

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

In the Matter of	)	
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United Power Line Council's Petition for	)	WC Docket No. 06-10
Declaratory Ruling Regarding the	)	
Classification of Broadband Over Power Line	)	
Internet Access Service as an Information	)	
Service	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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February 27, 2006

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**REPLY COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> submits these reply comments in response to the initial comments filed on February 10, 2006, as part of the Federal Communications Commission's (Commission or FCC) public notice seeking comment on the United Power Line Council's (UPLC) Petition for classification of broadband over power line (BPL) as an interstate information service (Petition) in the above-referenced docket.<sup>2</sup> NTCA renews its request that the Commission either deny the Petition or delay ruling on the Petition until it can review a more complete record.<sup>3</sup>

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> Pleading Cycle Established for Comments on United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet access service As An Information Service, Public Notice, WC Docket No. 06-10, DA 06-49 (rel. January 11, 2006) (Public Notice).

<sup>3</sup> NTCA silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals. Unless specifically stated below, NTCA reasserts its positions described in its February 10, 2006 initial comments filed in this docket.

## **I. Introduction**

Several commenters in this proceeding have urged the Commission to grant the UPLC Petition and classify BPL as an interstate information service, contending the record is sufficient for such classification.<sup>4</sup> NTCA and other commenters disagree,<sup>5</sup> and some commenters urge the Commission to condition any classification of BPL as an information service.<sup>6</sup> NTCA reasserts its position that the BPL record is insufficient, premature, and lacks detailed examples of commercially viable trials in rural markets, and that BPL will encourage cross-subsidization by the electric industry.<sup>7</sup> The Commission should, instead, either deny the petition or develop further a BPL-specific record on these issues and those additional issues raised in this proceeding, including in-home network interference, state jurisdiction, consumer protection, law enforcement, and discriminatory pole attachment rates, terms and conditions.

## **II. The Electric Utilities Promise Broadband Deployment Via BPL, But Do Not Provide Record Evidence Of Its Mass-Market Feasibility.**

Those commenters who support the UPLC Petition include, predictably, electric utilities (Duke Energy, Progress Energy and San Diego Gas & Electric Company) who:

a) recognize that BPL is still in its infancy; b) do not expand the record with additional

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<sup>4</sup> Duke Energy Corporation and Cinergy Broadband, LLC Joint Comments, p. 4; Progress Energy Comment, p. 2; San Diego Gas & Electric Company, pp. 1, 4; Telecommunications Industry Association (TIA) Comment, p. 1; First Communications, LLC Comment, p. 1. UPLC's comments in this proceeding mirror its Petition.

<sup>5</sup> NTCA Comment, p. 1; New Jersey Division of the Ratepayer Advocate Comment, p. 3; Pennsylvania Public Utility Commission (PA PUC) Comment, pp. 7-8 (characterizing the instant docket as a "limited proceeding"); Comptel Comment, pp. 1-2; Virtual Hipster Comment, p. 4.

<sup>6</sup> Panasonic Comment, p. 1; Florida Cable & Telecommunications Association, Cable Television Association of Georgia, Cable Telecommunications Association of Maryland, Delaware, and the District of Columbia, California Cable & Telecommunications Association, South Carolina Cable Television Association, and Alabama Cable Telecommunications Association (State Cable and TV Associations) Joint Comments, p. 6; NextG Networks Comment, p. 2; Virtual Hipster Comment, p. 4.

<sup>7</sup> NTCA Comment, p. 1.

data regarding existing BPL trials; c) rely heavily on the vague allegations contained in the UPLC petition; and d) are members of the UPLC.<sup>8</sup> These commenters promise broadband deployment in exchange for regulatory freedom from state controls, but the Commission should disregard these promises, as the electric companies do nothing to support those promises. San Diego G&E, for example, asserts that it initiated a BPL pilot in September 2005 but failed to include any details, such as the location, subscribership, and economic success or failure of the pilot.<sup>9</sup> San Diego G&E notes that it is involved in a California PUC proceeding on BPL, which indicates that state public utility commissions and consumer advocates have expressed an interest in how their utility infrastructure, and their ratepayers' rates, will be affected if electric companies seek to expand their offerings with BPL-enabled services, such as Voice over Internet Protocol (VoIP) over BPL.<sup>10</sup> The New Jersey Ratepayer Advocate expressed its concern most clearly in its comments:

BPL is an evolving technology that is offered in isolated markets and not ubiquitously offered on a national scale to the extent DSL and cable modem are now offered. As a result, this Petition is simply premature and dismissal is appropriate.<sup>11</sup>

NTCA agrees with these observations. Cable modem and DSL (wireline broadband) services were in existence on a large scale for years before the Commission, after carefully reviewing an extensive record, classified them as information services. BPL services are too few for accurate classification.

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<sup>8</sup> Duke and Cinergy Joint Comments, pp. 2, 4; Progress Energy Comment, p. 2; San Diego Gas & Electric Company, pp. 2-3; UPLC web site: <http://www.uplc.utc.org/page/63215/index.v3page> (UPLC member listing).

<sup>9</sup> San Diego Gas & Electric Company Comment, p. 4.

<sup>10</sup> *Ibid.*

<sup>11</sup> New Jersey Division of the Ratepayer Advocate Comment, p. 3.

Cinergy Broadband, filing jointly with Duke Energy, is a subsidiary of Cincinnati Gas & Electric Company and asserted that it has a commercial BPL network on its distribution system.<sup>12</sup> Cinergy failed, however, to provide any details regarding the Cincinnati pilot.<sup>13</sup> Comptel, in opposing the UPLC Petition, accurately observed that it is inappropriate to grant “wide sweeping relief” and that the Petition advocates a regulatory vacuum for BPL.<sup>14</sup> The Commission should not grant reduced federal or state oversight on BPL-enabled services absent hard, concrete examples of viable BPL deployments.

Progress Energy, the parent company for Carolina Power and Light and Florida Power Corporation, alluded to its distribution system’s capability to use BPL but neglected to include any details of any BPL pilots or commercial offerings.<sup>15</sup> UPLC, in commenting on its own Petition, explains at great length its organizational structure and indicates that there are number of BPL deployments, but does not include any details on BPL pilots or offerings other than those contained in its Petition.<sup>16</sup> Classification turns on the particular facts of how Internet technologies work and how they are provided.<sup>17</sup> By not citing specific, detailed examples of commercially viable BPL service offerings, the electric companies’ empty promises of broadband deployment to the mass-markets, especially rural markets, are useless and should not form the basis for any Commission grant of reduced regulatory oversight.

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<sup>12</sup> Duke and Cinergy Joint Comments, p. 2.

<sup>13</sup> The Commission may reasonably question the purpose behind such an obvious omission of relevant data.

<sup>14</sup> Comptel Comment, pp. 1-3.

<sup>15</sup> Progress Energy Comment, pp. 1-2.

<sup>16</sup> UPLC Comment, p. 4. First Communications LLC (a CLEC telecom carrier in Ohio) and TIA (an equipment manufacturer trade association) also supported the UPLC Petition but failed to cite any viable BPL deployments. First Communications Comment, pp. 3, 7; TIA Comment, p. 4.

<sup>17</sup> Comptel Comment, p. 8, *citing Brand X* decision, *NCTA v. Brand X*, 125 S.Ct. 2688, 2705 (2005).

### **III. The BPL Record Also Lacks Evidence On Relevant Issues Other Than Actual BPL Deployments.**

In addition to details on viable BPL deployments, the BPL record is deficient on several issues raised in the comments, including in-home network interference, state jurisdiction, consumer protection, law enforcement, and discriminatory pole attachment rates, terms and conditions. Comptel asserted that the Commission should issue a Notice of Inquiry (NOI) to develop a complete record regarding; 1) how BPL services are offered to the public; 2) implications on classifying BPL as information services; and 3) if the Commission should use its forbearance authority to address certain rules.<sup>18</sup> If the Commission declines to deny the UPLC Petition, Comptel's NOI approach or Virtual Hipster's rulemaking approach<sup>19</sup> are reasonable methods to creating a more complete record, as the earlier BPL NOI and rulemaking did not address these critical issues.<sup>20</sup>

Panasonic and Virtual Hipster expressed concern about in-home network interference that BPL would create for the end-user consumer and his/her neighbors,<sup>21</sup> while the State Cable and TV associations, Virtual Hipster and NextG Networks urge the Commission to consider pole attachment rates, terms and conditions issues.<sup>22</sup> The Commission may be exploring these issues in the pending pole attachment abuse

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<sup>18</sup> Comptel Comment, p. 2.

<sup>19</sup> Virtual Hipster Comment, p. 4.

<sup>20</sup> *Inquiry Regarding Carrier Current Systems, including Broadband Over Power Line Systems*, Notice of Inquiry, ET Docket No. 03-104; 18 FCC Rcd 8498 (2003) (BPL Inquiry); *Carrier Current Systems including Broadband Over Power Line Systems and Amendment of Part 15 Regarding New Requirements and Measurement Guideline for Access Broadband Over Power Line Systems*, Notice of Proposed Rulemaking, ET Docket Nos. 03-104 and 04-37, 19 FCC Rcd 3335 (2004) (BPL Rulemaking); NTCA Comment, p. 3.

<sup>21</sup> Panasonic Comment, pp. 2-3 (citing the need for "coexistence protocol" to prevent interference with high-definition television signals and other in-home network devices); Virtual Hipster Comment, p. 4 (asserting that the Commission should consider precise technologies being deployed as part of its decisions).

<sup>22</sup> NextG Networks Comment, pp. 1-2; State Cable & TV Assn. Joint Comments, p. 6, 7; Virtual Hipster Comment, p. 4.

proceedings,<sup>23</sup> and should incorporate its findings in the BPL proceedings.<sup>24</sup> Finally, the Pennsylvania Public Utilities Commissions reminds the FCC that state consumer protection laws and law enforcement needs should be considered in any BPL proceeding.<sup>25</sup> These are issues into which the Commission should further inquire.

#### **IV. Conclusion**

For all the reasons set forth in NTCA's initial comments, the Commission should either reject the UPLC Petition or delay ruling on the Petition until the Commission has developed a more complete record including the issues raised in this docket.

Respectfully submitted,

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<sup>23</sup> *In re Petition of the United States Telecommunications Association*, RM 11293; *In re Petition of Rulemaking of Fibertech Networks, LLC*, RM 11303 (filed Jan. 30, 2006).

<sup>24</sup> The PA PUC notes that BPL issues cross over into the pending IP-Enabled Services docket (WC Docket No. 04-36), the Intercarrier Compensation docket (CC Docket No. 01-92) and the BPL reconsideration petitions (ET Docket No. 04-37). PA PUC Comment, pp. 2-3. Clearly, the Commission must take an encompassing, careful approach to classifying BPL.

<sup>25</sup> PA PUC Comment, p. 4 (urging the FCC to retain state authority to address consumer BPL issues at the state level). The New Jersey consumer advocate asserted a similar proposition ("State commissions have concurrent jurisdiction to promote and regulate broadband"). New Jersey Division of the Ratepayer Advocate Comment, p. 3.

**CERTIFICATE OF SERVICE**

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-10, DA 06-49 was served on this 27th day of February 2006 via U.S. postage mail or electronically to the following persons:

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