

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

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

**MOTION FOR EXTENSION OF THE REPLY COMMENTS DEADLINE
AND
FOR RE-ISSUANCE OF CERTAIN PROPOSED RULE PROVISIONS
BY
THE NATIONAL ANTENNA CONSORTIUM
AND THE AMHERST ALLIANCE**

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The NATIONAL ANTENNA CONSORTIUM (NAC) is a non-profit advocacy group, composed of those who own, use or manufacture antennas and/or own, lease or build commercial communications towers. THE AMHERST ALLIANCE is a citizens' advocacy group which favors Low Power Radio in particular -- and more open access to the airwaves, by everyday Americans and small businesses, in general.

NAC and THE AMHERST ALLIANCE hereby submit this Motion For Extension Of The Reply Comments Deadline And For Re-Issuance Of Certain Proposed Rule Provisions. This Motion follows our joint Written Comments of May 1, 2004. It also follows our February 19, 2004 joint request for a 2-month extension of the established comment period. That request was denied by the Commission, along with similar requests from other parties.

This filing is a *new* Motion, based upon *new* evidence.

New Evidence For A New Motion

The central argument for the NAC/Amherst comment period extension request, and for similar requests by other parties, was the need for commenting parties to have enough time to review and evaluate a landmark study of BPL interference by the National Telecommunications and Information Administration (NTIA).

The *widely acknowledged* problem of BPL interference has fueled virtually all of the controversy over FCC actions to re-affirm its current authorization of BPL operations and encourage the expanded use of BPL technologies. Thus, the NTIA's study of BPL interference has a literally *crucial* role to play in any evaluation of how -- or if -- BPL interference can be prevented or sufficiently mitigated.

The NTIA's recent study was not released to the public until April 28, 2004: 6 days (and 4 workdays) before the Written Comments deadline of May 3, 2004.

Only on April 28 did we learn that this is a *2-part* study. *Phase I* of the NTIA's study was released on April 28, but *Phase II* of the study is still pending.

Thus, unless the Commission reverses its denial of the various requests for a longer comment period, it will have allowed commenting parties only:

6 days to prepare Written Comments on Phase I of the NTIA study

36 days to prepare Reply Comments on Phase I of the NTIA study

And

0 days to prepare Written Comments on Phase II of the NTIA study

0 days to prepare Reply Comments on Phase II of the NTIA study

The FCC has denied earlier requests for a longer comment period, submitted by ourselves and others, on the grounds that 6 days to file Written Comments, plus 30 days to file Reply Comments, constitute enough time for commenting parties to prepare and file responses to *the* NTIA's study. While this assertion would be highly debatable *even if* the entire study had been released to the public on April 28, the fact is that the 36 days are available only for preparing and filing responses to *part* of the study. The FCC's explanation for denying the comment deadline extension is not applicable at all to the other part of the NTIA's study.

As a broader point, the FCC has yet to provide a solid overall "rationale for the rush" on BPL. Indeed, it has failed to provide any rationale at all, solid or otherwise.

April 28 made it clear that the FCC is even planning *total denial of any* opportunity for commenting parties to review and evaluate Phase II of the NTIA study. For all we know, the FCC may proceed to a final rule so quickly that even *its own staff* may be denied an opportunity to review and evaluate Phase II of the NTIA's study.

Additional New Evidence For A New Motion

1. The INTERNATIONAL ELECTRICAL AND ELECTRONIC ENGINEERS of the United States of America (IEEE-USA) filed their Written Comments on May 3, 2004. In these Written Comments, IEEE-USA offered an assessment which reinforces the NAC/Amherst call -- in our May 1 Written Comments -- for re-issuance of the proposed rule's provisions on interference prevention, interference mitigation and enforcement.

We emphasize the following statement for the FCC's consideration:

We are concerned that the Commission's proposals for "interference mitigation" in the NPRM are inadequate in terms of being effective in resulting in timely resolution of interference problems in practice.

2. IEEE-USA's May 3 Written Comments also echoed our concerns -- expressed in our February 19 and May 1 filings in this Docket -- that commenting parties are not being allowed adequate time for the preparation of filings that address the NTIA's research on BPL interference.

Speaking of the issuance of Phase I of the NTIA's study on April 28, IEEE-USA said this to the FCC:

... the information contained in this report would have, *had it been available sufficiently before the comment period in this Proceeding to permit a thorough review and analysis of its contents*, been a valuable resource for the public in the formation of its comments. [The emphasis in this quote is theirs, not ours.]

Based solely on the time needed for an adequate review and evaluation of the Phase I study *alone*, without taking into account the pending Phase II study, the Written Comments by IEEE-USA urge the Commission to extend the Reply Comments deadline by “at least 30 days” and preferably by 45 days. This would convert to a new Reply Comments deadline of Thursday, July 1 to Thursday, July 15.

THE MOTION ITSELF

The NATIONAL ANTENNA CONSORTIUM (NAC) and THE AMHERST ALLIANCE submit the following 2-part Motion:

1. We urge the Federal Communications Commission to extend the Reply Comments deadline, in Docket 04-37, until *the later of* these 2 dates:

- (a) Wednesday, September 1;
- Or*
- (b) 2 months after the public release of Phase II of the NTIA’s study of BPL interference.

2. We urge the Federal Communications to re-issue, in a form which is substantially more clear and complete in its details, those provisions of its proposed rule, in Docket 04-37, which concern interference prevention, interference mitigation and the enforcement of standards.

We further urge the Federal Communications Commission to establish a Written Comments deadline which is *the later of* these 2 dates:

(a) Wednesday, September 1;

Or

(b) 2 months after publication of the re-issued proposed rule provisions in the FEDERAL REGISTER.

In addition, we urge the Federal Communications Commission to set a Reply Comments deadline which follows by 30 days the Written Comments deadline.

CONCLUSIONS

For the reasons which are set forth herein, *and/or* in our February 19 and May 1 filings in Docket 04-37, we urge the Federal Communications Commission to grant, expeditiously, the Motion which is set forth above.

Respectfully submitted,

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