

**BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
ALBANY, NEW YORK 12223-1350**

In the Matter of)
)
Proceeding on Motion of the) Case 06-M-0043
Commission To Examine Issues)
Related to the Deployment of)
Broadband over Power Line)
Technologies.)
)
)

To: Commission Secretary

COMMENTS OF UNITED POWER LINE COUNCIL

Pursuant to the Order Initiating Proceeding and Inviting Comments ("NY PSC Order", "Order") in this Case, Issued and Effective January 25, 2006, the United Power Line Council ("UPLC"), by and through its undersigned attorneys, hereby submits these comments in the above-captioned proceeding.¹ The UPLC urges the NY PSC to avoid restrictions on utility involvement in BPL business arrangements, which would unnecessarily discourage the deployment of BPL. Instead, the NY PSC should consider the approach recently proposed in California, which would allow utilities to engage in BPL transactions, and would even allow utilities to offer BPL directly upon approval by the PUC.

¹ CASE 06-M-0043 - Proceeding on Motion of the Commission to Examine Issues Related to the Deployment of Broadband over Power Line Technologies (released, Jan. 25, 2006).

I. INTRODUCTION

The UPLC is an alliance of electric utilities and their technology partners to drive the development of BPL. The UPLC was formed in 2002 in recognition that a handful of electric utilities were testing the technology in the U.S. at that time. From this humble beginning, the UPLC has grown in both numbers and activity. Today, there are approximately 70 companies that are members of the UPLC, and practically every electric utility and technology company that is actively engaged in the deployment of BPL is a member of the UPLC.²

The UPLC was formed by the United Telecom Council, which has represented the telecommunications and information technology interests of all types of utilities and other critical infrastructure industries for over 50 years.³ Even before the formation of the UPLC, UTC advocated for policies to promote the development of BPL.⁴ The Federal Communications Commission (FCC) has authorized UTC to serve as the manager of the Access BPL database, which is a centralized public database used to help resolve potential interference from BPL to licensed radio users.⁵ The UPLC also has Memoranda of Understanding

² A list of the members of the UPLC is available at www.uplc.org.

³ The UTC is unique in that it represents the telecom and IT interests of electric, gas, and water utilities, as well as pipeline companies and other critical infrastructure industries. It also represents the telecom and IT interests of each segment of the electric utility industry: investor-owned utilities (IOUs), municipal utilities (munis) and cooperatively organized utilities (co-ops).

⁴ See *e.g.* Comments of UTC, The Telecommunications Association in ET Docket No. 98-80 (filed Jul. 27, 1998); and Comments of the United Telecom Council in ET Docket No 01-278 (filed Feb. 12, 2002).

⁵ OET Announces United Telecom Council to Serve as Database Manager for Access Broadband over Power Line Systems: Sets Deadline for Information Submission, Public Notice, ET Docket No. 04-37, 2005 WL 2573531.

(MOUs) with various other international BPL organizations, including the PLCForum (Europe), the PLC Utilities Alliance (Europe), and the PLC-J (Japan); as well as various industry consortia that are promoting standards for BPL, including the HomePlug Power Line Alliance and the Universal Powerline Association.

Given its broad-based membership and its ties with other utilities and BPL organizations around the world, the UPLC represents fully the interests of the BPL industry. It has advocated extensively on behalf of the industry in various proceedings at the FCC and with Congress, other regulatory bodies, standards organizations, and trade groups.⁶ In addition to its advocacy efforts, it supports the development of solutions for business, technical and utility applications issues for BPL.⁷ It also hosts industry events, regular meetings, and is engaged with various standard-setting efforts on BPL.⁸ As such, the UPLC is pleased to submit its comments in the instant BPL proceeding in New York.

⁶ See e.g. Comments, Reply Comments and Petition for Reconsideration of the United Power Line Council in ET Docket No. 04-37; Comments and Reply Comments of the United Power Line Council in ET Docket 03-104; Comments of the United Telecom Council and the United Power Line Council in ET Docket No. 04-36; *and* Comments of the United PowerLine Council in ET Docket 02-98.

⁷ The UPLC created committees to focus on each of these areas: business, technical, and utility applications, as well as regulatory. These committees are co-chaired by representatives from a utility and a technology provider.

⁸The UPLC hosts conferences three times a year, including its annual conference, a winter conference, and a BPL symposium at the UTC annual conference. It also holds quarterly audio conference educational presentations. In addition, it holds numerous teleconferences of its members to discuss specific matters of interest. The UPLC is engaged with the IEEE on its various BPL standards efforts, and coordinates with the various industry consortia that are also developing standards.

II. STATUS AND DEVELOPMENT OF BPL TECHNOLOGY

In its Order, the NYPSC asks about the current state of the technology and the implications of likely technology developments over the next 2-3 years.⁹ Specifically, it inquires about the “capacity, performance, robustness and security offered by these systems;” as well as the technical requirements for electric company facilities utilized by the BPL system.¹⁰ It also asks how BPL works with other technologies and whether the technology is developmental or whether it is currently in full commercial production.¹¹ Finally, it asks about the status of standards, and whether “BPL operators will have sufficient safeguards and guidance.”¹²

First, with regard to its technical characteristics, BPL is a last mile technology that delivers symmetrical speeds that are comparable to cable modem and DSL. The speeds will vary depending on the technology used, the system design, and other factors. Signal propagation is also dependent on a number of factors, but generally the signal will carry substantially less than a mile before it needs to be repeated.¹³ Next generation equipment will carry the signal farther.

⁹ *Order* at 4.

¹⁰ *Order* at 4.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ The signal is capable of being repeated multiple times, but each repeat adds latency and cost. As such, BPL systems are designed to limit the number of repeats. Some systems are designed such that they do not use repeaters at all.

Second, with respect to its technology development, different BPL technologies use different frequencies of operation. Although most operate below 54 MHz, the FCC has provided rules for BPL operations between 1.7-80 MHz. There are different network topologies that have been deployed, which reflect that BPL is an enabling technology that continues to develop and can be tailored to serve different environments.¹⁴ As further indication that the technology continues to develop, next generation chipsets are now becoming available that can provide raw throughput speeds of 200 mbps.¹⁵ Recent announcements of large scale commercial deployments of BPL also are an encouraging sign that BPL is nearing commercial production, but equipment performance and availability will vary depending on the provider.¹⁶

Third, with regard to standards, there are various efforts underway and the UPLC is involved with these efforts and organizations. There are several industry consortia that have either developed or are working on specifications for

¹⁴ There are several different types of network architectures. Most BPL providers use both medium-voltage (MV) and low-voltage (LV) lines to deliver the signal to the end-user. However, Amperion uses Wi-Fi from the pole to the end-user; and Motorola uses Wi-Max (Canopy) to the pole and LV to the end-user.

¹⁵ Actual throughput speeds are substantially less than raw throughput speeds, and are affected by the amount of signal loss through coupling and attenuation down the line. Still, end user throughput speeds are expected to be 12 mbps or higher with the new chipsets.

¹⁶ See e.g. Dionne Searcy and Rebecca Smith, *High-Speed Internet Over Power Lines Could Serve Millions*, Wall St. J., Dec. 19, 2005, at B1. (reporting that TXU Corp and Current Communications Group had agreed to roll out BPL to two million customers in Texas). In addition to these commercial deployments, there are over 40 deployments around the country. A map showing the commercial and non-commercial deployments is available on the UPLC website at www.uplc.org.

BPL.¹⁷ At the same time, the IEEE has several standards efforts related to BPL, which are focused on coexistence and interoperability, installation and hardware, and electromagnetic compatibility.¹⁸ Other international standards efforts also are underway related to BPL.¹⁹ These standards efforts are a positive indication that the technology is maturing and the industry continues to grow.²⁰

III. SAFETY AND RELIABILITY OF SERVICE

In its Order, the NY PSC inquires about the interface of BPL equipment with the electric system, and how it affects the safety and reliability of the existing infrastructure. It also inquires as to logistical considerations related to safety and reliability, such as the “qualifications of workers who will install, maintain and improve the BPL system,” as well as the “physical limits of space available on and in existing electric utility facilities.”²¹ The NY PSC also inquires about interference on the lines to and from other devices; whether there are any

¹⁷ These include the Homeplug Powerline Alliance, the Universal Powerline Alliance, and the Consumer Electronics Powerline Communications Alliance. The UPLC has entered into a Memorandum of Understanding with Homeplug and UPA, and will be entering into a MOU with CEPCA.

¹⁸ IEEE P1901 (MAC/PHY) is working on coexistence and interoperability between BPL systems and devices. IEEE P1675 (hardware and installation) is working on standards for compliance with the NESC and NEC. IEEE P1775 (EMC) is working on guidelines for measuring BPL emission for compliance with national interference and immunity requirements.

¹⁹ See e.g. Open PLC European Alliance (OPERA) at <http://www.ist-opera.org/index.html.htm>.

²⁰ Some of the largest manufacturers in the world, including Sony, Mitsubishi, Panasonic, Intel and others are involved in these standards efforts.

²¹ *Order* at 5. Specifically, it asks whether the installation and maintenance of BPL systems should be restricted to electric utility certified personnel and/or other qualified personnel; or if not, what criteria and processes should apply to ensure worker qualifications. *Id.* at 6. It also asks for the minimum physical clearances for overhead and underground BPL installations. *Id.*

obligations to remedy such interference; and what the appropriate forum should be for dispute resolution.²² The *Order* further inquires about the utility applications for BPL, what impact they would have on BPL-based communications services to customers, and the equipment needed and the necessary actions to install and economically deploy these applications for electric utilities and their customers.²³ Finally, the NY PSC inquires about the reliability of BPL services, considering that it uses the electric distribution system.²⁴

A. Interaction with the Electric System

BPL works by transmitting data at a much higher frequency than electricity (>1.7 MHz v. 60 Hz), and as such, the BPL signal can occupy the electric wires without interfering with electric transmission.²⁵ The signal is transmitted onto the power lines using a coupler.²⁶ The couplers act as the interface between the power line network and the backhaul technology that

²² *Id.*

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ See *Order Instituting Rulemaking Concerning Broadband Over Power Line Deployment by Electric Utilities in California*, Order Implementing Policy on Broadband over Power Lines, Draft Decision of Commission Chong, Rulemaking 05-09-006 at 3 (mailed Feb. 10, 2006). (hereinafter "California Draft BPL Decision"). The power delivery system does potentially interfere with the BPL signal, but a variety of BPL technologies have been developed to address these technical challenges. *Id.*, citing *Carrier Current Systems including Broadband over Power Line Systems*, Report and Order, ET Docket No. 04-37, 19 FCC Rcd. 21,265 at ¶16 (hereinafter "FCC Report & Order").

²⁶ There are various types of couplers, including capacitive and inductive couplers, depending on the technology used.

carries traffic back to the Internet.²⁷ There also are couplers that are used to hand the signal off to customers on the low voltage side of the transformer. National and local utility safety codes and consumer product safety codes apply to BPL equipment and have proven effective for the safe operation of BPL systems in deployments around the country.²⁸ The Commission need not develop new safety standards for BPL, nor does it need to develop new test methodologies.²⁹

B. Personnel Qualifications

BPL equipment has been installed by utility workers and qualified contractors in trials and commercial deployments. The equipment can be installed using a “hot stick” or a glove without the need for a scheduled power outage. The UPLC recommends allowing utilities and BPL operators to continue to develop and/or follow their own worker qualification standards and training requirements. Likewise, utilities should continue to follow applicable electrical codes and standards to determine whether BPL equipment meets minimum physical space requirements for overhead and underground installations. Allowing utilities to use certified utility workers or qualified contractors and to follow utility standards for minimum clearances will effectively protect worker safety and promote BPL deployment. Conversely, it would be unnecessary and

²⁷ Various types of backhaul technologies may be used, including fiber and wireless.

²⁸ The IEEE standards for hardware and installation of BPL are based on the NEC and the NESC. The IEEE is following the NESC and the NEC rather than creating new standards for BPL.

²⁹ *But see Order at 5.*

inappropriate for the Commission to attempt to develop its own set of standards for every type of deployment by every type of BPL technology.

C. Interference

Neither should the Commission develop standards for interference between BPL and electrical equipment, such as vacuum cleaner motors, light dimmers, or electric heater thermostats. Interference issues with respect to BPL equipment have been addressed by, and are within the exclusive jurisdiction of, the FCC. BPL is an unintentional radiator and other types of electrical equipment are incidental radiators under Part 15 of the FCC Rules. They must accept interference to and from each other under the FCC Rules.³⁰ Moreover, interference to and from other electrical devices has not been a problem in BPL trials or deployments to date. As such, the Commission need not and should not develop its own rules for resolution of interference between BPL and other electrical devices.

D. Utility Applications

BPL has many potential benefits for utilities and the customers that they serve by enabling “smart grid” applications that could improve electrical system reliability and efficiency. Potential utility applications include automated meter reading, voltage control, equipment monitoring, remote connect and disconnect, power outage notification and the ability to collect data on time-of-day power demand.³¹ Some of these applications have been demonstrated successfully in various BPL trials, and many utilities are interested in BPL primarily for its

³⁰ See, 47 C.F.R. §15.5.

³¹ See *California Draft BPL Decision* at 6.

potential for internal utility applications.³² Still, more work on utility applications is necessary to realize the potential for BPL to improve utility reliability and efficiency.³³ Contrary to its tentative conclusion to limit utility involvement in deployments, the Commission should encourage utility involvement in these efforts, consistent with national policies.³⁴

IV. BUSINESS MODEL: STRUCTURAL CONSIDERATIONS

In its Order, the NY PSC tentatively concluded that utilities should adopt a landlord business model, in which a utility leases or sells access rights for its system to third parties, but does not offer BPL services itself. The NY PSC explains that it prefers structural separation as the most effective means of avoiding cross subsidization; that structural separation requires fewer

³² See *CenterPoint Energy and IBM Announce Deployment of Intelligent Grid Technology*, at <http://markets.chron.com/chron?ID=2986022&Page=NewsRead> (visited Mar. 7, 2006)(reporting that during 2006, CenterPoint Energy will deploy BPL for utility applications exclusively to three separate areas of Houston covering a diverse mix of electric (44,500) and gas (22,500) customers, as well as multi- and single-family homes and commercial customers.) Some of these utility applications were demonstrated live at a recent UPLC conference in San Diego, California. These demonstrations showed how utilities could monitor and control capacitor banks and other utility infrastructure, as well as provide two-way real-time automated meter reading capabilities. More information about the UPLC Demo in San Diego is available at www.uplc.org.

³³ Utilities are working with BPL providers and utility OEMs to develop utility applications that are BPL-enabled. That is another reason that it is important that the Commission not restrict utility involvement in BPL.

³⁴ This would be consistent with the joint statement by FERC and the FCC that “national policies should facilitate rapid deployment of all broadband technologies, including BPL,” recognizing the utility applications for BPL. See *Carrier Current Systems Including Broadband over Power Line Systems*, Notice of Proposed Rulemaking, Joint Statement of FERC Chairman Pat Wood and FCC Chairman Michael Powell (released Oct. 14, 2004).

administrative resources; and that utility investments in the past in competitive affiliates have not been commercially successful.³⁵

The UPLC strongly disagrees with this tentative conclusion. Utilities may choose to adopt a landlord model, and in fact many are pursuing such a business model. However, the Commission should not relegate utilities to the sidelines as passive observers of the BPL business. To do so would remove a potential partner for BPL operators, one with the expertise and the resources necessary to realize the full potential of BPL. It would also discourage the development of utility applications to the extent that utilities are restricted in their involvement with BPL.³⁶ Conversely, structural separation would entail administrative costs that will be borne by utilities and BPL operators, which would further drag the BPL business case down.³⁷ More importantly, structural separation would entail societal costs by delaying or preventing consumers from enjoying the benefits of BPL.³⁸

³⁵ *Order* at 8.

³⁶ Under a landlord model, utilities would not own, operate or manage the BPL system, which would mean that they would be entirely dependent on the BPL operator for utility applications. This would discourage utilities from developing BPL for utility applications for a variety of reasons. For example, if a BPL operator decided to deploy BPL only to the customers subscribing to its service, it would negate the ability of the utility to use BPL for utility applications for unserved electrical customers.

³⁷ Structural separation would create a Chinese wall between utility and BPL activities, and the ongoing costs of compartmentalizing the two would be substantial.

³⁸ Establishing and following structural separation requirements would significantly delay and increase the cost of deploying BPL, neither of which benefits consumers.

Instead of heavy-handed structural separation, the NY PSC should follow the deregulatory approach taken in California. The California PUC broadly exempted BPL transactions from statutory requirements for review of transactions involving utility assets. “In order to permit energy utilities to deploy BPL in a variety of ways, [the California PUC] will allow the participation of utility affiliates in the provision of BPL services.”³⁹ Instead of barring utilities from BPL, it recognized that “limits should be placed on affiliates’ provision of BPL services,” in order to ensure there is not cross subsidization.⁴⁰ As such, BPL transactions would be subject to the same rules as a telephone utility’s transactions with a DSL affiliate; and the risks and rewards of BPL investment would be primarily borne by utility shareholders, rather than ratepayers.⁴¹ Moreover, the California PUC would broadly exempt BPL transactions from statutory provisions that apply to leasing utility assets.⁴² The UPLC believes that

³⁹ *California Draft BPL Decision* at 13

⁴⁰ *Id.*

⁴¹ *California Draft BPL Decision* at 22 (“As a matter of policy, however, we do not believe ratepayer funds should be invested in BPL. For this reason, ratepayer funds should not be used to research, develop or operate a BPL system unless the expenditures can be justified solely on the basis of utility benefits.”) *See also Id.* at 23 (utility shareholders need a financial incentive to pursue BPL projects... [w]e conclude that access fees may be a useful way to provide incentives to shareholders, and, we do not want to preclude the electric utility from receiving access fees.... [w]e conclude however, that we should not require BPL companies, whether affiliated or unaffiliated, to pay access fees to a utility.) *And see Id.* at 27 (adopting a revenue sharing formula that provides incentives for shareholders to make BPL investments in excess of \$225,000).

⁴² *Id.* at 33-47 (concluding that “the public interest is best served by the speed of deployment of BPL technologies, rather than by a more rigorous but necessarily lengthy review process of individual BPL-related transactions.”) *See also Id.* at 44-46 (exempting BPL transactions involving existing facilities from

this approach provides flexibility and strikes an appropriate balance between promoting BPL deployment and protecting against cross-subsidization.

The UPLC supports policies that would not only permit utility involvement in BPL, but provide incentives for utilities to deploy BPL. The Commission should look for ways to streamline or eliminate regulatory requirements that would delay unnecessarily the deployment of BPL. Moreover, the Commission should not impose restrictions on BPL that it does not impose on other broadband platforms, and any such regulations should not be applied more restrictively on BPL than other broadband services. BPL is a nascent technology and an emerging industry. As it is just beginning large-scale commercial deployment, the Commission should avoid imposing regulations that might discourage its development. Consistent with the California PUC and national policy, the Commission should recognize that BPL is in the public interest and that eliminating regulatory barriers, such as those that arbitrarily preclude utility involvement in BPL, will encourage the deployment of BPL.⁴³

V. BUSINESS MODEL: ROLES AND RELATIONSHIPS

Beyond its general tentative conclusion restricting utility involvement in BPL, the Commission inquires into specific roles and responsibilities, such as the installation and maintenance of the BPL system, and customer service and collateral issues, as well as utility applications and billing and collection

environmental review.) *And see Id.* at 46-47 (declining to require the filing of an advice letter for approval of utility/BPL contracts.)

⁴³ It should be noted that this position is strongly held by the organization created jointly by technology provider *and* utilities to develop BPL.

services.⁴⁴ Specifically, the Commission inquires what, if any, utility involvement in the short run should be permitted, and what steps and regulatory oversight is necessary if utility personnel and/or other resources are in any way required in any of these steps.⁴⁵ With regard to customer service, the Commission inquires about potential effects on the functionality of other customer-owned equipment, and collateral service issues if BPL affects equipment owned by others whose premises are in close proximity to the BPL customer and/or the BPL system.⁴⁶ With regard to utility applications, the Commission inquires about the “business and financial relationships between the BPL provider and the incumbent electric utility necessary to preserve the ability to make such improvements when the technology becomes available.”⁴⁷ Finally, the Commission inquires about billing and collection issues that are unique to BPL, and that are not likely to be addressed in the Commission’s Competition III proceeding.⁴⁸

The UPLC urges the Commission to avoid regulating these specific issues with regard to BPL. At the outset, the UPLC believes that the public interest would be better served by permitting and encouraging utilities to participate in BPL business relationships, and their involvement should not be limited to the

⁴⁴ *Order* at 9-11.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.*

⁴⁸ *Id.*

“short run”. Instead, utility involvement in BPL operations should be ongoing and long run to coordinate the design, build-out and maintenance of a BPL network.⁴⁹

In any event, utility linemen will likely be needed to install and maintain BPL equipment, regardless of the business relationship between the utility and the BPL operator. As UPLC stated earlier, the Commission does not need to establish new standards or rules with regard to the use of utility line crews to install and maintain BPL equipment. Nor are rules necessary to address the customer service and collateral concerns that the Commission has raised with respect to interference between BPL and electrical equipment. There is no indication that these concerns are warranted, and in any event, they are covered by Part 15 of the FCC’s rules. Finally, there are no unique billing and collection issues with BPL that would warrant specific rules.

The UPLC also urges the Commission to encourage utilities and BPL operators to negotiate the business relationship with regard to utility applications. If the Commission does decide to review these relationships, it could do so on a case-by-case basis as part of its review of BPL transactions under Section 70 of the Public Service Laws.⁵⁰ However as a general matter, the UPLC urges the Commission to avoid Section 70 review of BPL transactions.⁵¹ These

⁴⁹ Utilities involvement is necessary to ensure that BPL equipment is safely and properly installed, so as not to impact delivery of electric services.

⁵⁰ §70 PSL.

⁵¹ The Commission has avoided Section 70 review of transactions in the past. See e.g. In Case 01-M-0398, *Joint Petition of Niagara Mohawk Power Corporation and NEES Communications, Inc. for Approval of an Agreement Authorizing Attachment of Fiber Optic Facilities on Certain Niagara Mohawk Overhead Transmission Structures*, Order Approving Petition (issued Apr. 5, 2001).

proceedings are time consuming and expensive.⁵² The public interest in the reasonable and timely deployment of BPL would outweigh any benefit that might be gained by exhaustive review of BPL transactions under Section 70. As such, the Commission should consider ways to avoid such review, or to expedite the process. In addition, the UPLC reiterates that the Commission should not attempt to prescribe a general rule regarding the use of utility personnel and other resources for BPL.⁵³

VI. ELECTRIC UTILITY REGULATORY ISSUES

In its Order, the NY PSC suggests that it should develop a “definite set of guidelines addressing the identification and appropriate treatment” of the costs associated with the use of utility personnel and/or resources.⁵⁴ Similarly it also suggests that it would be in the public interest to develop “a set of guidelines addressing the identification and appropriate treatment of incremental electric utility costs as the result of BPL deployment.”⁵⁵ Finally, the Commission asserts that access fees should be based on the results of a competitive bidding process, and asks whether the proceeds should be available to electric customers.⁵⁶

The UPLC urges the Commission to refrain from attempting to engage in asset valuation or determining the incremental costs associated with BPL at this

⁵² Section 70 proceedings usually take six months for approval.

⁵³ See *supra*. at 13.

⁵⁴ Order at 11.

⁵⁵ Order at 12 (advocating guidelines on costs, even though it acknowledges that these costs are largely unknown and highly dependent on the roles and responsibilities of the specific BPL business model.)

⁵⁶ Order at 12-13.

time. As the Commission acknowledges, these costs are highly variable and technology-dependent.⁵⁷ Moreover, given that there are only two Access BPL deployments in the state of New York, it is premature to assess these costs, and the effort to do so would unreasonably impinge on the cost and speed with which BPL would be deployed going forward.⁵⁸

Similarly, the Commission need not develop set access fees or a rate formula under these circumstances, and should not attempt to develop access fees based on a competitive bidding process. Such a process would entail costs and delays that would outweigh any public interest benefits that would be gained, particularly given the limited deployment of BPL in New York. Moreover, it could lead to anomalous results.⁵⁹ Now is simply not the time for the Commission to be delving into these matters; the Commission should encourage BPL development before seeking to impose such regulations, if it imposes them at all. Instead, the Commission should allow the parties to negotiate these matters with a minimum of regulatory involvement.

⁵⁷ *Order* at 12. (“the level and magnitude of such costs is unknown and highly dependent on the roles and responsibilities established in the specific business model...”)

⁵⁸ *Order* at 2 (“In New York, there are two active trial deployments of this technology.”)

⁵⁹ For example, the highest bidder for access to the utility lines may not be the best BPL operator. Conversely, given the limited number of BPL operators in the state, it is not at all clear that a bidding process would be really competitive or that the resulting fee would reflect market value.

VII. CONCLUSION

BPL faces substantial barriers to entry. As the NYPSC notes in its Order competition for broadband Internet access already exists in New York.⁶⁰ Substantial market shares have been claimed by cable companies providing cable modem service and telephone companies offering digital subscriber line (“DSL”) services creating, for all practical purposes, a duopoly. Using data about only the deployment of cable modem service and DSL, the State of New York Department of Public Service Staff determined that 90% of the population of New York had access to broadband at year end 2004.⁶¹ As such, BPL must compete with incumbents that have significant market power in New York.

Meanwhile, customer perceptions of service and price in the broadband Internet access market have already been set and customers have been conditioned to expect more for less over time. Unlike DSL and cable modem which are household terms, consumers are scarcely aware that BPL even exists. Given incumbents’ market power, demanding consumer expectations, and the continuing development of the technology as well as the public’s general lack awareness about it; there is considerable risk associated with offering BPL in New York.

Collectively all of these factors make it premature to declare any given business model, structural or relational, either prohibited or preferred. There are simply too many variables and too little data to support such a determination.

⁶⁰ Order at 1-2.

⁶¹ Appendix E, Telecommunications in New York: Competition and Consumer Protection; A White Paper Prepared by the State of New York, Department of Public Service Staff. Dated September 21, 2005. Filed in Case 05-C-0616.

Further what is right for the circumstances of one utility may not be right for another utility having different characteristics in its existing business operations.

A decision by the NYPSC affirming its tentative conclusion would be a death knell to any and all alternative business models with potential to result in the rapid deployment of BPL through direct involvement of the utility or an affiliate. It also would undercut the benefits that could be gained from deploying BPL to support utility applications.⁶² Such a decision would also stand in contrast to the treatments afforded and proposed for BPL in Texas⁶³ and California. In both states participation by affiliates and third parties is permitted. In California direct ownership by the utility also is possible.⁶⁴

In sum, BPL technology continues to mature and is nearing full commercial production, as is evident in several announcements of large-scale deployments. The Commission should encourage the technology to continue to develop by adopting a light-handed deregulatory approach. Moreover, the Commission should refrain from dictating business models for BPL generally, and should encourage utility involvement in the continued development of BPL technology and its use for utility applications. This approach would serve the public interest in the deployment of BPL for broadband access, competition and

⁶² The utility application benefits will be limited if BPL operators deploy systems only to their commercial customers, which is likely under a strict landlord business model. This would cut off a significant portion of the BPL business case.

⁶³ See V.T.C.A., Utilities Code, §43.001 *et seq.* SB 5 passed August 10, 2005. (SB5, 79th Leg., 2nd C.S. (TX. 2005)).

⁶⁴ "Rather, should a regulated energy utility wish to provide BPL service on a tariffed or non-tariffed basis, it should seek Commission approval to do so under existing Commission procedure." *California Draft BPL Decision* at 16.

enhanced utility applications. It would also help overcome the significant and growing barriers to entry into the broadband Internet access market.

WHEREFORE, THE PREMISES CONSIDERED, the UPLC urges the Commission to encourage the deployment and continued development of BPL through deregulatory pro-competitive policies consistent with national policies and those in California and Texas, as recommended herein.

Respectfully submitted,

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