

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

In the Matter of)
)
Carrier Current Systems, including)
Broadband over Power Line Systems...) ET Docket No. 03-104
)
Amendment of Part 15 Regarding New)
Requirements and Measurement) ET Docket No. 04-37
Guidelines for Access Broadband over)
Power Line Systems...)

REPLY TO OPPOSITION TO PETITION(S) FOR RECONSIDERATION

Pursuant to Section 1.429(g) of the Commission's Rules, JAMES EDWIN WHEDBEE, files* this reply to opposition to petition(s) for reconsideration of the Report and Order ("Opposition") in the above-captioned proceeding filed by CURRENT Technologies, L.L.C. ("CURRENT"), and all others similarly situated.

A. Summary...

I, JAMES EDWIN WHEDBEE, possess licenses from the Federal Communications Commission ("Commission") as NOECN in the Amateur Radio Service, WQCK-274, in the Aviation Service, and as a commercial radio operator. I am the former owner of a Low Power TV station. I was initially licensed by the Commission on October 23, 1981 as KA0MLG, at age 12; accordingly, this is my 24th year as a licensee. I am a Distinguished Honor Graduate of the United States Army's Signal School and Ft. Gordon, GA in digital communications, with over three years' active duty experience in digital communications. Currently, I hold a Master's Degree in School Law.

Including errata, between March 31, 2004 and September 28, 2004, I filed 12 comments and/or reply comments with the Commission. On October

18, 2004, I filed a Petition for Reconsideration (“Petition”) with the Commission seeking to clarify its Report and Order (*19 FCC Rcd 21265 (2004)*) only to the extent that Access BPL (“BPL”) systems be required to offset their regulatory costs by paying regulatory fees; my Petition did address the technical merits of the Report and Order as I felt those would be more adequately addressed by others. Given the irregularity of the Commission’s delayed filing of the Report and Order in the Federal Register, on February 10, 2005, after learning that the Commission might not consider my Petition as timely filed, I filed a request with the Commission, pursuant to Sections 1.41 and 1.46 of the Commission’s rules and regulations, seeking to enlarge the time for filing to include Petitions filed from the date of the Report and Order through the Petition filing deadline given by the Commission in the Federal Register. Accordingly, I am an interested party in these proceedings.

Despite my personal opposition to the methodology suggested by BPL proponents, from the outset, I have expressed the willingness of the amateur radio community to work together with new technology proponents, including those involved in the culmination of BPL technologies. It is an incontrovertible and historic fact that the amateur radio service and community of amateur radio operators have reached out and worked together with proponents of new technologies, and my own efforts toward these ends were illustrative of this. It is also an incontrovertible and historic fact that the amateur radio service and community of amateur radio operators have contributed to the state of the art in telecommunications, including such technologies as BPL. In greater or lesser part, BPL proponents owe their very existence to amateur radio, and should they choose to do so, would benefit from a friendly ongoing relationship.

Responses I received from BPL proponents, and indeed even from the Commission, varied from cold and unresponsive, rude and inconsiderate, to outright hostile and threatening. In its Report and Order, the Commission gives a thinly veiled threat to the amateur radio community not to seek sanctions against non-compliant BPL providers. (*Paragraph 87 of the Commission's Report and Order.*) Accordingly, it seems only fair and logical that my comments would tend to progress from the optimistic - wanting to work with BPL proponents - to the pessimistic - that BPL proponents and the Commission did not care who they railroaded, as long as the NPRM was adopted. Following the Report and Order, I filed a Petition for Reconsideration not seeking what, in my opinion, would amount to a *de novo* review of the technical merits of the proposal, but instead - and again, trying to work with the Commission - offsetting the Commission's regulatory burden by requiring payment of annual regulatory fees by Access BPL providers. On March 28, 2005, I received a 32 page book, entitled: "Opposition to Petitions for Reconsideration," from CURRENT, on their own behalf and implicitly on behalf of others similarly situated, wherein my name was mentioned within the context of petitioning the Commission for reconsideration of its Report and Order ab initio. For reasons of obsolescence, I do not.

B. Objections raised by CURRENT to this Petitioner's Petition...

CURRENT Technologies, LLC, mentions that it opposes my Petition in a footnote on page 2 of its Opposition, in broad and general terms, but fails to give a specific reason why. That same footnote observes that the Commission lacks jurisdiction to waive a time limitation regarding the filing of Petitions for Reconsideration. It cites a Court of Appeals case involving a particular party who was within a licensed/instrument-of-authority-required service. (*Reuters, Ltd. v. FCC, 781 F. 2d 946, 951.*) CURRENT is mistaken. The same Court makes exceptions to this apparent "lack of jurisdiction" argument in

other cases. (*Inter alia: McElroy Electronics Corp. v. FCC, 86 F.3d 248, et seq. (DC Cir. 1996).*) Assuming the Commission would not propound an illegal regulation, and assuming the latter Court case is also accurate in its analysis of the law, Sections 1.46 and 1.41 of the Commissions rules and regulations authorize such expansions of time. Furthermore, given the irregularity/inefficiency in the Commission's own efforts to timely publish the Report and Order in the Federal Register, I feel safe in assuming no Court would object to extensions of time when the Commission's own actions precipitate the need therefore.

C. Objections raised by CURRENT generally...

CURRENT extensively argues that the Commission correctly concluded that BPL's interference would be low. It gives three main reasons: (1) that, the Commission reasonably interpreted NTIA data; (2) that, the Commission based its decision on adequate data; and, (3) that, the interference from trial BPL operations were not predictive. These arguments were specious for reasons I shall state below.

First, the Commission definitely did interpret NTIA data. That NTIA data could be interpreted in a manner opposite to the Commission's, and for reasons I'll state below, should have been. Second, the Commission made a decision on the basis of adequate data. I agree. Unfortunately, the Commission took a tortured view of that data which distorts it so BPL could be implemented, and the proof of this is the Commission's insistence that aviation band frequencies be notched out from BPL usage. Last, CURRENT argues that trial BPL operations aren't predictive of the interference potential of BPL. I disagree; those trials are all the practical evidence we have one way or another. The NTIA data could be interpreted to prove satisfactorily that harmful interference is not only likely, but given that the

BPL trials have been causing interference, should have been so interpreted. Furthermore, data from ARRL and others should have been considered with equal weight as those of NTIA, yet those were all but ignored.

CURRENT argued that Part 15 doesn't require absolute protection from all interference. I agree. Part 15 requires protection from harmful interference, as is defined in Section 15.3(m) of the Commission's rules and regulations. It is unnecessary to revisit what constitutes harmful interference, as this long-standing regulation has served and continues to serve that purpose. Section 15.5 of the Commission's regulations requires operators of Part 15 devices to cease and desist upon notification from Commission representatives. Given the Commission's current level of foot-dragging on interference complaints, I have no question interference has occurred if a Commission representative contacts a BPL provider for shutdown of its equipment. However, CURRENT should not construe the Commission's foot-dragging to mean it doesn't have a duty to eliminate interference as Section 15.15 of the Commission's regulations require that "Emissions...shall be suppressed as much as practicable..." Further, the equipment BPL operators use is subject to the label requirement of Section 15.19(a)(3) which states that operation of that equipment is subject to it not causing interference.

CURRENT argues that the Commission need not treat all licensed services identically. Indeed, the Commission doesn't. CURRENT also argues the Report and Order's technical and operational rules strike a balance among services and BPL. The Commission indeed had the foresight not to permit interference with aviation radio because it didn't want the legal liability that would be associated with an A380 Airbus crashing into the Potomac River because of BPL. Apparently, it didn't take that logic a step further to consider the exposure created when other services can't operate

due to BPL. After all, when the noise ceilings become sufficiently high, the Commission's own personnel would have to admit that other insidious uses of the electromagnetic spectrum may have a deleterious effect on our national security. This might be the reason certain governmental facilities are protected in the Report and Order. Bottom line: not all interference complaints are specious, and CURRENT and others similarly situated are stuck with dealing with interference complaints if those occur. The Commission is not going to protect CURRENT and others similarly situated when people die or become disabled because communications become unreliable due to BPL technology – CURRENT and others similarly situated will be on their own then.

Finally, in reply to CURRENT, I would suggest that BPL will die its own death soon enough. When I was seven years old and living in Cheney, Kansas, my father and I put together a working carrier-current AM broadcast transmitter. As a teenager, I was putting together wireless “internet” services on amateur radio (actually what would later become the internet). My military service was 100% about digital communications; as I was decorated in combat for my achievements in keeping a digital communications system active over a geographical area much greater than originally intended. I grew up with this technology and know it well – well enough to state unequivocally that BPL is already obsolete. I understand that some in the Commission needed to pass this rule in order to pad their own inadequate resumés, or that President Bush and his administration sought to throw the energy companies a bone by requiring this rule be implemented, or for other similar reasons of patronage. Whatever the reason for adopting this Report and Order, my Petition sought only to offset the Commission's costs for its implementation by imposing a modest regulatory fee on the BPL providers. Taxpayers should not have to subsidize the correction of interference by BPL.

D. Conclusion...

None of the BPL proponents, including CURRENT, stated any opposition to a reasonable annual regulatory fee being imposed in connection with the costs of Commission oversight of BPL. My Petition does not seek a review of the Report and Order, apart from the limited objective of preventing taxpayer subsidization of interference investigation, enforcement, and mitigation arising due to BPL. Given there is no objection to these regulatory fees, the Petition should be granted.

Respectfully Submitted:



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Petitioner

March 29, 2005.

*(NOTE: ELECTRONICALLY SERVED BY FILING ON E.C.F.S.)