

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CTIA—THE WIRELESS ASSOCIATION®

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION

and

UNITED STATES OF AMERICA,

Respondents.

No. 07-1175

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2112, 2342(1), and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, CTIA—The Wireless Association® ("CTIA") hereby petitions this Court for review of those portions of the final orders of the Federal Communications Commission (the "Commission" or the "FCC") promulgating a rule to require commercial mobile radio service ("CMRS") providers to have an emergency back-up power source for all assets necessary to the provision of communications services that are normally powered by local commercial power, including eight hours of back-up power for all cell sites, subject to certain exceptions. *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Order on Reconsideration, EB Dkt. No. 06-119, WC Dkt. No. 06-63 (adopted on October 2, 2007, and released on October 4, 2007)* ("Reconsideration

Order"); *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, EB Dkt. No. 06-119, WC Dkt. No. 06-63 (adopted May 31, 2007, and released on June 8, 2007) ("June Order").

The Reconsideration Order was published in the Federal Register on October 11, 2007, 72 Fed. Reg. 57,879, and appears in the Federal Communications Record at 22 FCC Rcd 18013 (2007), 2007 WL 2903938. The June Order was published in the Federal Register on July 11, 2007, 72 Fed. Reg. 37,655, and appears in the Federal Communications Record at 22 FCC Rcd 10541 (2007). A copy of the full text of the Reconsideration Order and the June Order are attached as Exhibits 1 and 2, respectively.

This Petition for Review is timely as to the Reconsideration Order because it is filed within the 60-day period set forth in 28 U.S.C. § 2344. This Petition is timely as to the June Order because CTIA timely filed a Petition for Reconsideration of that order. *Petition for Reconsideration of CTIA—The Wireless Association*[®], EB Dkt 06-119, WC Dkt No. 06-63 (filed Aug. 10, 2007). This filing tolled the 60-day period under 28 U.S.C. § 2344.¹ Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

CTIA seeks judicial review of the back-up power rule on the grounds that the rule: exceeds the Commission's statutory

¹ Although CTIA withdrew its Petition for Reconsideration on September 28, 2007, see *Letter from Christopher Guttman-McCabe, CTIA, to Marlene H. Dortch, FCC*, EB Dkt 06-119, WC Dkt No. 06-63 (Sep. 28, 2007), this Petition for Review is filed within 60 days of that withdrawal.

jurisdiction and authority; was adopted without observance of procedure required by law; violates the Administrative Procedure Act for additional reasons, see 5 U.S.C. § 701 et seq.; and is otherwise contrary to law. Accordingly, CTIA respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the relevant portions of Orders and provide such additional relief as may be appropriate.

CTIA - THE WIRELESS ASSOCIATION®
1400 16th Street, NW Suite 600
Washington, DC 20036
TEL: 202.785.0081

Michael F. Altschul
Senior Vice President, General
Counsel

Christopher Guttman-McCabe
Vice President, Regulatory
Affairs

Paul W. Garnett
Assistant Vice President,
Regulatory Affairs

Brian M. Josef
Director, Regulatory Affairs

Its Attorneys

By: Helgi C. Walker per authorization TMM
Helgi C. Walker
William S. Consovoy
Thomas M. Messner
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

Attorneys for
CTIA - THE WIRELESS ASSOCIATION®

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