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FCC PROVIDES BACKUP POWER DISCLOSURE TEMPLATE

Last month the Federal Communications Commission (FCC) submitted to the Office of Management and Budget (OMB) the backup power consumer disclosure rule it adopted in its IP Transition *Report and Order*. OMB must approve the rule under the requirements of the Paperwork Reduction Act before it can go into effect. Once approved by OMB, small providers will have 300-days to comply with the rule (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 and gave smaller providers an additional 180-days, for a total of 300-days).

OMB has not yet approved the rule so the clock has not begun to run on the 300-day deadline for compliance with the rule. GPNW will notify clients when OMB has approved the rule which is expected in the near future. However, even with almost a year to comply with the rule, it is not too early to begin thinking about how to most easily and efficiently comply with the rule.

In the backup power consumer disclosure rule, the FCC required 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-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.

The rule permits 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.

To reduce the burden on smaller providers, in paragraphs 4 and 60 of the *Report and Order*, the FCC 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. Such guidance was included in the FCC's submission last month to OMB in the form of a Model Disclosure Notice, which it included as Appendix A in its submission. Once approved by OMB, small providers may use this as a template to comply with the notification requirements of the new rules. The template is subject to public comment as is the rest of the FCC's filing with OMB, but the FCC appears confident that it conforms to the requirements of the backup power consumer disclosure requirement. Once approved by OMB, the template can be used as a guideline to follow in complying with the new disclosure requirement. So although the FCC does not explicitly say that its template can be used as a "safe harbor" defense in the event of an enforcement action (as requested by NTCA), it would seem that companies should be confident that close adherence to the FCC's template should ensure rule compliance.

FCC DRAFT TEMPLATE FOR BACKUP POWER CONSUMER DISCLOSURE

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.

Please contact your GVNW Consultant for any questions you may have about the Backup Power Disclosure Rules.