

## telecommunications, media, and technology lawflash

December 17, 2014

### FCC Releases NPRM to Ensure Reliable Backup Power

*The FCC seeks comment on multiple issues, including ensuring reliable backup power for consumers of IP-based voice and data services.*

On November 25, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking and Declaratory Ruling (NPRM) that, among other things, seeks comments regarding customer premises equipment's (CPE's) backup power requirements. As the network evolves from circuit-switched voice services that run on powered copper lines to all-Internet Protocol (IP) networks that run largely on unpowered lines, the FCC is seeking to ensure that there is reliable backup power for consumers of IP-based voice and data services during power outages, such as those caused by extreme weather events.

The FCC seeks comment on multiple issues, as outlined briefly here:

- **The scope of the potential requirements:** The FCC seeks comment on the communications services that should be included within the scope of any imposed CPE backup power requirements. It proposes that these requirements apply to facilities-based fixed-voice services that are not line-powered by the provider. Accordingly, the FCC seeks comment on how "fixed" wireless service should be defined and how it should account for power outages affecting other CPE. The FCC's intent is to afford sufficient power for minimally essential communications. It seeks comment on the scope of "minimally essential," particularly in light of communication methods other than traditional voice, the degree to which backup power technology can be conserved or prioritized for minimally essential uses, and the extent to which providers should be obligated to conserve backup power.
- **The extent to which providers should be obligated:** The FCC proposes that providers be held responsible for providing backup power that can power customers' CPE during the first eight hours of an outage. It seeks comment on the scope of provider responsibility to provide such power, particularly the length of time after an outage, and what steps should be expected of providers to maintain continuity of power.
- **Available solutions for providers:** The FCC seeks comment on the technology solutions available, should providers bear the responsibility to provide backup power.
- **How providers can meet obligations, should they be imposed:** The FCC seeks comment on the degree and flexibility of the responsibility to provide backup power for a duration of time, including how time should be measured.
- **Consumer responsibility and education:** The FCC proposes that consumers maintain continuity of power after the proposed eight-hour duration imposed on providers. Additionally, the FCC seeks comment regarding the proper division of responsibility between providers and consumers, equipment standards, the commercial availability of relevant equipment to consumers, and the degree to which responsibility for consumer education should be imposed on providers and the form it should take.
- **Strategies for maintaining CPE power during long outages:** The FCC asked how providers can help consumers obtain access to backup power resources during extended outages. It noted the popularity of charging stations for mobile cell phones among retail businesses and the proven usefulness of mobilized cell phone charging stations and Wi-Fi access points in disaster areas. The FCC asked if similar solutions for CPE or its battery components that support other IP-based services were possible and if such solutions were feasible in more rural or less accessible areas.

- **Cost-benefit analysis of proposed requirements:** The FCC seeks cost-benefit analysis of the requirements proposed, comments on sources of cost and benefit information and on assessment methodology, and comments on how to maximize the cost-to-benefit ratio of compliance.
- **Legal authority of the FCC:** The FCC tentatively concluded that it has the authority to adopt the proposals within the NPRM, citing multiple sections of the Communications Act, Title I generally, and other sources. It seeks comment on any additional sources of legal authority.
- **Alternatives to regulation:** The FCC asked what steps it could take, short of adopting rules, to promote the development and implementation of consumer CPE backup power solutions, including promotion of standardization. It asked how to measure the effectiveness of Communications Security, Reliability and Interoperability Council (CSRIC) best practices in determining if they sufficiently ensure voice over IP (VoIP) CPE continuity of power, if such practices could be adapted beyond VoIP CPE, and what additional measures providers should take beyond CSRIC's recommendations. The FCC also asked if market-based incentives alone could deliver the solutions necessary to meet consumer needs and expectations, encourage competition on the basis of reliability and continuous service during an outage, educate customers, and drive improved backup capabilities for CPE. The FCC invited proposals that would address its concerns without adopting regulations.

**Comment Date:** Comments are due 30 days after the NPRM is published in the *Federal Register* (which has not yet occurred).

**Reply Comment Date:** Replies are due 60 days after the NPRM is published in the *Federal Register*.

## Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

### Washington, D.C.

William B. Wilhelm Jr.

+1.202.373.6027

[william.wilhelm@morganlewis.com](mailto:william.wilhelm@morganlewis.com)

Ronald W. Del Sesto Jr.

+1.202.373.6023

[rdelsesto@morganlewis.com](mailto:rdelsesto@morganlewis.com)

## About Morgan, Lewis & Bockius LLP

Founded in 1873, Morgan Lewis offers 725 partners and nearly 2,000 lawyers—as well as scores of patent agents, benefits advisers, regulatory scientists, and other specialists—in 28 offices across North America, Europe, Asia, and the Middle East. The firm provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labor and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some jurisdictions. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2014 Morgan, Lewis & Bockius LLP. All Rights Reserved.