

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

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

**PETITION FOR RECONSIDERATION OF THE UNITED POWER LINE  
COUNCIL**

Pursuant to Section 1.429 of the Federal Communications Commission (“FCC”) Rules, the United Power Line Council (“UPLC”) hereby submits this petition for reconsideration of the *Report and Order* in the above referenced proceeding.<sup>1</sup> The UPLC respectfully requests reconsideration of two rules: 1) Section 15.615(a), requiring Access BPL operators to post information to the BPL database within 30 days prior to initiation of service; and 2) Section 15.37(l), requiring all Access BPL devices that are manufactured, imported, marketed or installed after the transition period to comply with new Subpart G, including certification of the equipment. Although the UPLC agrees with the BPL database requirement generally, it disagrees with requiring the information to be provided for posting to the BPL database 30 days in advance of operation.

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<sup>1</sup> *Carrier Current Systems, including Broadband over Power Line Systems*, Report and Order, ET Docket No. 04-37, 19 F.C.C.R. 21,265 (“*Report and Order*”).

Instead, information should be posted when BPL operations commence. Similarly, although the UPLC agrees with the transition period generally, it disagrees with requiring all equipment that is marketed or installed after the transition date to comply with the new rules, including the certification requirement. Instead, the FCC should continue to permit the marketing or installation of Access BPL equipment that complies with the existing rules for another eighteen (18) months after the transition period.

#### **I. Introduction**

The UPLC applauds the FCC and the NTIA for their extraordinary effort to produce quickly rules that both protect against interference and promote the deployment of BPL. The FCC has affirmed that the interference potential from BPL is low, and has concluded that any interference that might occur can be effectively mitigated by the BPL operator remotely. Similarly, the NTIA has reduced the number of frequencies on which BPL operations are prohibited, and has tailored the exclusion zones and consultation areas. As such, the UPLC is pleased with the final rules, which address many of its concerns raised on the record.

The 30-day advance notice requirement for the BPL database and the transition period for installed equipment are the two remaining issues which would unnecessarily upset the balance in the rules that the FCC and NTIA have otherwise achieved. Any benefit from requiring 30-day advance posting of information to the BPL database is outweighed by the

competitive disadvantage this rule places on BPL operators. Similarly, imposing an 18-month transition deadline on the marketing or installation of Access BPL equipment will as a practical matter impose a much shorter timeframe in which the equipment must be actually brought into compliance with the new rules, as described below. As such, the UPLC requests that the Commission eliminate the 30-day advance notice requirement for the BPL database, and extend the 18-month transition period as it applies to the marketing or installation of Access BPL equipment.

**II. The FCC should not require 30-day advance notice disclosure of BPL operations on the BPL database.**

In the *Report and Order*, the Commission required BPL operators to provide certain information to the BPL database manager 30 days prior to initiation of any operation or service.<sup>2</sup> The 30-day advance notice requirement for the BPL database was not proposed in the NPRM, and it was only raised in comments by NTIA among others.<sup>3</sup> Consequently, there was inadequate opportunity to comment on the 30-day advance notice requirement for the BPL database. Moreover, the *Report and*

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<sup>2</sup> *Report and Order* at ¶85. See also 47 C.F.R. §15.615(a) (requiring BPL operators to provide the BPL database manager information on all existing Access BPL systems and all proposed Access BPL systems for inclusion into a publicly available data base, within 30 days prior to initiation of service.)

<sup>3</sup> Comments of National Telecommunications and Information Administration at vi, 8-11 (filed June 4, 2004)(explaining that advance notification would allow local radio operators to coordinate with BPL operations).

*Order* does not explain the basis upon which it adopted the rule. As such, the rule itself is arbitrary and capricious.

Although this specific rule was never proposed, the UPLC and other parties did express competitive concerns with respect to the amount of information disclosed on the BPL database.<sup>4</sup> As such, these comments generally requested that the Commission limit the amount of information disclosed on the database to basic contact information that would be necessary to facilitate the resolution of interference complaints. Naturally, requiring BPL operators to post information to the BPL database in advance of operation only heightens the UPLC's concerns on the record about tipping off BPL competitors.

The 30-day advance notification requirement would turn the BPL database into a convenient way for competitors implementing different technologies to spy on the industry's activities and to fend off competition from BPL in their service areas. Thirty days would allow these competitors plenty of time to drop prices and to concentrate marketing efforts in the zipcodes listed on the database. Meanwhile, the FCC does not require these competitors to disclose similar information in advance of their operations.<sup>5</sup>

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<sup>4</sup> Comments of the UPLC at 12 (filed May 3, 2004).

<sup>5</sup> Although cable providers are required to provide signal leakage reports, these reports do not report the level of detailed information required for the BPL database, nor are these annual reports required in advance of operation. *But see Report and Order* at ¶49 (comparing cable signal leakage reports to consultation requirements for BPL).

Moreover, the 30-day advance notice requirement is unnecessary. First, BPL operators are already required to provide 30-day advance notice to Public Safety entities in local BPL deployment areas.<sup>6</sup> Second, in addition to restrictions in defined excluded bands and exclusion zones, BPL operators are already required to provide 30-day advance notice to Federal government in prescribed consultation areas.<sup>7</sup> Finally with respect to other operations in local areas, the FCC has expressly declined to extend similar considerations towards other licensed users, including amateur operations.<sup>8</sup> Therefore, imposing a 30-day advance notification requirement through the BPL database would be largely redundant with respect to avoiding interference with public safety and Federal operations. For avoiding interference with other local operations, the 30-day advance notice requirement would only have a marginal benefit that would be greatly outweighed by the competitive damage that would be caused to BPL operators.<sup>9</sup> Without the 30-day advance notice requirement, the BPL

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<sup>6</sup> 47 C.F.R. §15.615(e) (requiring BPL operators to provide the same information as disclosed on the BPL database to public safety users in areas where BPL deployments are planned at least 30 days prior to the initiation of any operations or service.)

<sup>7</sup> 47 C.F.R. §15.615(f)(3) (requiring BPL operators to provide notification to a specified point of contact for Federal government operations in defined consultation areas, at least 30 days prior to initiation of any operation or service.)

<sup>8</sup> See *Report and Order* at ¶53 (declining to establish “Access BPL-free zones around airports, military bases, hospitals, police stations and fire stations” or to afford special protection to amateur radio frequencies, which it noted are often are used for “routine communications and hobby activities,” and which are sufficiently protected under the general Part 15 provisions.)

<sup>9</sup> As the NTIA noted in its comments, BPL operators can “extract local frequency assignment data from the pertinent Commission databases, identify the locations and frequencies used by local radio receivers and plan BPL operating frequencies in a

database would continue to serve its primary purpose effectively as a mechanism for resolving harmful interference from BPL operations. As such, the UPLC respectfully requests that the FCC eliminate the 30-day advance notice requirement for posting information to the BPL database.

**III. The Commission should extend the 18-month transition period as it applies to the marketing or installation of equipment.**

In the *Report and Order*, the Commission clarified that “after the transition period, all Access BPL devices that are manufactured, imported, *marketed or installed* shall comply with the requirements specified in subpart G of Part 15, including certification of the equipment.”<sup>10</sup> The UPLC respectfully requests that the Commission extend the transition period as it applies to the marketing or installation of equipment in order to provide sufficient time as a practical matter in which manufacturers may bring their equipment into compliance with the new rules.

As a practical matter, requiring equipment that is marketed or installed after the 18-month transition period to comply with the new rules will require equipment providers to obtain equipment certification at a much earlier time than the July 7, 2006 deadline. Manufacturers may need as much as nine months of lead time for certification in order to meet this requirement. It makes no sense to impose tighter deadlines necessary to meet marketing and installation restrictions than the

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manner that avoids BPL interference to local co-frequency radio receivers.” See Comments of NTIA at 11 (filed June 4, 2004).

<sup>10</sup> *Report and Order* at ¶129 (emphasis added). See also 47 C.F.R. 15.37(l).

deadlines that would apply to the manufacture and importation of equipment. In essence, it would put the proverbial cart before the horse. As such, we believe that the Commission did not intend such a result, and suggest that the Commission continue to permit the marketing and installation of equipment for another eighteen (18) months after the transition period, until January 7, 2008.

This will allow equipment manufacturers time to sell inventoried equipment that complies with the existing rules and time to produce new equipment that complies with the new rules. At the same time, this will not diminish interference protection, because the equipment that will be marketed and installed during the extended transition period still must not cause harmful interference. The UPLC submits that this would also be consistent with Commission precedent, which has generally provided more time for manufacturers to implement new rules for other Part 15 equipment.<sup>11</sup>

#### **IV. Conclusion**

The UPLC respectfully requests reconsideration of the rules to eliminate the 30-day advance notification requirement for the BPL database and to allow equipment to be marketed or installed after the 18-month transition period until January 7, 2008 before it must comply with

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<sup>11</sup> See *Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), *recon. denied*, 9 FCC Rcd 3386 (1994). And see, *Revision of Part 15 to Extend the Receiver Certification Program, to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 F.C.C.2d 687 (1976), *clarified*, 62 F.C.C.2d 693 (1976).

the new rules in Subpart G, including the equipment certification requirement. Reconsideration of these rules will greatly promote the deployment of BPL, while continuing to protect against the low potential of interference from BPL operations.

The UPLC also takes this opportunity to express its appreciation for the extraordinary work of the FCC and NTIA to develop the rules, which generally balance the interests of promoting BPL and protecting against possible interference from it. Reconsideration of the aforementioned rules as described above will ensure that the balance that the FCC and NTIA have otherwise achieved will not be upset by anti-competitive manipulation of the BPL database and unintended accelerated deadlines for equipment compliance during the 18-month transition period.

**WHEREFORE, THE PREMISES CONSIDERED,** the UPLC is pleased to provide this Petition for Reconsideration of the *Report and Order*.

Respectfully submitted,

**UPLC**

By: \_\_\_\_\_

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