

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Amendment of Part 15 Regarding ) ET Docket No. 04-37  
New Requirements and Measurement )  
Guidelines for Access Broadband over )  
Power Line Systems )

**REPLY COMMENTS OF EARTHLINK, INC.**

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## REPLY COMMENTS OF EARTHLINK, INC.

EarthLink is one of the nation's largest Internet Service Providers (ISPs), serving over 5 million customers nationwide with dial-up, broadband (DSL, cable and satellite), web hosting and wireless Internet services. EarthLink regularly receives awards for its customer service and innovation, including the J.D. Power and Associates award for highest customer satisfaction among dial-up ISPs and (tie) highest customer satisfaction among broadband ISPs.

As a competitor in the information services marketplace, EarthLink has a fundamental interest in this proceeding, and agrees with the Commission's analysis that "Access BPL offers the promise of a new method for delivery of broadband services to residential, institutional, and commercial users."<sup>1</sup> Electric power lines already reach almost every home and business in the United States, and the rapid deployment of Access BPL systems could provide a cost effective means of bringing broadband Internet access to rural and underserved areas. In addition, Access BPL may provide a competitive alternative to the present cable and DSL duopoly, which would mean increased choices and reduced prices for consumers. EarthLink believes that the reasonable measures proposed by the Commission in the *NPRM* adequately protect existing users and provide appropriate remedies should any harmful interference actually occur. Access BPL is already lawfully being provided in numerous locations throughout the country under the

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<sup>1</sup> *In the Matter of Carrier Current Systems, Including Broadband over Power Line Systems and Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Dockets 03-104 and 04-37, Notice of Proposed Rulemaking, FCC 04-29 (released Feb. 23, 2004) at ¶ 38 (hereinafter "*NPRM*"). See also *NPRM* at ¶ 48 and ET Docket 04-37 (May 3, 2004), Comments of Southern LINC at 6-7, Comments of Current Technologies at 6-10, and Comments of Main.net at 1-2.

Commission's existing Part 15 rules without any significant adverse effects.<sup>2</sup> EarthLink supports the timely adoption of the measures proposed in the *NPRM* with the following minor modifications.

**Access BPL Database.** EarthLink agrees with numerous commentators that the Access BPL public database requirement proposed in the *NPRM* should be modified to prevent its use for anti-competitive reasons.<sup>3</sup> In particular, EarthLink agrees with the suggestion of Main.net that the language of proposed 47 C.F.R. §15.109(g) be amended to only require the city or town where an Access BPL system is deployed, the name of the public utility whose facilities are used for that deployment, and the name, address, and contact information for the Access BPL operating entity.<sup>4</sup> This information would allow anyone who suspects interference from an Access BPL system to contact the operator for more specific information based on the location and type of interference being experienced. Requiring Access BPL operators to provide more specific information – for example advanced notification of deployment, specific operating frequencies, or detailed geographic service information – would put Access BPL operators at a significant competitive disadvantage with respect to their direct, and well established, cable and DSL competitors.

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<sup>2</sup> *NPRM* at ¶¶ 5 and 6. *See also* ET Docket 04-37 (May 3, 2004), Comments of Main.net at 3 and 7, Comments of Current Technologies at 2 and 5, and Comments of United Power Line Council at 2-3.

<sup>3</sup> *See* ET Docket 04-37 (May 3, 2004) Comments of AT&T Corp. at 7, Comments of the United Power Line Council at 12, Comments of Southern LINC at 9, and Comments of Duke Energy Corporation at 8. *See also* Comments of the Information Technology Industry Council at 6 and Comments of Current Technologies at 18-21.

<sup>4</sup> ET Docket 04-37 (May 3, 2004), Comments of Main.net at 8.

**Timeframe for Adaptive Interference and Shutdown Technology.** EarthLink agrees with other parties that the Commission should establish a two or three year window for compliance with any new requirements for devices to implement remote adaptive interference mitigation and shutdown capabilities. This implementation window will provide time for manufacturers to include these capabilities and for existing Access BPL systems to come into compliance.<sup>5</sup>

**Definition of “Access BPL.”** EarthLink supports the Commission’s proposed definition of “Access BPL” and believes that the Commission should make clear that its proposed definition of “Access BPL” applies regardless of the relationship of the Access BPL operator to the electric utility owner. EarthLink believes that Access BPL will prove to be a commercially successful means of providing broadband services to homes and businesses, and EarthLink has been working closely with many different industry players to help make Access BPL a reality. Like Main.net and Current Technologies, EarthLink is not affiliated with or owned by an electric utility.<sup>6</sup> EarthLink notes that the Commission’s proposed definition states that Access BPL is a “...system that transmits radio frequency energy by conduction over *electric power lines owned, operated, or controlled by an electric service provider...*”<sup>7</sup> This definition does not address the relationship of the Access BPL operator to the electric service provider, nor should it. Rather, the definition simply clarifies that Access BPL must be provided over electric

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<sup>5</sup> See ET Docket 04-37 (May 3, 2004), Comments of Current Technologies at 3, Comments of United Power Line Council at 11.

<sup>6</sup> See ET Docket 04-37 (May 3, 2004), Comments of Main.net at 5 and Comments of Current Technologies at 5.

<sup>7</sup> NPRM at ¶ 32 (emphasis added).

lines under the ownership or control of someone who is in the business of providing electric utility service (as opposed to telecommunications or cable service).<sup>8</sup>

**CALEA and Broadband Competition.** Finally, EarthLink would like to comment briefly on two issues advanced by several parties that concern issues outside the scope the *NPRM*. These are a request by the Department of Justice that the Commission should declare that Access BPL “service”<sup>9</sup> is subject to the Communications Assistance for Law Enforcement Act (CALEA)<sup>10</sup> and arguments advanced by some Bell Operating Companies and the cable industry that the emergence of Access BPL further justifies deregulation of broadband Internet access service.<sup>11</sup> EarthLink addresses each of these issues in turn below.

Access BPL is the use of electric power facilities to deliver telecommunications and information services to residential and business consumers. The nature of the services provided, rather than the physical facilities used to provide those services, is what determines the legal obligations of the provider under both CALEA and the Communications Act of 1934.<sup>12</sup> CALEA compliance for broadband Internet access,

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<sup>8</sup> See ET Docket 04-37 (May 3, 2004), Comments of the United Power Line Council at 5.

<sup>9</sup> See ET Docket 04-37 (May 3, 2004), Comments of the United States Department of Justice at 4 (“Access BPL *service* to the public is subject to CALEA”).

<sup>10</sup> 47 U.S.C. §1001 *et seq.*

<sup>11</sup> See ET Docket 04-37 (May 3, 2004), Comments of BellSouth Corporation at 2 and 7, Comments of Verizon at 1, and Comments of the National Cable and Telecommunications Association at 3-4.

<sup>12</sup> 47 U.S.C. §151 *et seq.* See *e.g.*, 47 U.S.C. §1001(7) (“person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire”) and 47 U.S.C. §153(46) (“the offering of telecommunications for a fee directly to the public... regardless of the facilities used.”). See *also*, 47 U.S.C. §1001(6) (“information services”) and 47 U.S.C. §153(20) (“information service”).

Voice over Internet Protocol (VoIP), and other packet-switched services are already the subject of a pending proceeding before the Commission,<sup>13</sup> and any decision by the Commission with respect to the CALEA obligations of Access BPL providers is more appropriately resolved in that forum.

Likewise, the Commission has numerous ongoing proceedings in which it is already addressing the issue of the regulatory obligations of the Bell Operating Companies and cable operators with respect to broadband Internet access service provided over DSL and cable facilities, as well as the overall treatment of VoIP and other IP-enabled services offered by any provider.<sup>14</sup> EarthLink agrees with the comments of other competitive providers in this proceeding that the Bell companies and cable operators have an effective duopoly on the provision of broadband services to residential and small business consumers.<sup>15</sup> Access BPL has the *potential* to provide an alternative means of providing broadband services to residential and small business consumers. However, it is years away from being a widely offered service that can provide an effective competitive check on the broadband duopoly that presently exists today. Until millions of consumers nationwide are being competitively served by numerous Access BPL providers, it is far too early for the Commission to use Access BPL as an excuse to

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<sup>13</sup> See *In the Matter of United States Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration Joint Petition for Rulemaking to Resolve Various Outstanding Issues Concerning the Implementation of the Communications Assistance for Law Enforcement Act*, RM No. 10865 (March 10, 2004).

<sup>14</sup> See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33; *Appropriate Framework for Broadband Access to the Internet Over Cable Facilities*, CS Docket 02-52; *In the Matter of IP-Enabled Services*, WC Docket 04-36; and *In the Matter of Petition of SBC Communications Inc for Forbearance from the Application of Title II Common Carrier Regulations to IP Platform Services*, WC Docket 04-29.

<sup>15</sup> See ET Docket 04-37 (May 3, 2004), Comments of AT&T Corp. at 2. See also ET Docket 04-37 (May 3, 2004), Comments of LecStar Telecom, Inc. and LecStar DataNet, Inc. at 2.

further deregulate incumbent local exchange carriers or to forbear from regulating cable operators who use their facilities to provide broadband Internet access and other telecommunications based services.

In summary, EarthLink supports the adoption of the Commission's proposed rules with minor modifications. The Commission should proceed expeditiously with adoption of these rules in order to promote the rapid deployment of broadband Internet access and other services over Access BPL systems.

Respectfully submitted,



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