints and economic resources. NextG explains that it provides telecommunications services to wireless carriers via a network architecture that uses fiber-optic cable and small antennas mounted in the public rights-of-way on infrastructure such as utility poles, street lights and traffic signal poles. NextG argues that DAS Nodes should not be treated as a cell site because the DAS Node does not include some of the features typically associated with a cell site. The antenna is not associated with a base station or network switching equipment at the DAS Node site. NextG and MetroPCS maintain that even if the Commission does treat the DAS Node as a cell site this equipment should be exempt from the backup power rule because it is ''technologically, financially, and politically infeasible'' to install eight hours of backup power. DAS Forum argues that the impact due to the loss of power to a portion of a DAS network is far less than the loss of power to a traditional cell site because the balance of the DAS network continues to function when one node is damaged.

The Commission declines to exempt DAS Nodes or other sites from the emergency backup power rule. Rather, the Commission believes that to the extent these systems are necessary to provide communications services, they should be treated similarly to other types of assets that are subject to the rule. The Commission notes that many of the arguments made by petitioners are similar to the physical constraint arguments raised by other parties. As stated earlier, the Commission sees no reason why LECs and CMRS providers who choose to place assets at locations with limited physical capacities should generally be excused from compliance with the rule. The Commission realizes that many providers have begun to use DAS and other small antenna systems as part of their communications networks. That fact alone, however, is far outweighed by the need to ensure a reliable communications network. To the extent petitioners raise concerns regarding legal impediments, private agreement constraints and safety risk issues, the Commission notes that the modifications to the rule made today should address those concerns. DAS Forum and PCIA argue that the backup power rule will adversely impact the public interest and Commission policy goals, because the increased expense of compliance will prevent wireless carriers from further deploying their networks in this manner and that this will decrease capacity, coverage and reliability and affect emergency communications and wireless E911 coverage. Petitioners have not presented sufficient evidence that the backup power rule will prevent wireless carriers from deploying their networks, particularly in light of the reduced burden of compliance that will result from the rule modifications the Commission adopts in the Order on Reconsideration. Moreover, as noted above, the Commission finds that the benefits of ensuring backup power for communications assets outweighs any economic burden that LECs and CMRS providers may incur as a result of this rule.

Conclusion

For the reason stated above, the Commission denies petitioners' requests that it rescind § 12.2 of the Commission's rules, but find that the petitioners have presented an adequate basis for modifying this backup power rule as detailed above and in Appendix B of the Order.

Procedural Matters

Supplemental Final Regulatory Flexibility Analysis. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this Order on Reconsideration on small entities. The Supplemental Final Regulatory Flexibility Act analysis is set forth in Appendix C of the Order. The Commission's Consumer & Government Affairs Bureau, Reference Information Center, will send a copy of this Order, including the Supplemental Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Paperwork Reduction Act of 1995 Analysis. The rules in 47 CFR 12.2 contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

Congressional Review Act Analysis. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 1, 4(i)–(k), 4(o), 201, 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 405, 621(b)(3) and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(k), 154(o), 201, 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 405, 541(b)(3), and

541(d), and §§ 1.3 and 1.106 of the Commission's rules, 47 CFR 1.3, 1.106, that this Order on Reconsideration in EB Docket No. 06–119 and WC Docket No. 06–63 is adopted.

It is further ordered, that the Petitions for Reconsideration filed by The American Association of Paging Carriers, the DAS Forum, MetroPCS Communications, Inc., NextG Networks, Inc., PCIA—The Wireless Infrastructure Association (PCIA), and The United States Telecom Association are granted to the extent discussed above, and the remainder of those petitions are denied.

It is further ordered that § 12.2 of the Commission's rules is amended as specified in Appendix B of the Order, and that § 12.2 shall be effective on the date of **Federal Register** notice announcing OMB approval of the information collection requirements contained in that rule.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 12

Communications, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 12 as follows:

PART 12—REDUNDANCY OF COMMUNICATIONS SYSTEMS

■ 1. The authority citation for part 12 continues to read:

Authority: 47 U.S.C. 151, 154(i)–(k), 154(o), 201, 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 405, 541(b)(3), and 541(d).

■ 2. Revise § 12.2 to read as follows:

§ 12.2 Backup power.

(a) Except to the extent set forth in 12.2(b) and 12.2(c)(4) of the Commission's rules, local exchange carriers, including incumbent local exchange carriers and competitive local exchange carriers (collectively, LECs), and commercial mobile radio service (CMRS) providers, as defined in § 20.9 of this chapter, must have an emergency backup power source (*e.g.*, batteries, generators, fuel cells) for all assets necessary to maintain communications that are normally powered from local commercial power, including those assets located inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers must maintain emergency backup power for a minimum of twenty-four hours for assets that are normally powered from local commercial power and located inside central offices, and eight hours for assets that are normally powered from local commercial power and at other locations, including cell sites, remote switches and digital loop carrier system remote terminals. Power sources satisfy this requirement if they were originally designed to provide the minimum backup power capacity level required herein and the provider has implemented reasonable methods and procedures to ensure that the power sources are regularly checked and replaced when they deteriorate. LECs that meet the definition of a Class B company as set forth in § 32.11(b)(2) of this chapter and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

(b) LECs and CMRS providers are not required to comply with paragraph (a) of this section for assets as described in paragraph (a) of this section where the LEC or CMRS provider demonstrates, through the reporting requirement as described in paragraph (c) of this section, that such compliance is precluded by:

(1) Federal, state, tribal or local law;

(2) Risk to safety of life or health; or

(3) Private legal obligation or agreement.

(c) Within six months of the effective date of this requirement, LECs and CMRS providers subject to this section must file reports with the Chief of the Public Safety & Homeland Security Bureau.

(1) Each report must list the following:

(i) Each asset that was designed to comply with the applicable backup power requirement as defined in paragraph (a) of this section;

(ii) Each asset where compliance with paragraph (a) of this section is precluded due to risk to safety of life or health;

(iii) Each asset where compliance with paragraph (a) of this section is precluded by a private legal obligation or agreement;

(iv) Each asset where compliance with paragraph (a) of this section is precluded by Federal, state, tribal or local law; and

(v) Each asset that was designed with less than the emergency backup power capacity specified in paragraph (a) of this section and that is not precluded from compliance under paragraph (b) of this section.

(2) Reports listing assets falling within the categories identified in paragraphs (c)(1)(ii) through (iv) of this section must include a description of facts supporting the basis of the LEC's or CMRS provider's claim of preclusion from compliance. For example, claims that a LEC or CMRS provider cannot comply with this section due to a legal constraint must include the citation(s) to the relevant law(s) and, in order to demonstrate that it is precluded from compliance, the provider must show that the legal constraint prohibits the provider from compliance. Claims that a LEC or CMRS provider cannot comply with this section with respect to a particular asset due to a private legal obligation or agreement must include a description of the relevant terms of the obligation or agreement and the dates on which the relevant terms of the agreement became effective and are set to expire. Claims that a LEC or CMRS provider cannot comply with this section with respect to a particular asset due to risk to safety of life or health must include a description of the safety of life or health risk and facts that demonstrate a substantial risk of harm.

(3) For purposes of complying with the reporting requirements set forth in paragraphs (c)(1)(i) through (v) of this section, in cases where more than one asset necessary to maintain communications that are normally powered from local commercial power are located at a single site (*i.e.*, within one central office), the reporting entity may identify all of such assets by the name of the site.

(4) In cases where a LEC or CMRS provider identifies assets pursuant to paragraph (c)(1)(v) of this section, such LEC or CMRS provider must comply with the backup power requirement in paragraph (a) of this section or, within 12 months from the effective date of this rule, file with the Commission a certified emergency backup power compliance plan. That plan must certify that and describe how the LEC or CMRS provider will provide emergency backup power to 100 percent of the area covered by any non-compliant asset in the event of a commercial power failure. For purposes of the plan, a provider may rely on on-site and/or portable backup power sources or other sources, as appropriate, sufficient for service coverage as follows: a minimum of 24 hours of service for assets inside central offices and eight hours for other assets, including cell sites, remote switches, and digital loop carrier system remote

terminals. The emergency backup power compliance plans submitted are subject to Commission review.

(5) Reports submitted pursuant to this paragraph must be supported by an affidavit or declaration under penalty of perjury and signed and dated by a duly authorized representative of the LEC or CMRS provider with personal knowledge of the facts contained therein.

(6) Information filed with the Commission pursuant to paragraph (c) of this section shall be automatically afforded confidentiality in accordance with the Commission's rules.

(7) LECs that meet the definition of a Class B company as set forth in § 32.11(b)(2) of this chapter and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this reporting requirement.

[FR Doc. E7–20061 Filed 10–10–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–08; FCC 02–152]

Public Safety 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) announces that a certain rule adopted in its Public Safety 700 MHz Band proceeding (WT Docket No. 02–08; FCC 02–152) in 2002, to the extent it contained an information collection requirement that required approval by the Office of Management and Budget (OMB) was approved, and became effective January 31, 2006, following approval by OMB.

DATES: The effective date for the final rule published on June 20, 2002 (67 FR 41847) revising 47 CFR 90.176 is January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Public Safety and Homeland Security Bureau, at (202) 418–2391, or *Jerry.Cowden@fcc.gov*.

SUPPLEMENTARY INFORMATION:

1. On May 16, 2002 the Commission adopted a Report and Order (R&O) in WT Docket No. 02–08; FCC 02–152, a summary of which was published at 67 FR 41847 Q2 (June 20, 2002). In that R&O, the Commission stated that, upon OMB approval, it would publish in the **Federal Register** a document announcing the effective date of the change to 47 CFR 90.176.

2. On January 31, 2006, OMB approved the public information collection associated with this rule change under OMB Control No. 3060–0783. Therefore, the change to 47 CFR 90.176 became effective on January 31, 2006.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19441 Filed 10–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XD26

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA. This action is necessary to prevent exceeding the 2007 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 2007, through 2400 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific halibut PSC limit for vessels using trawl gear was established as 2,000 metric tons by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that the 2007 Pacific halibut PSC limit allocated to vessels using trawl gear in the GOA will soon be reached. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closing directed fishing for groundfish by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 4, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2007.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–5017 Filed 10–5–07; 1:20 pm]

BILLING CODE 3510–22–S