

March 13, 2006

**VIA HAND DELIVERY**

Hon. Jaclyn Brilling  
Secretary  
State of New York Public  
Service Commission  
Three Empire State Plaza, 14<sup>th</sup> Floor  
Albany, New York 12223-1350

Re: Case 06-M-0043 – Proceeding on Motion of the Commission to examine  
Issues Related to the Deployment of Broadband over Power Line  
Technologies

Dear Secretary Brilling:

Attached per your instructions are an original and 15 copies of the Comments. In addition, copies were served electronically to the parties on the service list. Please time-stamp the enclosed copy of our Comments as proof of service and return same to our courier.

Respectfully submitted,

Elise L. Hiller

**Enclosure**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission to Examine  
Issues Related to the Deployment of  
Broadband Over Power Line Technologies**

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**Case 06-M-0043**

**COMMENTS OF THE CABLE TELECOMMUNICATIONS  
ASSOCIATION OF NEW YORK, INC ON ISSUES RELATED TO THE  
DEPLOYMENT OF BROADBAND OVER POWER LINE TECHNOLOGIES**

**INTRODUCTION**

The Cable Telecommunications Association of New York, Inc. (CTANY) offers the following comments in the above-captioned proceeding. CTANY applauds the Commission's ongoing efforts to facilitate intermodal competition for the provision of data, voice and video services. Broadband over Power Lines presents an opportunity to further expand competitive choices for consumers of such services. CTANY supports the Commission's principle that, "...competition is the most efficient way of ensuring the provision of quality utility services at reasonable prices..." but also agrees with the Commission's caution that "...BPL raises unique issues which we have not previously considered." (Order, p. 3) The comments contained herein should be read with these broad themes in mind.

**Status and Development of BPL Technology**

The Commission's desire to understand the stage of BPL technology development is well placed, especially if any party argues that utilities or utility affiliates should risk capital on such ventures. While BPL holds out hope for new facilities-based competition and "smart grid" applications, as noted in the Commission's Order, this is still an

immature technology. According to Brett Kilbourne of the United Power Line Council (which purports to represent the BPL ‘industry’, including interested utilities and BPL providers), there are approximately 40 BPL trials currently underway. This number is relatively flat as compared to the year before. Notwithstanding several years of pilot experience, there are a meager 7 commercial deployments, up marginally from last year. And, as NARUC recently reported, “...the year brought news that several BPL trials ended unsuccessfully.” (*Report of the Broadband over Power Lines Task Force*, The National Association of Regulatory Utility Commissioners, February 2006, herein *The NARUC Report*, p. 2) Some examples of failed trials include: a PPL residential BPL pilot in Allentown-Bethlehem Pennsylvania; two Idacorp trials in Reno, Nevada and Boise, Idaho and a test in Raleigh, North Carolina which resulted in a decision not to deploy for the time being. In the case of the Idacorp decision not to deploy, NARUC quoted the Idacorp CEO as observing that, while there was long term potential for BPL, he does not see widespread adoption by utilities in the near term. (*The NARUC Report*, p. 6)

As part of the NARUC Task Force’s work, it asked EPRI to research the current state of the technology and utility attitudes towards deployment. After extensive interviews with a diverse group of utilities, the report concluded:

Although they acknowledge that regulatory support is important to BPL implementation, all of the utilities we spoke with felt that regulatory concerns ***pale in comparison with issues of technology performance*** and business strategy. (Emphasis added) (*Understanding Utility Responses to BPL*, EPRI Solutions, February, 2006, contained in p. 15 of *The NARUC Report*.)

Technological issues associated with BPL are well documented. Interference with radio signals has best been documented by ham radio operators. However, as the

NARUC report and others have observed, BPL can interfere with other radio applications such as police, ambulance and taxi radio transmissions. Interference with other types of appliances in the home that may utilize radio frequencies is part of further investigation taking place in ongoing pilots.

While CTANY remains uncertain of the potential for BPL to interfere with VoIP and other communications technologies that may be attached to utility poles, it respectfully urges the Commission to pursue this issue. In addition, CTANY hopes that any interference issues will be mitigated quickly and efficiently and with little or no disruption to others who may be located on the utility pole.

The purpose in citing the current technological immaturity of BPL is not intended to discourage the deployment of another facilities-based technology. Rather, CTANY supports continued research and development of this and other technologies based on market incentives to do so, rather than ratepayer subsidies. Thus, monopoly electric ratepayer dollars should not be placed at risk in a technology that is still in the developmental stage and which could easily give way to superior technologies for many if not all of its functions.

### **TENANT CONCERNS**

If they are not affiliated with owners of bottleneck facilities, new competitors in the broadband marketplace should be treated with the same light regulatory touch as all broadband providers. Providers of BPL services are among the many competitors sharing space on utility poles in an effort to bring broadband service to the customer. As competition increases, and as space on the utility poles may decrease, CTANY would be concerned that the electric utility owner would have financial incentives to

use its monopoly power to the detriment of cable operators with respect to pole attachment issues. Avoiding such favoritism would be no easier a task than it is today with regard to Verizon and other Incumbent Local Exchange Companies. The matter of makeready work offers an example.

Section 224 of the Communications Act, entitles cable operators to attach to poles, ducts and conduits, as these are essential facilities. Pole owners must provide attaching parties such as cable operators with “nondiscriminatory access to any pole, duct, conduit or right-of-way that the utility owns or controls.”<sup>1</sup> When cable operators need to extend their lines or modify or upgrade their plant, they must apply to the pole owners in order to make their modifications. Sometimes the pole owner may not have the space immediately available to easily accommodate the cable operator’s request and thus the pole owner must undertake either some rearrangement of the pole or the pole must be swapped out and a new, taller pole must be installed. The process of either readjusting the pole space or changing out the pole is known as “makeready” and the party seeking to have makeready done is responsible for paying for the makeready. In addition, all cable operators in New York State pay a pole attachment rate to the utility pole owner based upon the FCC formula that was adopted by the New York Commission in 1996.

As the pole owners continue to provide competitive services, swift access to poles and conduit remain a paramount concern to cable operators. Thus, if a new provider of BPL service seeks to access the electric utility pole at the same time as a cable operator, CTANY is concerned that the electric utility owner may favor the BPL provider. That single transaction could well result in a factual dispute over whether there was “insufficient capacity” under 47 USC 224(f) (2) to accommodate cable’s makeready request. BPL providers, cable companies and the Commission do not need to devote time to such disputes. The relationship between cable broadband providers and landline telephone providers has been difficult and the cable relationship with energy delivery companies has been delicate, at best. Both

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<sup>1</sup> 47 USC 224(f) (1)

situations are complicated by an interplay of federal and state laws with arcane factual questions and enormous stakes.

CTANY's goal, which we believe is consistent with that of state and federal regulators, remains nondiscriminatory treatment and to avoid abuse of essential bottleneck facilities. In August 2004, the PSC issued its Order in the Generic Pole Proceeding<sup>2</sup>, which set forth a framework for behavior by pole owners and attachers alike. While there are still some areas of disagreement, the order addressed numerous issues including the application process, performance of preconstruction surveys and costs, makeready estimates and charges, rearrangements and the elimination of the "but-for" rule. In addition, the order also noted that power supplies should be installed in compliance with relevant safety codes giving consideration to the needs of all Attachers. Post construction inspection, overlashing, audits, periodic inspections, and expedited dispute resolution were also included in the order.

The prospect of new entrants (whether they be affiliates or third parties) onto the utility poles serves to underscore the need for timely resolution of outstanding issues between pole owners and attachers. All parties have been engaged in conversations regarding the terms and conditions of a generic pole attachment agreement. Successful resolution of that agreement will help to resolve outstanding questions such as the number of pole applications that can be made, and the nature and content of utility operating procedures.

Given the significance of pole attachment issues to the cable industry and broadband customers, CTANY respectfully requests that the Commission continue to use its Generic Pole Proceeding Order (Case 03-M-0432) to oversee pole attachment issues, such as access, rearrangements, clearance, makeready costs and pole attachment tariff rates. As noted above, we would also request, because BPL may pose interference issues, that the Commission work with its federal counterpart to ensure that

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<sup>2</sup> PSC Case 03-M-0432.

systems or devices be put into place to reduce potential interference or mitigate the effects of such interference.

## CONCLUSION

BPL is a new technology that may someday provide reliable voice, data and video broadband service. As the technology and the economics of the technology mature, financial markets will respond and third parties will be ready to bring BPL to market. Any technical issues, such as interference, should be worked out addressed to the Commission's satisfaction before any commercial launch is considered. Such interference issues should be understood, and mitigated, so that they do not disrupt services provided by other competitors. Continued refinement of pole attachment issues will assure a competitive broadband market for incumbents, prospective providers of BPL and other technologies and thus the Consumers will reap the benefits.

Dated: March 13, 2006

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