

## *FCC Opens Proceeding to Implement Katrina Panel Recommendations*

On June 19, 2006, the Enforcement Bureau of the Federal Communications Commission (“FCC”) issued a Notice of Proposed Rulemaking (“NPRM”) on steps that it may take to implement certain recommendations of the Independent Panel charged with reviewing the impact of Hurricane Katrina on telecommunications and media industries, including wireline and wireless networks, Public Safety Answering Points (“PSAPs”) and 911/E911 facilities damaged or destroyed by the storm. Specifically, the Independent Panel reviewed the readiness and preparedness of communications networks to respond to natural disasters, as well as the sufficiency and effectiveness of federal relief and recovery efforts, including communications among first responders, such as police, fire and emergency medical personnel. The Independent Panel convened, directly and via teleconference, on several occasions during the six-month review period provided by the FCC, and considered, among other things, comments by interested members of the public, submitted both in writing and in person, through public meetings and one-on-one interviews. As ordered by the FCC, the Independent Panel submitted the results of its review on June 12, 2006.

The purpose of the NPRM is to implement the recommendations of the Independent Panel, intended to promote greater resiliency and reliability of communications infrastructure, and to strengthen and improve response and recovery efforts by the federal government to natural disaster. As a general matter, the FCC seeks public com-

ment on the appropriate measures to be taken by the federal government to address the problems identified by the Independent Panel in connection with the Hurricane Katrina disaster. The NPRM also invites public comment on the safeguards proposed by the Independent Panel to limit disclosure of sensitive infrastructure information or commercial information, as necessary to prevent exposure of potential targets to wrongdoers, and to shield regulated entities against competitive harms. A brief summary of the NPRM is provided below.

### **PRE-POSITIONING FOR DISASTER**

The Independent Panel concluded that a pro-active program to strengthen network reliability and resiliency, rather than a “reactive” program intended only to respond to natural disaster, would expedite federal disaster relief and recovery efforts. Accordingly, the Independent Panel proposed the following emergency preparedness measures.

### **Development of a “Readiness Checklist”**

The Independent Panel recommended that the FCC work with industry sectors, trade associations and other organizations to establish a “Readiness Checklist” for the communications industry, which shall include developing formal business continuity plans, formulating proper emergency plans and procedures, conducting emergency response training exercises, and maintaining pre-positioned supplies and equipment to aid in disaster response. The “Readiness Checklist” recommended by the Independent Panel should rely on the work of industry consensus groups, such as

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the Network Reliability and Interoperability Council (“NRIC”) and the Media Security and Reliability Council (“MSRC”). The NPRM seeks public comment on whether the FCC should adopt guidelines or criteria for developing and implementing private-sector development of business continuity plans, emergency response training exercises, practicing communications plans, or archiving critical system back-ups for secure off-site facilities.

### **Community Education Campaigns**

The Independent Panel recommended that the FCC enhance awareness of public safety community through community education campaigns. For purposes of enabling an efficient and global response to natural disaster, the Independent Panel also recommended that the FCC establish a prioritized system for automatic waiver of regulatory requirements, and automatic granting of requests for Special Temporary Authority (“STA”), under specific emergency circumstances. Further, the FCC should coordinate all federal outage and infrastructure reporting requirements in crisis situations. The NPRM seeks comment on the appropriate content of such regulatory reports for emergency outages, format, frequency, distribution and related issues, including whether additional safeguards should be implemented to protect disclosure of sensitive information.

### **Assistance to Non-Communications Entities**

The Independent Panel recommended that the FCC assist non-communications entities (e.g., hospitals, nursing homes, day care facilities, etc.) with developing emergency communications plans, including establishing a hotline and/or website for the purpose.

### **RECOVERY COORDINATION**

The Independent Panel concluded that significant challenges to maintaining and restoring

communications services following Hurricane Katrina resulted from impediments to accessing key resources, such as power and/or generator fuel, within the impacted area. Accordingly, the Independent Panel proposed the following measures to facilitate coordination of relief and recovery efforts among federal, state and local governments, and private organizations.

### **Credentials for Emergency Relief and Recovery Workers**

The Independent Panel generally supported recommendations by the National Security Telecommunications Advisory Commission (“NSTAC”) to establish national standards for awarding credentials to repair workers and contractors, including repair workers of all communications infrastructure (e.g., wireline, wireless WISP, broadcast media, satellite), and further, that states develop and implement credentials consistent with such federal requirements and guidelines. The Independent Panel also recommended that the FCC work with Congress and the appropriate federal departments and agencies to grant “emergency responder status,” under the Stafford Act, to all providers of communications services (e.g., wireline, wireless WISP, broadcast media, satellite), and that such designation be incorporated into the National Response Plan, as well and state and local emergency response plans.

### **Public/Private Sector Coordination Activities**

The Independent Panel recommended that the FCC encourage, but not require, each regional, state and local Emergency Operating Center (“EOC”) and Joint Field Office (“JFO”) to engage in the following activities, for the purpose of enhancing communications and coordination among federal, state and local authorities, and the private sector: (1) facilitate coordination between communications infra-

structure providers, and state and local emergency preparedness officials; (2) develop credentials and procedures to allocate communications infrastructure providers (and contractors) into disaster areas to perform repairs; (3) develop clearly identified post-disaster coordination areas for communications infrastructure providers, and include such areas in the state Emergency Preparedness Plans; (4) share information and coordinate resources to facilitate repair of key communications infrastructure; and (5) facilitate electric and other utilities' maintenance of priority lists for commercial power restoration.

#### **Industry-Only Coordination Activities**

The Independent Panel recommended that communications infrastructure providers form an industry-only group to engage in disaster planning and coordination of recovery efforts. The Independent Panel also recommended that the FCC work with the National Communications System, an organization within the Department of Homeland Security ("DHS"), to expand current membership of the National Coordinating Center for Telecommunications ("NCC"), to include representation of all types of communications systems, including broadcast, cable, satellite, and other new technologies.

#### **Use of Priority Communications Resources**

The Independent Panel recommended that the FCC work with the National Communications System to promote use of existing priority communications services, such as Government Emergency Telecommunications Service ("GETS"), Wireless Priority Service ("WPS"), and Telecommunications Service Priority ("TSP"), by all eligible government, public safety and industry groups.

#### **Public Access to Emergency Contact Information**

The Independent Panel recommended that the FCC create two websites identifying the following emergency contact information: (1) state emergency management contacts, and post-disaster staging areas for communications providers; and (2) contact information for the FCC's "task force" that coordinates disaster response efforts, and procedures for facilitating disaster response and outage recovery.

#### **FIRST RESPONSE COMMUNICATIONS**

The Independent Panel concluded coordinated state and local efforts are critical to maintaining communications among first responders following natural disaster. Accordingly, the Independent Panel proposed the following joint state/local efforts to facilitate restoring public safety communications following natural disaster.

#### **Maintaining Pre-Positioned Equipment Components**

The Independent Panel recommended that the FCC encourage state and local jurisdictions retain and maintain a cache of pre-positioned equipment components that would be needed to immediately restore existing public safety communications immediately following natural disaster, including Radiofrequency ("RF") gear (e.g., Internet Protocol ("IP") gateways, dispatch consoles, etc.), trailers, tower system components (e.g., antenna systems and hydraulic masts), back-up power equipment, and fuel. In particular, the NPRM seeks comment on the types and capabilities of equipment that should be included in such pre-positioned equipment cache, and the functionalities most critical to restoring public safety communications immediately following natural disaster.

### **Maintaining Interoperability of First Responder Communications**

To facilitate interoperability of communications among first responders, the Independent Panel recommended that the FCC encourage expeditious development of regional plans for use of 700 Mhz systems, and that the FCC promptly review and approve such plans.

### **911 and E911 Service**

The Independent Panel recommended that the FCC encourage implementation of NRIC “best practices” intended to promote reliability and resiliency of 911 and E911 architecture. In particular, service providers and network operators should consider placing and maintaining 911 circuits over diverse interoffice transport facilities, and should ensure that emergency back-up power capabilities (located on-site, when appropriate) for such circuits remain available. Moreover, network operators should consider deploying dual active 911 selective router architecture as a means for eliminating single points of failure. The Independent Panel also recommended that network operators, service providers, equipment suppliers and public safety authorities establish alternative methods of communication for critical personnel. The FCC should work with other federal agencies to promote funding for 911 enhancement and interoperability.

### **Public Safety Answering Points (“PSAPs”)**

The Independent Panel recommended that localities establish a secondary back-up PSAP that is more than 200 miles away, to answer calls when the primary and secondary designated PSAPs are disabled.

### **Communications with the Medical Community**

The Independent Panel recommended that the FCC educate the emergency medical community about emergency communications and priority communications services, and assist coordination of this sector’s emergency communications efforts.

### **EMERGENCY COMMUNICATIONS TO THE PUBLIC**

The Independent Panel recommended that the FCC facilitate and complement use of the Emergency Alert System (“EAS”), and specifically, that the FCC educate state and local officials about the existing EAS, its benefits, and its uses. To ensure that all Americans, including persons with disabilities and persons that do not speak English, are able to receive emergency communications, the FCC should take the following steps: (1) promptly work to resolve technical hurdles in the current EAS to ensure that persons with vision or hearing disabilities, and persons who do not speak English, receive access to public warnings; (2) work with industry trade associations to create and publicize best practices for serving persons with disabilities and persons who do not speak English; and (3) encourage state and local government agencies that provide emergency information to make such information access to persons with disabilities and persons who do not speak English.

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Notice of the NPRM was published in the Federal Register on July 7, 2006. Interested parties must file comments with the FCC no later than August 7, 2006 and reply comments no later than August 21, 2006.