Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Carrier Current Systems, including Broadband over Power Line Systems	)	ET Docket No. 03-104
	)	
Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems	)	ET Docket No. 04-37

To: The Commission

REPLY COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS (SBT)

Having reviewed the comments received in this proceeding, SBT is even more convinced that the Commission must articulate in specific terms the rights of potentially aggrieved licensed operators whose devices suffer interference due to the operation of BPL systems, and the duties of BPL operators in support of those rights. Additionally, SBT joins with other commenting parties in requesting that the agency move cautiously down the path toward adoption of BPL rules, following its consideration of all available technical information regarding the effect that universal deployment may have on the relevant noise floor.

The comments in support of the agency's statements within the NPRM do not stop at lauding the Commission's efforts in attempting to balance the rights and duties of licensed and unlicensed users of the HF spectrum. Instead, many of the commenting parties seek additional advantage over licensed users and take pains to try to separate licensed operators from any effective procedure to complain or effectively assist in resolving incidents of harmful interference. Given the inch offered by the Commission, many commenting parties are

suggesting a yard of specialized consideration; and in doing so, they have attempted to set BPL apart and above the dictates of Part 15 operation.

SBT finds no fault with advocacy that attempts to gain a competitive advantage for existing and potential operators of BPL systems. Nor does SBT harbor any ideas that manufacturers of BPL devices would comment in a way that would disturb their hopes of a highly profitable investment in technology. Indeed, all of corporate America would come to a halt in slack-jawed amazement if those commenting parties had uttered comments other than those received within this proceeding. However, the Commission's responsibility is to assure fidelity to its rules and policies which state clearly that the rights of Part 15 operators are entirely at sufferance to the rights of licensed radio operators. Further, that the duties imposed on an entity's choice to take advantage of unlicensed operation will be enforced by the agency, without regard to employment of a data base or hardware-based mitigation techniques.

Although SBT joins with the Commission in recognizing the promises of BPL, it would be imprudent for all persons not to recognize concurrently the pitfalls and the need to adopt tangible, reliable means for resolving interference quickly, by properly levying the burden upon BPL operators consistent with the Commission's long-standing treatment of Part 15 devices and their operators. The need for greater assurances is demonstrated by the comments received by persons seeking to gain an advantage via this rule making. For examples:

- Main.net Communications proposes that the proposed data base information be made wholly general in scope, including only limited information. Main.Net Communications Comments at 7.
- Southern Linc asks that the precise location of installations not be made available to the public. Southern Linc Comments at 8; that the level of available information be controlled under the discretion of the BPL carrier, Id. at 10; and suggests a method for resolving complaints, including responses to licensed operators, which read much like automatic, prerecorded messages activated via an automated answering system, Id at 11. Not content with the generous radiation limits already proposed, Southern Linc asks that the Commission remain open to increasing those limits for future BPL operations, Id. at 17; while stating that a shut-down feature is not required to be incorporated in the Commission's guidelines, Id. at 18.
- Consolidated Edison Company of New York asks that the Commission state that a BPL operator need only shut down an offending unit as a last resort and such last resort would only be effected upon notification by a Commission representative, ConEd Comments at 4, citing 47 C.F.R. §15.5(c).
- The United Power Line Council recommends that the Commission impose an obligation of good faith on licensed users to discourage frivolous complaints and argues that there is no reason to create new enforcement rules for BPL, UPLC Comments at 10 and n. 24.
- Current Technologies, LLC requests a three-year period for BPL operators to deploy compliant equipment and strongly advocates that the proposed data base not be made available to the public. Current Technologies Comments at 3. Any interference

mitigation would allow the BPL operator to contest the complaint and take no action based on a "not us" response to the affected licensed operator and would impede licensed operators seeking the assistance of the Commission until after the BPL operator had admitted the interference, but took no remedial action. Id. at 23.

The above comments are typical of those in support of the Commission's proposed rules, suggesting only modifications which will lessen the burden on BPL operators, reduce the cost of compliance with the Commission's rules and policies, and dilute the rights of licensed operators who may require relief from incidents of interference. Nearly all suggest that the Commission's proposed data base requirement result in information being stored that is not accessible by the public and which would be used to insulate BPL operators from complaining parties. And, often, supporting commenters recommend that whatever action might be taken to mitigate interference following a complaint be, in essence, within the discretion of the BPL operator or its charged representative in the form of the data base administrator. While reducing licensed operators' access to the BPL operators to demand cessation of interference by proposing a gauntlet of procedures and standard responses to future complaints; the comments often suggest that the Commission be employed, only as a last resort, following a complaining party demonstrating fidelity to the BPL operators' self-created and serving processes.

If the Commission's hopes for BPL are to succeed, the Commission must recognize the need to act in support of its existing policies and rules, which properly direct all activity for demonstrating compliance from the unlicensed device operator. If the Commission steps back

from this position, it will be creating a quasi-licensed entity that is inured with rights that are not found among all other Part 15 regulatees. SBT does not join with others in suggesting that BPL cannot or should not be deployed under any circumstances. Frankly, the evidence of BPL's potential is not entirely known. However, SBT strongly urges the Commission to be consistent in its treatment of BPL operators and not, inadvertently, create a new breed of licensee that is beholding to no one other than the vagaries of the marketplace.

That some degree of caution is entirely justified is also evident by the content of the comments, which further contain the apprehension expressed by diverse groups, each seeking some assurances for their constituency. For examples:

- The American Radio Relay League has appropriately voiced the severe concerns of the amateur radio community, noting the low priority given amateur radio operators' past complaints regarding harmful operations of Part 15 devices.[1] ARRL Comments at 11. ARRL further states that its long experience confirms and mirrors those experiences articulated in SBT comments, that the extremely low priority given such complaints has resulted in an abysmal record of Commission assistance in resolving interference complaints, particularly when the offending party is operating a Part 15 device. Id at 19.

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[1] SBT rejects suggestions from supportive commenters which state that amateur radio operators might mitigate interference from BPL operations by reorienting their antennas. This suggestion is wholly inconsistent with the rights of licensed operators to operate their facilities in an environment which is undisturbed by operation of Part 15 devices, without the need to accommodate unlicensed operations.

- Aeronautical Radio, Inc. seeks to protect the operations of high frequency stations operating in the 3 to 30 MHz range which provide vital communications to aircraft. ARINC Comments at 2. ARINC's concerns raise a suggestion that BPL operators be able to respond 24/7 to the needs of resolving interference to public safety entities, Id at 6.[2]
- Boeing Corporation joins with ARINC in its comments, citing the potential threat to aeronautical systems and the need to protect HF operations. Boeing Comments at 6. Boeing emphasizes the need for BPL operations to be capable of being shut down in the event that harmful interference results, Id. at 10. And Boeing notes that the proposition that BPL operators will have an incentive to exercise caution in installing their systems is offset by a contrary incentive to avoid taking seriously any obligation to mitigate interference, particularly by ceasing operation following installation and the provision of services to subscribers. Id at 10-11.
- Whereas ARINC and Boeing are alarmed regarding possible interference in the 3-30 MHz range, the Association For Maximum Service Television, Inc. articulates the threat to DTV operations from BPL operations in the 54-72 MHz and 76-82 MHz ranges. MST Comments at 2, recommending that the Commission limit all BPL operations to below 50 MHz. Id at 3.
- Alan Dixon puts forth a credible case for protecting CB radio operations from interference from BPL, but extends his protective stance for all licensed operators employing the HF spectrum, including Amateur Radio, International Broadcasting,

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[2] A suggestion which has been rejected by commenting BPL supporters as being too expensive.

Maritime, Aviation, Part 90, military, homeland security, FEMA, etc. Dixon Comments at 10.

- And with near irony, Echelon Corporation seeks some additional protection for Power Line Carriers, from their sister operators of BPL. Echelon Comments at 4-5.

The above representative comments cannot be brushed aside easily with rosy stories of staged successes by BPL operators. The concerns expressed are legitimate and are brought by parties seeking to protect licensed operations from unlicensed operations – a policy long embraced by the Commission. The Commission may even note that a supporting commenter, the National Rural Telecommunications Cooperative and the National Rural Electric Cooperative Association (NRTC/NRECA) that appears to be between the crosshairs of the Commission's desires to deploy a new broadband delivery system to rural areas, stated in its comments, "[w]e also urge the Commission to continue to exercise prudent caution in its approach to protecting licensed spectrum users from harmful interference while encouraging exploration of BPL technology." NRTC/NRECA Comments at 1.

Licensed operators are legitimately concerned about the wide deployment of unfettered BPL operations and the contents of the Commission's NPRM has done little in the form of tangible admonitions and creation of effective procedural protections, to reduce those concerns. And although the agency may wish to reduce the volume of the protests against its proposed rules by assigning those objections to the rhetoric of protectionism that is the nature of licensed operations, the agency should further heed the comments of IEEE-USA, one of the most

distinguished technical groups in the Country, which organization has been called upon countless times in the Commission's past to assist it in devising technical rules. The IEEE comments are clear in the direction offered the Commission in this proceeding.

> "We therefore, strongly urge the Commission to approach this matter with a more cautious and measured approach. Most importantly, we have concerns about the ability of Access BPL technologies to adequately protect the many and varied licensed users of the high frequency ("HF") spectrum – *including many uses that are critical to national security, homeland defence, and emergency and disaster communications* – from serious and widespread harmful interference.

IEEE-USA Comments at 2. It is, therefore, the lack of prudent caution and deliberate decision making that raises the concerns of licensed operators and qualified engineers. It is the absence of procedural protections for injured parties. It is the fact that the NPRM is silent on what responsibilities the Commission itself will take in assuring that deployment of BPL will not be performed in a manner which renders meaningless the authority held by license operators and will raise, the *de facto* status of BPL operators above their chosen station as operators of Part 15 devices. Indeed, little or no tangible assurance has been offered by the Commission and, thus, none can as yet be relied upon by licensed operators.

SBT strongly recommends that the Commission include in its rule making those assurances that are required to protect the rights of licensed operators, by setting forth rules that maintain the burden of compliance, including immediate cessation of operation, on BPL

operators. SBT strongly recommends that the Commission create all avenues and procedures which make available the Commission's assistance and insistence that BPL operators avoid, mitigate and resolve all harmful interference arising from operation. And SBT recommends that the Commission not leave to the vagaries of the marketplace its duty to engage in reasoned spectrum management, trusting that the only incentive BPL operators might have is to operate in compliance. This trust has been violated in the past, *See*, Docket WT 02-55, and there is no reason to believe that similar violations of trust will not occur in the future if the Commission does not maintain its vigilance.

Respectfully submitted,

SMALL BUSINESS IN TELECOMMUNICATIONS

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