

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Inquiry Regarding Carrier Current Systems,     )  
Including Broadband Over Powerlines            )            FCC Docket No. 03-104

REPLY COMMENTS OF  
THE CITIZENS BROADCAST BAND DISCUSSION GROUP, JOHN ANDERSON,  
NICKOLAUS E. LEGGETT AND DON SCHELLHARDT, ESQUIRE

The undersigned parties hereby submit Reply Comments, in FCC Docket 03-104, regarding the possible authorization of Broadband Over Powerlines (BPL).

THE CITIZENS BROADCAST BAND DISCUSSION GROUP (CBBDG) is an informal group of net-linked Americans who favor expanded radio broadcasting opportunities for the general public and small community groups. This nationwide organization is currently led by KYLE DRAKE, of Plymouth, Minnesota. He is a radio research and electronic designer, currently engaged in improving AM Band equipment.

The other undersigned parties -- JOHN ANDERSON of Wisconsin, NICKOLAUS E. LEGGETT of Virginia and DON SCHELLHARDT, ESQUIRE of Connecticut -- are all longstanding activists for media reform.

John Anderson is a broadcast journalist who runs DIYMEDIA, a radio reporting service at the University of Wisconsin Madison, with a Web Site at [www.diymedia.net](http://www.diymedia.net).

Don Schellhardt is President of THE AMHERST ALLIANCE, an advocacy group for media reform. In these Reply Comments, however, he speaks only for himself.

Nick Leggett maintains a Web Site on politics and technology at <http://home.earthlink.net/nleggett/home.html>. He was a co-filer, with Don Schellhardt, of the 1997 Petition For Rulemaking which triggered the FCC's first consideration of a Low Power FM Radio Service in FCC Docket RM-9208. For over 20 years, he has filed regularly in FCC Dockets and has authored, or co-authored, several Petitions for action by the FCC.

**We Strongly Second  
The Concerns Expressed By Various Commenters  
Regarding Interference From BPL**

With respect to the possible authorization of BPL, as contemplated in FCC Docket 03-104, CBBDG and the 3 other undersigned parties strongly second the concerns which have already been expressed in Written Comments by THE AMERICAN ACADEMY OF SCIENCES' COMMITTEE ON RADIO FREQUENCIES ... THE NORTH AMERICAN SHORTWAVE ASSOCIATION ... THE AMERICAN RADIO RELAY LEAGUE... THE AMHERST ALLIANCE ... and a small army of individual Amateur Radio Service operators. Among others.

If approved, BPL would threaten existing uses of affected frequencies for Amateur Radio Service transmissions ... *military* communications on the Military Affiliate Radio System (MARS) ... Citizens' Band transmissions ... shortwave listening and broadcasting ... and radio astronomy, both amateur and professional.

Any and all of these five existing uses clearly have a greater value to society than the marginal increases in convenience offered by BPL.

We add that BPL has already been rejected, on grounds of inevitable interference with higher priority frequency uses, by the governments of both The Netherlands and Japan. The FCC should make the same decision.

**Approval Of BPL,  
At This Time,  
Would Constitute Partial Pre-Judgment Of  
A Pending PETITION FOR NOTICE OF INQUIRY**

We also stress that the FCC's authorization of BPL technology, at least at this time, would effectively preclude some of the options presented for the Commission's consideration in a Petition For Notice Of Inquiry filed by CBBDG and the other 3 undersigned parties.

Our Petition was filed with the Commission on March 8, 2003 and posted on the FCC's Electronic Comment Filing System (ECFS) on March 26, 2003. The Petition calls for the creation of one or more new broadcast bands, reserved exclusively for use by individuals and small community groups, and requests a Notice Of Inquiry as a way to explore the possibilities.

Since one of the possible locations for the new broadcast band(s) would be on the same frequencies that BPL would use, the FCC's approval of BPL at this time would constitute partial pre-judgment of the Petition For Notice Of Inquiry by CBBDG *et al.*

Such partial preclusion of a Petition For Notice Of Inquiry, before it has ever been considered by the Commission, would be contrary to general principles of administrative law.

Therefore, authorization of BPL should only be considered *after*, or possibly in conjunction with, a decision on whether one or more of the affected frequencies should host one or more of the new broadcast bands proposed by CBBDG *et al.*

**The CBBDG Petition,  
Addressing In Part The Same Frequencies  
Proposed For Use Of BPL,  
Should Be Transferred Out Of  
Its Currently Mis-Assigned Docket**

In addition, we want to make certain the full Commission is aware that our Petition For Notice Of Inquiry has been mis-assigned to the wrong Docket File on the ECFS. That is: FCC staff have, for reasons unknown, placed the Petition in FCC Docket 99-325, which concerns the "interim" approval of In Band On Channel (IBOC) Digital Radio, plus subsequent filings that seek to overturn or retain that authorization.

Since our Petition has nothing to do with IBOC Digital Radio, but rather addresses the entire radio spectrum as a possible home for one or more new broadcast bands, the placement of our Petition in the IBOC Docket is inexplicable. Even more inexplicable is the decision by FCC staff to *keep* the Petition in FCC Docket 99-325, even *after* hearing from us that the Petition has nothing to do with IBOC Digital Radio.

The Petition For Notice Of Inquiry, filed by CBBDG and the other 3 undersigned parties, should be assigned a Docket Number and made the subject of public comments. Failing that, it should be placed, at the very least, in an appropriate "holding tank" area of the ECFS -- ideally, PRM03ET -- while it awaits formal Docketing. The Petition's present location, in an irrelevant Docket, makes it very unlikely that the filing will ever be "discovered", and considered as a possible vehicle for regulatory action, by higher levels of the Commission.

Following several informal efforts to resolve this problem at the "usual" levels of Commission review, CBBDG has recently filed a formal complaint with the Office of the Inspector General at the FCC. We had hoped the problem could have been resolved without having to file such a formal complaint, but repeated communications through "the usual channels" had availed us nothing.

In any event, we repeat our basic contention that the FCC should not proceed to the merits of BPL authorization without first considering, sequentially or simultaneously, the relevant portions of our pending Petition For Notice Of Inquiry.

### **Conclusion**

*Given* (1) the body of scientific evidence regarding the interference that BPL will generate, (2) the high social value of the existing frequency uses that would be compromised or even displaced by BPL, (3) the record of rejection of BPL by

two other industrialized nations, and (4) the fact that approval of BPL would at least partially pre-judge a pending Petition For Notice Of Inquiry, the rejection of BPL by the FCC is clearly justified.

Respectfully submitted,

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Dated: \_\_\_\_\_  
August 18, 2003