

SUPPORTING STATEMENT

A. Justification:

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

For over one hundred years, consumers have trusted that they will hear a dial tone in an emergency even when the power is out. Now, as networks transition away from copper-based, line-powered technology, many are aware of the innovation this transition has spurred in emergency services, but many consumers remain unaware that they must take action to ensure that dial tone's availability in the event of a commercial power outage. The Commission's own consumer complaints portal reveals frustration over the failure of service providers to adequately inform subscribers about how to self-provision backup power, in order to access 911 services in a power outage. This period of transition has the potential to create a widespread public safety issue, if unaddressed.

Accordingly, the *Report and Order*¹ creates new section 12.5 of our rules to place limited backup power obligations on providers of facilities-based fixed, residential voice services, which are not line-powered, to ensure that such service providers meet their obligation to provide access to 911 service during a power outage, and to provide clarity for the role of consumers and their communities, should they elect not to purchase backup power. To be sure, many providers of residential voice communications already offer some level of backup power to consumers. However, the vital importance of the continuity of 911 communications, and the Commission's duty to promote "safety of life and property through the use of wire and radio communication," favor action to ensure that all consumers understand the risks associated with non-line-powered 911 service, know how to protect themselves from such risks, and have a meaningful opportunity to do so.

The Commission is seeking, from the Office of Management and Budget (OMB), approval of a new requirement for providers of covered services to disclose backup power information to consumers at the point of sale and annually thereafter.

This new information collection requirement does not apply to individuals or households; thus, there will be no impact under the Privacy Act.

Statutory authority for this information collection is contained in sections 1, 4(i), and 251(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 251(e) (3); section 101 of the NET 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. 615a-1; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 47 U.S.C. 615c.

2. Indicate how, by whom and for what purpose the information is to be used.

We require providers to disclose to subscribers the following information: (1) availability of backup power sources; (2) service limitations with and without backup power during a power outage; (3) purchase and replacement options; (4) expected backup power duration; (5) proper usage and storage conditions for the backup power source; (6) subscriber backup power self-

¹ In the Matter of Ensuring Continuity of 911 Communications, PS Docket No. 14-174, Report and Order, 30 FCC Rcd 8677, rel. Aug. 7, 2015 (*Report and Order*).

testing and monitoring instructions; and (7) backup power warranty details, if any. Each element of this information must be given to subscribers both at the point of sale and annually thereafter, as described in the rule.

The disclosure requirements are intended to equip subscribers with necessary information to purchase and maintain a source of backup power, to enhance their ability to maintain access to reliable 911 service from their homes.

We permit providers to convey both the initial and annual disclosures and information described above, by any means reasonably calculated to reach the individual subscriber. For example, a provider may meet this obligation through a combination of disclosures via email, online billing statement, or other digital or electronic means for subscribers, which communicate with the provider through these means. For a subscriber who does not communicate with the provider through email and/or online billing statements – such as someone who ordered service on the phone or in a physical store and receives a paper bill by regular mail – email would not be a means reasonably calculated to reach that subscriber.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

In an effort to reduce the burden, the disclosure requirements permit providers to convey the information described above, by any means reasonably calculated to reach the individual subscriber. For example, the covered provider can distribute the information via e-mail, online, or other automated, electronic, mechanical, or technological means. Thus, the collection potentially involves the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.**

Commission rules existing prior to this new collection require limited customer notification for interconnected VoIP service providers. The existing requirement, however, is only for a subset of covered providers considered in this new rule, and we find that the prior information disclosure requirement is too limited to fully inform consumers about backup power. Specifically, section 9.5(e)(1) of the Commission rules requires customer notifications for circumstances such as “loss of electrical power,” “under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.” Informing consumers of the circumstances under which their E911 service is not available does not adequately inform a consumer on how to purchase, efficiently use, monitor, or replace backup power at the consumer’s premises. Thus, the information disclosure requirements existing prior to this new rule, are not of sufficient scope or uniformity across all covered providers, to satisfy the Commission’s obligation to promote the safety of life and property and ensure consistent 911 services. The disclosure requirements of the new rule have been carefully designed to require disclosure of only that information needed by subscribers to plan in advance to extend the effectiveness of their backup power and ultimately, count on the continued availability of 911 service in harsh weather conditions, or other emergencies when consumers are most vulnerable.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The Commission considered, and eventually adopted, various options in order to minimize the economic impact of the regulations adopted in the *Report and Order* on small entities. For example, the Commission adopted a 120-day phase-in of the requirement to provide consumers with a technical solution in order to have 8 hours of standby backup power, which will give carriers time to prepare and implement the process of complying with the rule. The Commission similarly adopted a 3-year phase-in of the requirement to offer a technical solution to provide consumers with 24 hours of backup power. This phase-in period affords service providers that do not already support 24-hour backup power, with adequate time to develop a 24-hour technical solution. Moreover, providers are free to charge consumers for backup power, and to develop a technical solution that suits their business needs including, under certain circumstances, meeting the requirement by directing consumers to a third-party retailer.

Additionally, we give smaller providers an additional 180 days (for a total of 300 days after the Commission announces approval from OMB) to comply with the notification requirements adopted in the *Report and Order*. Specifically, as noted above, providers of a covered service are required to disclose certain information about backup power during power outages. This information must be disclosed at the point of sale for the new service and annually for all subscribers thereafter. For providers of a covered service other than smaller providers, these disclosure obligations become effective 120 days after the Commission announces approval of them from OMB. For smaller providers, the disclosure obligations become effective 180 days thereafter; thus, giving smaller providers a total of 300 days after the Commission announces approval from OMB, to comply with the notification requirements.

We also note that, for the consumer education component of the rule, the Commission had smaller companies in mind when allowing such notification to be made “by any means reasonably calculated to reach the consumer.” This option affords providers flexibility to reach their subscribers in a manner consistent with their business practices, and based upon their individual subscriber relationships. Whenever the provider has an online relationship with the subscriber, disclosures may be made by email or by online billing statement, thus reducing the cost to small entities.

To further reduce the burden on smaller providers, in paragraphs 4 and 60 of the *Report and Order*, the Commission directed its Public Safety and Homeland Security Bureau (PSHSB) to work with its Consumer and Governmental Affairs Bureau (CGB) to develop, prior to the implementation date of these rules for smaller providers, non-binding guidance with respect to the required notifications to subscribers. We intend to provide to them the resulting Model Disclosure Notice, which is included as Appendix A below. Once approved by OMB, they may use this as a template to comply with the notification requirements of the new rules.

Finally, we note that the Commission encourages, but does not require, providers to engage in tailored outreach to community/state/local/tribal agencies and community organizations. While such action may be beneficial to small entities, we understand the potential costs in requiring such action.

6. Describe the consequences to a Federal program or policy activity, if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reduce burden.

If this information is not disclosed as required, subscribers will be less able to plan in advance to extend the effectiveness of their backup power, and ultimately count on the continued availability of 911 service in harsh weather conditions or other emergencies when consumers are most vulnerable.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with the criteria listed in supporting statement.

This collection of information is consistent with the guidelines in sections 5 CFR 1320.5(d) (2) & 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information prior to submission to OMB.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

On November 6, 2015, pursuant to 5 CFR Section 1320.8, the Commission published a 60 Day Notice in the Federal Register (*See* 80 FR 68869) with the information collection requirements contained in this collection. Comments were due on or before January 5, 2016. The Commission received one comment on January 5, 2016.

The one comment received was from NTCA–The Rural Broadband Association (NTCA), which urged the Commission to release to the public a copy of any document developed by the agency to aid in the disclosure of information to consumers.² The NTCA Comment asserts that in the *Report and Order*, the Commission directed PSHSB to work with CGB to create consumer disclosure forms for the use of small carriers. The NTCA Comment indicated that such guidance would go a long way towards limiting the burden imposed on small entities with respect to complying with Section 12.5(d); but the Commission has yet to publicly release such a document. The NTCA Comment argues that providers subject to the rule, therefore, cannot effectively comment on the burden.

The template that providers may use to disclose the required information to consumers is appended to this supporting statement to OMB, and thus, will allow the public to comment on it (including whether or not they agree with our burden analysis), in response to the 30 Day Notice. However, the elements of this template are well known from the rule and the *Report and Order*, and thus, the burdens were already ascertainable. Once approved by OMB, the template at Appendix A can be used as a guideline for respondents to follow in complying with the new third party disclosure requirement of Section 12.5.

The NTCA Comment raises two additional issues that cannot be considered in the process of obtaining OMB approval for this collection of information. First, NTCA urges the Commission to ensure that carriers that choose to use the model disclosure document can also use a “safe harbor” defense, in the event of an enforcement action related to Section 12.5(d). Second, NTCA requests that the term “reasonably calculated,” as used in describing providers’ efforts to reach individual subscribers, should be broadly construed to ensure that providers can elect to provide the notifications by email to their broadband customers. Both of these issues go to the substance of the new rules and the *Report and Order*, and therefore are inappropriate for consideration in the review of the information collection.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

² Paperwork Reduction Act Comments of NTCA–The Rural Broadband Association, PS Docket No. 14-174 (filed January 5, 2016) (NTCA Comments).

No payment or gift to respondents has been or will be made.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Commission did not provide any assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature.

This collection does not address any matters of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should: indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance.

We believe that the burden of these backup power disclosure requirements will be minimal, and thus, will be exceeded by the significant benefits we expect to result from them, such as enhanced subscriber access to 911 services. Specifically, we estimate the number of respondents to be 570, and the estimated time per respondent will vary widely by respondent because of differences in their current level of backup power provisioning. Some respondents may not need to expend any resources to comply with the third party disclosure requirement, because they are already providing the service. Others may have to build the service from the ground up. And, still others may currently be providing some, but not all of the required disclosure. Consequently, a respondent may spend zero to 70 hours per initial notification, which will mostly consist of time spent researching backup power information, and adapting existing programs to deliver the information to subscribers. Respondents are required to disclose the information to subscribers at the point of sale and annually thereafter. The estimate of the total hour burden is \$151,100 to initiate the program.

Initial Disclosure

- We estimate the in-house cost to respondents, based upon the use of a technical person costing \$80 per hour.
- Hours to initiate program:
 - 10 hours for research
 - 20 hours for software development
 - 40 hours for training
 - 70 hours total
- We estimate that only 2% of the estimated 570 covered service providers do not currently offer a backup power solution, and may need to start from the ground up. Thus, only 11 would need the full 70 hours to initiate the program.
 - 70 hours x 11 respondents = 770 burden hours
 - \$80 per hour x 70 hours x 11 respondents = \$61,660
- We estimate that the remaining 98% of the estimated 570 covered service providers would need only 2 hours to adapt existing programs to make sure that the programs are in compliance with the new rules.

2 hours x 559 respondents = 1,118 burden hours

\$80 per hour x 2 hours x 559 respondents = \$89,440

Total burden hours: 770 hours +1,118 hours = 1,888 hours

Total initiation cost to the respondent: \$61,660 + \$89,440 = \$151,000

We anticipate the total cost burden for respondents to initiate the program during the first year may be approximately \$151,100. The Commission does not anticipate that there will be any burden or costs for respondents to disclose information to subscribers annually. The annual disclosure requirement will be fulfilled due to the use of information technology.

13. Provide estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

The Commission believes that the respondents will use in-house staff rather contracting out this requirement.

- a) Total annualized capital/start-up costs: \$0
- b) Total annualized costs (O&M): \$0
- c) Total annualized cost requested: \$0

These calculations make clear that the cost of satisfying the notification requirement should be minimal for service providers, and the benefits of informing consumers of backup power solutions in order to reach 911 service from the subscriber premises during power outages, far outweighs any such minimal costs. This is in part because the vast majority of providers already furnish subscribers with some backup power information. As a result of current disclosure practices, we expect that only a small share of the providers will need to take additional steps to comply with these rules beyond modifications to existing disclosures. Similarly, providers already furnish subscribers with information upon initiation of service, and are free to include the information we require herein with the other materials, removing the need for a special cost of distribution. Also, in order to limit costs to providers, we make clear that a service provider may fulfill its disclosure obligation via any means reasonably calculated to reach the consumer, while also honoring any preference expressed by the customer. Such methods may include electronic outreach, including email notification and paperless billing statements; paper copies are not required for subscribers who access and receive information through those means. The annual notification associated with this requirement gives service providers ample time to plan. For example, they may include the appropriate notifications in normally-distributed billing statements, in a manner that does not increase the number of printed pages distributed.

There are numerous benefits associated with the disclosure requirements on how commercial power outages affects VoIP service. Millions of Americans have come to rely on their TDM voice service working during a commercial power outage to call 911. With this backdrop, educating consumers that their phones will not work in a commercial power outage absent backup power is essential, even if the consumer opts not to purchase backup power. At a minimum, an educated consumer will not have the expectation of relying on a VoIP service only to have it fail to operate when the consumer tries to make a 911 call, wasting valuable time in the process. In this way the consumer notifications not only promote the availability of 911 service in power outages, pursuant to our statutory mandate governing IP transitions, but also promote the “safety of life and property through the use of wire and radio communication.” It assists in meeting the Commission’s statutory charge, by enabling customers to know the limitations of their service during a power outage and make alternate arrangements—either via a backup power solution or alternate means of communication—to ensure the 911 call can go through. This is

consistent with our findings with respect to requiring minimum wireless location accuracy, where we found that the rules “will improve emergency response times, which, in turn, will improve patient outcomes, and save lives.” We believe, therefore, that it is reasonable to expect that the rules we adopt today will save lives and result in numerous other benefits that are less quantifiable, but still advance important public interest objectives. Given that the notification requirements contained herein have minimal associated costs, we conclude that the benefits of these rules far exceed the costs.

14. Provide estimates of annualized costs to the Federal government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expenses that would not have been incurred without this collection of information.

The Commission estimates there will be no annual cost to the Federal government.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14.

This is a new information collection resulting in a program change/increase of 570 respondents, 570 responses, and 1,888 annual burden hours. These estimates will be added to OMB’s Active Inventory.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

The FCC has no plans to publish data from this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Commission does not intend to seek approval to not display the expiration date of the information collection from OMB.

18. Explain any exceptions to the Certification Statement identified in Item 19, “Certification of Paperwork Reduction Act Submissions.”

There are no exceptions to the “Certification Statement.”

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.

APPENDIX A

Model Backup Power Disclosure Notice for Modification and Use by Covered Providers as Appropriate

Although this model is for a fictional provider [KTTel] of a covered service choosing, among other things, to furnish backup power using a battery, our rules do not require the use of any particular technical solution.

Backup Power for Home Phone Services during Power Outages

For many years, your home phone would allow you to stay connected to emergency voice services during a power outage. However, many of today's advanced home phone services require backup battery power to continue functioning during an outage. To avoid a disruption of home voice service during an outage – and to maintain the ability to connect to 911 emergency services -- we at [KTTel] offer you the option of purchasing backup power for your home phones.

What Your Battery Can – and Can't – Do for You

[KTTel's] backup batteries for telephone modems allow you to continue to use your home voice services during a power outage. Without a backup battery or alternate backup source such as a generator, customers will not be able to make any calls, including emergency calls to 911. The only way to maintain the ability to use your phone is by using some form of backup power.

Our backup battery does not provide power to any services other than voice. Home security systems, medical monitoring devices and other equipment will not run on a home phone backup battery.

Purchase and Replacement Options

If you are concerned about being able to contact 911 emergency services during a power outage, a backup battery may be a good option for you. The battery offered by [KTTel] is approximately [one pound] and is roughly the size of [a juice box].

-If the company provides the backup batteries-

You can purchase a backup battery directly through [KTTel]. If you have any questions or simply want to purchase a backup battery through us, please call [1-800-123-4567], visit our website at [<http://www.kttel.com/backupbattery>], or go to your local retail store. Our 8 hour backup batteries cost approximately [\$35] and can be shipped directly to your house, or can be picked up in one of our many retail locations. If you do not feel comfortable installing your own battery, please call us to make an appointment, and we would be happy to assist you. However, please note that there may be a charge for this service.

-If a third party provides the backup batteries-

You can also purchase a backup battery through many of your local retailers or on-line, including from the vendor identified below. Be sure to purchase the battery model that matches the type of modem that you have. The type of modem that you have is a [KTTel Modem Style TM502G]. The type of battery that you need is a [Citren 8 Hour Backup Battery for TM5/6/7 Modems - 8.4 Volts].

[AC's Excellent Batteries]

KTTel Modem Style TM502G

Citren 8 Hour Backup Battery for TM5/6/7 Modems - 8.4 Volts

Approximate cost - \$45

<http://www.baumbatteries.com/backupbatteries/Citren8>]

Expected Backup Power Duration

Backup batteries are expected to last at least 8 hours on standby power. The backup battery should give you [6 hours] of talk time. If you feel that is not enough time, you may extend your standby power by purchasing a 24 hour battery or additional 8 hour batteries.

Instructions for Proper Care and Use of Your Battery

Please follow the more detailed instructions included with your battery for proper use, storage and care of your battery to ensure that it will function as needed during a power outage. If you do not store your battery correctly, it may shorten its useful life. Environmental factors such as temperature can shorten

your battery's useful life. We recommend that you store your battery above [41°F and below 104°F]. These batteries are [not] rechargeable. They will not last forever and should be replaced every [1 to 2 years], or when your device starts to make a loud beeping sound. That sound means that the battery is depleted, and must be replaced. See the instructions above for purchase and replacement options. You should also periodically, as described in the instructions included with your battery, remove and test your battery to verify both the operation of the backup battery and its condition.