

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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

To the Commission:

REPLY TO COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS

With my compliments for his eloquent comments on May 13, 2004 to the Commission, I wish to associate myself with and render my full agreement with the sentiments expressed by Mr. Robert H. Schwaninger, Esq., of Schwaninger & Associates, P.C., on behalf of Small Business in Telecommunications. I fear that if the Commission fails to heed Mr. Schwaninger's discerning advice it will appear as if certain business interests have 'bought off' the Commission. As with Mr. Schwaninger, I must confess that I too am concerned about what responsibility the Commission intends to hold itself to in the final rules.

This rulemaking appears hasty and, in my 22 years' experience as a licensee working with the Commission to make telecommunications better, improvidently written...leaving with only one lagging question: what force drives the unjudicious speed of this proposal, and does that force really expect this proposition to be swallowed whole in its present form by licensees? I can, with this proposal, envision licensees demanding - through the Commission and by judicial mandamus - the immediate shutdown of BPL operators over a broad span of geography. Do consumers really need services that can be terminated due to interference with licensees?

If the Commission becomes ineffective at enforcing its own rules and regulations, does it really believe that licensees won't use judicial process to force remedial action? I respectfully put the Commission on notice that if this rulemaking doesn't contain very effective enforcement mechanisms against interference with licensees, it may be making the need for further administrative action by licensees in the future moot. Exhausting all administrative remedies is a prerequisite in obtaining from the Courts extraordinary relief in the nature of mandamus against administrative agencies like the Federal Communications Commission. By failing to heed the advise of the ARRL and Mr. Schwaninger, the Commission will be effectively barring any administrative remedies down the road with this proposal - thereby giving rise to expedited judicial remedies to force the Commission's hand. Surely during such judicial proceedings, the issue of abuse of power could arise if the Commission has acted too hastily in adopting a special interest's proposal against the historic and legal rights of licensees. Moreover, there is international law which gives licensees rights independent of statute and regulation - in mandamus proceedings, no Court will ignore those if those support the contentions of a disparaged licensee. These are but a few considerations the Commission would be wise to heed during its deliberations.

This proposal - in its current form - creates unreasonable financial burdens on radio licensees by way of legal fees, court costs, and other expenses that are not mentioned in the cost analysis the Commission must undertake in connection with its regulations - these aren't speculative costs: one need only look at the current list of enforcement actions being considered by the Commission with respect to Part 15 operators to have this borne out. Any other rulemaking proceeding (not being pushed by special interest lobbies) would contain all those provisions Mr. Schwaninger advised the Commission to adopt; consequently, whose political future(s) is/are being assured by those special interests? These are questions that commenting parties have a legitimate right to have answered along with the questions concerning a lack of technical rules to ensure that Part 15 BPL operators understand that they are subject to being shut down on a moment's notice from a licensee's observation. Again, as a licensee for the past two decades, I have no doubt that we can all be good neighbors and good citizens if this rulemaking is correctly handled without placing an onerous regulatory burden on existing licensees (whose jobs it should not be to enforce Commission rules and regulations) - my concern is that the playing field not be stacked against licensees whose rights were earned as opposed to special interests, whose privileges were bought. If there is evidence to the contrary, produce it.

Most respectfully submitted:

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May 13, 2004

(Also Teacher-Sponsor of...

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