

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Regulatory Oversight Of)
Broadband Over Powerlines) FCC Docket No. 04-37
(BPL) Operations)

ADDITIONAL REPLY COMMENTS
OF THE NATIONAL ANTENNA CONSORTIUM (NAC)
AND THE AMHERST ALLIANCE
REGARDING THE MOTION FOR EXTENSION OF TIME
BY W. LEE McVEY, P.E.

The NATIONAL ANTENNA CONSORTIUM (NAC) is an association, representing those who own, use and/or build radio antennas as well as those who own, lease and/or build communications towers. THE AMHERST ALLIANCE is a Net-based, national citizens' advocacy group for Low Power Radio in particular and media reform in general.

NAC and THE AMHERST ALLIANCE have already made several joint filings in FCC Docket 04-37. These joint filings have included a May 21, 2004 Motion For Extension Of Time And Re-Issuance Of Certain Proposed Rule Provisions, which was granted in part, and denied in part, in an Order by the Commission on May 27, 2004. The Reply Comments deadline was moved from Tuesday, June 1 to Tuesday, June 22.

We file these Additional Reply Comments to support the June 3 Motion For Extension Of Time by W. Lee McVey, P.E. of Florida. We agree with him that meeting *the FCC's own stated goal* requires extending the comment period to at least Wednesday, June 30.

W. Lee McVey's Reasoning Is Correct

We limit our Reply Comments to W. Lee McVey's request for action, at a minimum, to adjust the Reply Comments comment period extension for enough additional time to meet the Commission's own stated objective: that is, providing at least 3 weeks for commenting parties to review the Phase II study of BPL interference by the National Telecommunications and Information Administration (NTIA).

As W. Lee McVey notes in his Motion, the Commission extended the Reply Comments deadline, in its May 27 Order, by 3 weeks -- from Tuesday, June 1 to Thursday, June 22 -- with the explicit explanation that it wished to provide commenting parties with 3 weeks to review, evaluate and prepare Reply Comments on NTIA's Phase II study.

The Order also noted that the 3-week review period was calculated by assuming that the NTIA's Phase II study would be released to the public on Friday, May 28.

Had this expectation been met, the new Reply Comments deadline of Tuesday, June 22 would have provided 25 full days (17 full workdays) for review of the Phase II study.

In fact, however, it was not until Friday, June 4, that NTIA's Phase II study -- actually, only a *summary* of its key findings -- became available to the public. The summary of Phase II findings was included in Comments by NTIA to the FCC. The Comments were apparently received by the FCC on Friday, June 4 but were not posted on the Electronic Comments Filing System (ECFS) until Monday, June 7.

“Filling In A Blank” In Mr. McVey’s Motion

When W. Lee McVey filed his Motion For Extension Of Time on Thursday, June 3, he could not propose a specific date for the new Reply Comments deadline because he did not know when NTIA’s Phase II study would be released. Now that the release date is known, however, a specific adjustment of the previous Reply Comments deadline can be calculated.

Since release of NTIA’s Phase II study on May 28 would have provided 25 full days for its review and evaluation by commenting parties, we propose adding 25 full days to June 7 -- resulting in an adjusted Reply Comments deadline of Monday, July 4. Since July 4 is a national holiday, however, we propose an adjusted Reply Comments deadline of Tuesday, July 5.

Alternatively, the Commission could add 17 full workdays to Monday, June 7. This would yield an adjusted Reply Comments deadline of Wednesday, June 30.

Thus, even using the more conservative standard, a minimum of 8 more days are required for public comment *simply to meet the FCC’s own stated objective* of providing at least 3 weeks for interested parties to review, evaluate and prepare Reply Comments on the Phase II study. Keeping the current deadline would reduce *actually available review time* from 25 full days to 14 full days ... and from 17 full workdays to 11 full workdays. Staying with June 22 would mean respective review reductions of 44% and 35%.

**8 More Days Is The *Minimum* Extension,
Not The *Optimum* Extension**

NAC and THE AMHERST ALLIANCE stress that moving the Reply Comments deadline forward to Wednesday, June 30 -- or even to Tuesday, July 5 -- is the *minimum* adjustment that is needed. In legalese, it simply “restores *the status quo ante*”. That is, it simply *compensates for* the late date of NTIA’s filing and preserves the 3-week review period that was originally intended, and promised, by the FCC.

NAC and THE AMHERST ALLIANCE continue to believe, and assert, that 2 months should be available for interested parties to review, evaluate and/or comment on NTIA’s Phase II study. Using *that* standard, the Reply Comments deadline should be extended to Friday, August 6.

Conclusion

For the reasons set forth herein -- and also in the June 3, 2004 Motion For Extension Of Time by W. Lee McVey, P.E. -- NAC and THE AMHERST ALLIANCE urge the FCC to extend the Reply Comments deadline in Docket 04-37 by a minimum of 8 days: that is, until Wednesday, June 30 at the earliest. We recommend Friday, August 6 as the *optimum* date for a new Reply Comments deadline.

Respectfully submitted,

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