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July 9, 2008

Via ECFS Filing Only

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, S.W.
Washington, D.C. 20554

Attention: Office of Engineering and Technology

Re: Notice of Oral Ex Parte Presentation, ET Docket 04-37

Greetings.

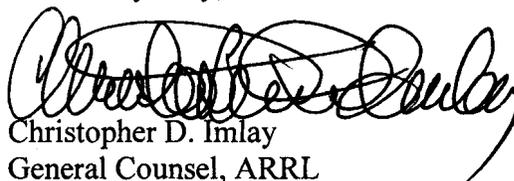
On Wednesday, July 9, 2008, representatives of ARRL, the National Association for Amateur Radio (ARRL), met with several members of the staff of the Commission's Office of Engineering and Technology, including Mr. Julius Knapp; Mr. Bruce Romano; Geraldine Matisse, Esquire; Mr. Ira Keltz; and Ms. Anh Wride. Members of the Commission's Laboratory staff participated by videoconferencing. Attending on behalf of ARRL were Joel Harrison (President), David Sumner (Executive Vice President) and the undersigned, General Counsel.

The purpose of the meeting was to discuss a possible regulatory approach for Broadband over Power Line (BPL) systems, post-remand from the United States Court of Appeals for the District of Columbia Circuit. ARRL's proposed revised rules would address the needs and concerns of Amateur Radio operators in avoiding harmful interference from Broadband over Power Line Systems (BPL) while imposing the minimum necessary regulatory obligations on BPL deployments. ARRL's proposal is set forth in the attached one-page memorandum, copies of which were delivered to the Commission's staff at the meeting.

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Questions concerning the foregoing ex parte statement or the attachment hereto should be addressed to the undersigned counsel.

Yours very truly,



Christopher D. Imlay
General Counsel, ARRL

cc:

Mr. Julius Knapp
Mr. Bruce Romano
Geraldine Matisse, Esq.
Mr. Ira Keltz
Ms. Anh Wride

Attachment

BPL: DOCKET 04-37, POST-REMAND

Inasmuch as the Mandate of the Court of Appeals issued on June 13, 2008, the April 25, 2008 decision of the Court in *American Radio Relay League, Incorporated v. FCC and USA* is now binding on the Commission. Given that the case was remanded to the Commission for further proceedings in ET Docket 04-37, it is timely to discuss options for modified rules post-remand. While it is recognized that the Commission is obligated by the Court's Opinion to conduct further proceedings, there are at this point rules that could be adopted which would, at once, (1) protect Amateur Radio communications from predictable harmful interference from BPL; and (2) permit broadband over power line systems to operate in the 3 to 80 MHz range without significant constraint and without substantial redesign or retroactive build outs.

The Court of Appeals remanded the BPL case to the Commission in two respects. First, it ordered that “[o]n remand, the Commission shall make available for notice and comment the unredacted ‘technical studies and data that it has employed in reaching [its] decisions’ ...and shall make them part of the rulemaking record.” The discussion of what was not released was limited to the five, substantially redacted early field studies that the OET staff conducted of BPL field trials.

Second, the Court ordered that on remand, the Commission “shall either provide a reasoned justification for retaining an extrapolation factor of 40 dB per decade for access BPL systems sufficient to indicate that it has grappled with the 2005 studies (i.e., the Crieff, Scotland studies done by OFCOM), or adopt another factor and provide a reasoned explanation for it.”

Since the 2004 rulemaking in Docket 04-37 was commenced, BPL technology has evolved. Second generation (2G) BPL modems are typically capable of -35 dB of “notching”, which is more than 10 dB better than the first generation. Commission rules do not require that Amateur allocations be “notched” but the 2G modems are now deployed almost universally and can do so. DS2, Homeplug and Panasonic have indicated that their 2G modems are capable of such. Main.net is believed to be as well. So, rule modifications can be adopted to incorporate the two parameters of which the modems are now capable: (1) mandatory notching of all Amateur allocations by BPL systems; and (2) notch depths of 35 dB. These two factors would be sufficient together to reduce the number of potential interference problems to a small enough number that it would be practical to address them on a case-by-case basis. They are also achievable by present BPL technology without significant limitation on BPL deployment.

As to the 40 dB/decade extrapolation factor, the Commission must revisit that per the Court's Opinion. Since a reasoned justification for a 40 dB/decade extrapolation factor cannot be sustained in the face of the existing contrary evidence, the Commission should adopt another extrapolation factor that is consistent with the evidence.