

BOOTH, FRERET, IMLAY & TEPPER, P.C.

ATTORNEYS AT LAW

ROBERT M. BOOTH, JR. (1911-1981)
JULIAN P. FRERET (1918-1999)
CHRISTOPHER D. IMLAY
CARY S. TEPPER

BETHESDA OFFICE:
7900 WISCONSIN AVENUE, SUITE 304
BETHESDA, MD 20814-3628

TELEPHONE: (301) 718-1818
FACSIMILE: (301) 718-1820
TEPPERLAW@AOL.COM

SILVER SPRING OFFICE: ✓
14356 CAPE MAY ROAD
SILVER SPRING, MD 20904-6011

TELEPHONE: (301) 384-5525
FACSIMILE: (301) 384-6384
BFITPC@AOL.COM

February 25, 2009

Via Courier and E-mail
Michael.Copps@fcc.gov

Honorable Michael Copps, Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: ET Docket 04-37; Broadband Over Power Lines;
American Radio Relay League, Inc. v. FCC, 524 F.3d
227 (D.C. Cir. 2008).

Dear Chairman Copps:

This is written on behalf of our client, ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL). As you know from a number of meetings with ARRL representatives over the past few years, ARRL has been substantially concerned about interference to Amateur Radio communications from Broadband over Power Line (BPL) technology, and the inadequacy of the present rules governing BPL operation to prevent instances of such interference. Your office has been willing to listen to these concerns during the pendency of the Docket 04-37 proceedings, for which we are grateful. Nevertheless, the Commission was given some specific instructions by the United States Court of Appeals for the District of Columbia Circuit last April in *American Radio Relay League, Inc. v. FCC*, No. 06-1343, and to date, literally nothing has been done by the Commission to comply with those instructions. ARRL respectfully requests that the Commission revisit the BPL rules without further delay, and to comply with the obligations placed on it by the Court.

The Court did not vacate the Commission's 2004 BPL rules (47 C.F.R. § 15.601, *et seq.*) adopted in *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, Carrier Current Systems* 19 FCC Rcd. 21,265 (October 28, 2004). Indeed, ARRL did not request such, because the current Part 15 rules, inadequate though they are, were slightly preferable to the general application of the Part 15 rules to BPL systems in terms of interference prevention. Nevertheless, the Commission's inaction since the Court's remand has served neither BPL deployment, nor Amateur Radio, well. From the

perspective of BPL systems, the regulatory uncertainty attending the remand has inevitably had a dampening effect. From the perspective of the Amateur Radio Service, there are still no rules in place which adequately protect licensed Amateur Radio operators from interference from BPL systems. While there are configurations of BPL systems which can adequately reduce the probability of interference *ex ante* and without significant constraints on BPL deployment, the current BPL rules do not mandate the use of these interference prevention mechanisms.

The Court of Appeals remanded the BPL proceeding to the Commission for further proceedings with two, very specific instructions: 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’ [with respect to BPL]...and shall make them part of the rulemaking record.” These technical studies, which were not released to the public but on which the Commission said it relied in adopting its BPL rules, consisted of five, substantially redacted field studies that the OET staff conducted of BPL field trials. The unredacted studies have not been released to date.

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., BPL studies conducted in Crieff, Scotland by OFCOM], or adopt another factor and provide a reasoned explanation for it.” This pertains to the rate at which radiated emissions from power lines carrying access BPL decay with distance from the power lines, and therefore the extent to which the radiated energy from the lines can interfere with licensed radio services such as Amateur Radio.

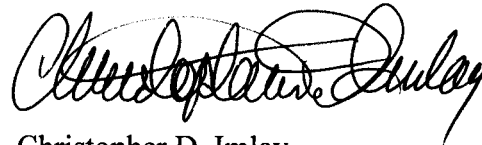
Since the 2004 rulemaking in Docket 04-37 was commenced, BPL technology has evolved. This has created an opportunity to craft revised BPL rules which address the actual interference potential of BPL systems while still enabling BPL as a broadband delivery or grid management technology. ARRL, some eight months ago, offered a plan to OET in this regard. A copy of our submission to OET is attached hereto. The revised regulations suggested by ARRL would be sufficient to reduce the potential interference to the point that it would be practical to address such instances on a case-by-case basis. Compliance is achievable with present BPL technology without significant limitation on BPL deployment.

Whether or not OET is willing to consider ARRL’s specific proposals for revised BPL rules, the Commission is long overdue in complying with the very clear and specific instructions of the United States Court of Appeals for the District of Columbia Circuit, and this cannot be allowed to continue. It is necessary to commence further proceedings in ET Docket No. 04-37 after making the requisite disclosures, and we respectfully urge the Commission to do so without further delay. The Obama Administration, on Inauguration Day this year, placed a series of goals on the White House web site. Among these was the following: “**Restore Scientific Integrity to the White House:** Restore the basic principle that government decisions should be based on the best-available,

scientifically-valid evidence and not on ideological predispositions.” The Commission has the opportunity to implement this goal in this Docket proceeding.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher D. Imlay". The signature is fluid and cursive, with the first name "Christopher" being the most prominent part.

Christopher D. Imlay
General Counsel, ARRL

Copies: Commissioner Adelstein
 Commissioner McDowell
 Mr. Julius Knapp, Chief, OET
 Docket 04-37 (Via ECFS)

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TELEPHONE: (301) 718-1818
FACSIMILE: (301) 718-1820
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SILVER SPRING, MD 20904-6011
TELEPHONE: (301) 384-5525
FACSIMILE: (301) 384-6384
BFITPC@AOL.COM

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.

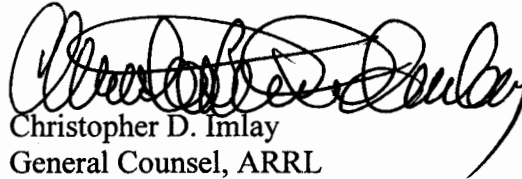
On Wednesday, July 9, 2008, representatives of ARRL, the National Association for Amateur Radio (ARRL), met with several members of the staff of the Commission's Office of Engineering and Technology, including Mr. Julius Knapp; Mr. Bruce Romano; Geraldine Matisse, Esquire; Mr. Ira Keltz; and Ms. Anh 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.