

- 4 AT&T Mobility is a Commercial Mobile Radio Service provider licensed by the Federal Communications Commission (FCC). The UTC designated AT&T Mobility as an Eligible Telecommunications Carrier (ETC) in Washington in 2004 and again in 2005.²
- 5 Effective July 29, 2006, the Commission adopted rules on ETC designation and annual certification. In particular, WAC 480-123-030(1)(g) requires a wireless ETC to demonstrate in its petition for ETC designation that it has at least four hours of battery back-up power at each cell site, back-up generators at each microwave hub, and at least five hours of back-up battery power and back-up generators at each switch. WAC 480-123-070(6) requires that each ETC that receives federal high-cost funds certify annually that it continues to adhere to the same standards in WAC 480-123-030(1)(g). As an ETC, AT&T Mobility is subject to the four-hour back-up power requirement.
- 6 On July 31, 2006, AT&T Mobility submitted a petition to the Commission requesting a permanent exemption or, in the alternative, a temporary exemption of WAC 480-123-070(6) and WAC 480-123-030(1)(g). The Commission denied the Company's request for a permanent exemption; however, the Commission granted a temporary exemption subject to the condition that the Company provide four hours of back-up power at all Priority 1 and -98 db cell sites using reliable alternative power sources including battery, fixed generator or fuel cells within two years.³ The temporary exemption expired on February 15, 2009.
- 7 AT&T Mobility's petition for a second, temporary exemption from WAC 480-123-030(1)(g) was brought before the Commission at its regularly scheduled meeting on September 10, 2009.

DISCUSSION

Issue 1. Clarification of Commission Order 01

- 8 In its August 3, 2009, petition, AT&T Mobility requested the Commission to clarify Order 01. The Company agrees that the Order requires AT&T Mobility to engineer and install four-hour back-up power at all Priority 1 and -98 db cell sites, but disputes that the order requires it to install any additional back-up power at its existing non-priority capacity cell sites within its ETC-designated areas.

² Docket UT-043011, Order 01 (AT&T Wireless) and Order 02 (Cingular Wireless, for identical service areas).

³ Docket UT-063060, Order 01.

- 9 AT&T Mobility asserts that it met the requirement set forth in Commission Order 01 of this docket except for three priority and coverage cell sites, and that it does not need to upgrade the back-up power for non-priority cell sites. Staff disagrees with AT&T Mobility's interpretation of Order 01 with regard to its non-priority cell sites. Staff believes that Order 01 granted a temporary exemption for AT&T Mobility's non-priority cell sites from the four-hour back-up power rule for a period of two years, but the exemption is temporary, not permanent. By its terms, the Order requires AT&T Mobility to request a second, temporary exemption for its non-priority cell sites if they are not in compliance with WAC 480-123-030(1)(g), upon the expiration of the temporary exemption.
- 10 Order 01 states that AT&T Mobility is granted a temporary exemption from the battery power requirement, but that within two years of the date of the Order the Company must provide four hours of back-up power at all Priority 1 and -98 db cell sites using reliable alternative power sources (battery, fixed generation or fuel cells).⁴
- 11 In Order 01, the Commission acknowledged that upgrading the battery back-up power at all cell sites in a short period of time is cost prohibitive and would financially limit the Company's ability to increase network coverage and capacity. Therefore, the Commission allowed the Company to prioritize the installation of four-hour back-up power in Priority 1 and -98 decibel cell sites first.
- 12 Order 01 states that "[a]s for the balance of [the Company's] noncompliant sites, the public interest is better served over the next two years by *deferring* bringing them up to the four-hour standard, thereby allowing additional investment in network coverage and capacity. *We can revisit this issue at the expiration of the exemption if necessary.*"⁵
- 13 Staff agrees Order 01 did not require AT&T Mobility to install additional back-up power at its non-priority cell sites before February 15, 2009. However, the exemption was temporary, not permanent. The temporary exemption expired on February 15, 2009.

Issue 2. Exemption for Three Priority and Coverage Cell Sites

- 14 In its March 6, 2009, petition, AT&T Mobility described its compliance status and requested a permanent exemption, or in the alternative, a one-year extension of the

⁴ *Id.*, ¶ 31.

⁵ *Id.*, ¶ 18, (Emphasis added.)

temporary exemption granted in Order 01 for three priority and coverage cell sites that are currently not in compliance.

- 15 AT&T Mobility reported that between February 15, 2007, and March 6, 2009, the Company had taken necessary steps to survey, engineer and construct all coverage cell sites to achieve four hours of back-up power. Of the 576 Priority 1 and -98 decibel sites identified in 2006, all but three are now in compliance with the four-hour back-up power rule. The three cell sites did not meet the four-hour standard themselves, but portions of their service areas receive overlapping coverage from adjacent cell sites that have 3.75 or four-hour back-up power. The Company encountered difficulties in installing the batteries at those sites.
- 16 The Commission grants the Company's request for a one-year exemption from the rule to enable the Company to complete the structural analysis and equipment screening and to resolve lease agreement issues. Upon the completion of the back-up power upgrades or at the expiration of the one-year exemption, whichever occurs first, the Company is required to file a compliance status report on the power upgrades of the three cell sites.

Issue 3. Exemption for Non-Priority Cell Sites

- 17 In its August 3, 2009, petition, AT&T Mobility requested a temporary exemption from WAC 480-123-070(6) and WAC 480-123-030(1)(g) for its non-priority cell sites until July 1, 2012, if the Commission declines to adopt AT&T Mobility's interpretation of Order 01. Staff's review concludes the benefit of an immediate enforcement of the back-up power rule at non-priority cell sites is outweighed by its costs. Staff supports the Company's request for a temporary exemption.
- 18 The added benefit of having four hours of back-up power at all non-priority capacity cell sites is relatively small. Before the promulgation of the Commission's rules, the Company's policy was to provide at least two hours of back-up power at all its cell sites. AT&T Mobility states in its petition that service areas of the non-priority cell sites have overlapping coverage from adjacent priority and coverage cell sites. AT&T Mobility further asserts that roughly 98 percent of the points of presence of the non-priority cell sites are covered by those adjacent priority and coverage cell sites throughout AT&T Mobility's ETC-designated areas in Washington. When a power outage occurs and a non-priority cell site stops functioning, most customers will be able to receive service from adjacent cell sites.

- 19 AT&T Mobility confirms that since the July 29, 2006, effective date of WAC 480-123-030(1)(g) and WAC 480-123-070(6), all its new cell sites within the ETC-designated areas in Washington have been engineered for four-hour back-up power using reliable power sources including batteries, permanent generators or some combination thereof.
- 20 AT&T Mobility asserts that the Company has a comprehensive emergency response plan. This plan involves deployment of portable generators to cell sites without commercial power. It also has “Cells on Wheels,” which are portable cell sites that can be put into service temporarily if fixed cell sites fail. Although these measures are not exact substitutes for on-site four-hour back-up power, they mitigate the negative impacts of the potential failure of cell sites due to the lack of four-hour back-up power.
- 21 Upgrading the back-up power at cell sites is costly. The Company will incur substantial costs to upgrade the power back-up capacity at all non-priority cell sites. The Company does not expect any major increase in its federal high-cost support due to the interim cap the FCC recently imposed on competitive ETCs’ receipt of federal high-cost funds.⁶ The public interest can be better served by the Company expending the federal universal service subsidy on increasing its network coverage and capacity, while upgrading back-up power at non-priority cell sites during the temporary exemption period.
- 22 Based on the above rationale, staff recommends the Commission grant a temporary exemption from the four-hour back-up power rule for AT&T Mobility’s non-priority cell sites until July 1, 2012, subject to the following conditions:
- a. The Company must provide four hours of back-up power at all new cell sites constructed during this period.
 - b. The Company must include a compliance status report on back-up power upgrades in its annual ETC filing with the Commission.
 - c. The Company must file a final compliance report upon completion of the back-up power upgrades or at the expiration of the temporary exemption, whichever occurs first.

⁶ *In the Matter of High-Cost Universal Service Support, et al.*, Order, WC Docket No.05-337 and CC Docket No.96-45, FCC 08-122 (Released May 1, 2008).

FINDINGS AND CONCLUSIONS

- 23 (1) The Commission has jurisdiction over Eligible Telecommunications Carriers in Washington and the subject matter of this Order pursuant to WAC 480-123.
- 24 (2) AT&T Mobility is an ETC designated by the Commission.
- 25 (3) In Docket UT-063060, Order 01, the Commission granted AT&T Mobility a temporary exemption from the back-up power requirements of WAC 480-123-030(1)(g) and WAC 480-123-070(6) for a period of two years effective February 15, 2007, for its priority and non-priority cell sites.
- 26 (4) With the exception of three priority and coverage cell sites, AT&T Mobility complied with Order 01.
- 27 (5) The Commission is not persuaded to grant a permanent exemption from the four-hour back-up power requirement to priority and coverage cell sites.
- 28 (6) The requests for a temporary exemption from WAC 480-123-070(6) and WAC 480-123-030(1)(g) are consistent with the public interest and should be granted.

ORDER

THE COMMISSION ORDERS:

- 29 (1) The Commission clarifies that under Order 01, Bellingham Cellular Partnership, Bremerton Cellular Telephone Company, Hood River Cellular Telephone Company, New Cingular Wireless PCS, LLC and Olympia Cellular Telephone Company (collectively AT&T Mobility f/k/a Cingular) were not required to install additional back-up power at its non-priority cell sites before February 15, 2009.
- 30 (2) AT&T Mobility's petition for a permanent exemption from WAC 480-123-070(6) and WAC 480-123-030(1)(g) for three priority and coverage cell sites is denied.
- 31 (3) The petition for a temporary exemption from WAC 480-123-070(6) and WAC 480-123-030(1)(g) for the three priority and coverage cell sites is granted for a

period of one year from the effective date of this Order, subject to the condition that the Company must file a compliance status report on the back-up power upgrades to the three identified cell sites upon full compliance or at the end of the one-year exemption, whichever occurs first.

- 32 (4) The petition for a temporary exemption from WAC 480-123-070(6) and WAC 480-123-030(1)(g) for all non-priority cell sites is granted until July 1, 2012. AT&T Mobility must use reliable power sources (battery, fixed generator or fuel cells) to meet the four-hour back-up power standard. The exemption is subject to the following conditions:
- a. AT&T Mobility must provide four hours of back-up power at all new cell sites constructed during this period.
 - b. AT&T Mobility must include a compliance status report on back-up power upgrades in its annual ETC filing with the Commission.
 - c. AT&T Mobility must file a final compliance report upon completion of the back-up power upgrades or at the expiration of the temporary exemption, whichever occurs first.
- 33 (5) The Commission retains jurisdiction over AT&T Mobility's ETC designation and the subject matter of this Order.

DATED at Olympia, Washington, and effective October __, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner