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Broadband over Powerlines: Regulatory and Policy Issues

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Summary

Congress has expressed significant interest in increasing the availability of broadband services throughout the nation, both in expanding the geographic availability of such services, as well as expanding the service choices available to consumers. The telephone, cable, and satellite industries, and more recently the electric utilities, all provide broadband services to consumers. Driven by the growth of the Internet and the increasing demand for broadband services, electric utilities began exploring ways to turn a previously internal communications capability into a commercially viable, consumer service — Broadband over Powerlines (BPL).

BPL has the potential to play a significant role in increasing the competitive landscape of the communications industry but also has the potential to extend the reach of broadband to a greater number of Americans. BPL, like any technology, has its advantages and disadvantages. Proponents state that (1) BPL is less expensive to deploy than the cable and telephone companies' broadband offerings, (2) it does not require upgrades to the actual electric grid, and (3) it is not limited by certain technical constraints of its competitors. However, critics have expressed ongoing concern that BPL could interfere with licensed radio spectrum such as amateur radio, government, and emergency response frequencies.

The Federal Communications Commission (FCC) has been investigating BPL since 2003 and adopted the Report and Order (FCC 04-245) in the proceeding in October 2004. Among other items, the Order

- Set forth rules imposing new technical requirements on BPL devices
- Established bands within which BPL must avoid operating entirely and "exclusion zones" within which BPL must avoid operating on certain frequencies
- Established a publicly available BPL notification database to facilitate resolution of harmful interference
- Changed the equipment authorization for BPL systems from verification to certification
- Improved measurement procedures for all equipment that use RF energy to communicate over power lines.

The FCC is conducting two other proceedings that will likely have an impact on BPL, one related to the applicability of the Communications Assistance for Law Enforcement Act (CALEA) on new services and the other the regulatory classification of services enabled by the Internet Protocol. Orders in both proceedings are expected during 2005.

During the 109th Congress, with respect to the FCC's BPL Order, on April 21, 2005, the House of Representatives passed H.Res. 230, to express the sense that the FCC should reconsider and revise its rules governing BPL "based on a comprehensive evaluation of the interference potential of those systems to public safety services and other licensed radio services."

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Broadband over Powerlines: Regulatory and Policy Issues

Background

Congress has expressed significant, ongoing interest in increasing the availability of broadband[1] services throughout the nation, both in expanding the geographic availability of such services (e.g., into rural as well as more urban areas), as well as expanding the service choices available to consumers (e.g, promoting additional service options at reasonable prices).

The telephone, cable, and satellite industries, and more recently the electric utilities, all provide broadband services to consumers. Electric utilities have long had the ability to send communications over their powerlines through what is called powerline communications (PLC) technology, but that capability was used primarily to maintain the operability of the power grid — remote monitoring of the grid and other management functions. It was not offered as a commercial product because of technical limitations and regulatory limitations under the Public Utility Holding Company Act of 1935 (PUHCA).[2] Specifically, regarding regulatory limitations, PUHCA prohibited electric utilities from entering the retail telecommunications market without all of their operations, including the telecommunications component, being regulated by the Securities and Exchange Commission under PUHCA. However, in 1996, driven by the elimination under the Telecommunications Act of

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[1] The FCC currently defines "broadband" as a service or facility with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second (kbps); it uses the term "high-speed" to describe services and facilities with over 200 kbps capability in at least one direction. Broadband is also different from narrowband modem service in that it is "always on," meaning there is no need to dial up. See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996* (CC Docket No. 98-146), Report, February 6, 2002. This document is available online at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-33A1.pdf]. For further information about broadband and broadband deployment, see CRS Issue Brief IB10045, *Broadband Internet Access: Background and Issues*, by Angele A. Gilroy and Lennard G. Kruger.

[2] Public Utility Holding Company Act (PUHCA) of 1935, 49 Stat. 803, (1935), 15 U.S.C. Sect. 79, *et seq*. PUHCA also addresses issues such as cross-subsidization, the subsidization of competitive services with profits from regulated services, which could become an issue as BPL is deployed more widely. Cross-subsidization within the electric industry, however, is not an issue for the FCC and is beyond the scope of this report. For a detailed description of PUHCA, see CRS Issue Brief IB10006, *Electricity: The Road Toward Restructuring*, by Amy Abel and Larry Parker.

the PUHCA limitations[3] and the increasing demand for broadband services, electric utilities began exploring ways to turn PLC into a commercially viable, consumer service — Broadband over Powerlines (BPL).[4]

Many electric companies are now in the process of upgrading their transmission and distribution systems to provide BPL.[5] This technology has the potential to play a significant role in increasing the competitive landscape of the electric utility and telecommunications industry, as well as making broadband available to more Americans than ever before. BPL, like any technology, has its advantages and disadvantages. For example, BPL, in general, is less expensive to deploy than the cable and telephone companies' broadband offerings because it does not require upgrades to the actual electric grid and is not limited by certain technical constraints of its competitors. Specifically, the telephone companies' broadband service, digital subscriber line (DSL), is limited to consumers within 18,000 feet of a central office unless expensive remote equipment is placed close to the customer. Cable companies, while not limited by the same distance restrictions as the telephone companies, still must upgrade their cable plant as well as the equipment at their

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[3] In 1996, the FCC adopted regulations to implement new Section 34(a)(1) of PUHCA. Under new Section 34, registered public utility holding companies may enter the telecommunications industry without prior Securities and Exchange Commission (SEC) approval by acquiring or maintaining an interest in an "exempt telecommunications company" (ETC). Also, exempt public utility holding companies, by owning or acquiring an interest in an ETC, may now acquire a "safe harbor" from potential SEC regulation under PUHCA Section 3(a). *In the Matter of Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935* (GC Docket No. 96-10), Report and Order as added by Section 103 of the Telecommunications Act of 1996, September 12, 1996. The Report and Order is available online at [http://www.fcc.gov/wcb/cpd/other_adjud/Archive/99etc.html].

[4] Two types of BPL exist — "In-house" BPL and "Access" BPL. In-house BPL uses "the electrical outlets available within a building to transfer information between computers and between other home electronic devices, eliminating the need to install new wires between devices. Using this technology, consumers can readily implement home networks." Access BPL provides "high speed Internet and other broadband services to homes and businesses. In addition, electric utility companies can use Access BPL systems to monitor, and thereby more effectively manage, their electric power distribution operations." *Carrier Current Systems, including Broadband over Power Line Systems* (ET Docket 03-104) *and Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems* (ET Docket 04-37), Notice of Proposed Rulemaking (NPRM), February 23, 2004, para. 3. The NPRM is available online at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-29A1.pdf]. This report addresses only Access BPL and so uses the term "BPL" to mean "Access BPL." A summary of this NPRM can be found at Federal Register, Vol. 69, No. 52, March 17, 2004, pp. 12612-12618.

[5] See *Potential Interference from Broadband over Powerline Systems to Federal Government Radio Communications at 1.7-80MHz, Phase 1 Study, Volume I,* Section 9. National Telecommunications and Information Administration Report 04-413 (NTIA Report), April 2004. This report is available online at [http://www.ntia.doc.gov/ntiahome/fccfilings/2004/bpl/ FinalReport Adobe/NTIA_BPL_Report_04-413_Volume_I.pdf]. This report contains an in-depth overview of the technologies and network topologies used to provide BPL with accompanying diagrams.

"head end"[6] to provide cable modem service. Finally, Internet service delivered via satellite is still primarily a downstream-only service, with a dial-up connection required to send data to the Internet. However, critics of BPL have expressed concern that it will interfere with licensed radio spectrum such as amateur radio, government, and emergency response frequencies.

Companies both in the United States and abroad have pilot tested BPL and many are now deploying it commercially. For example, Manassas, VA, became the first U.S. community with a commercial BPL offering.[7] The pilot test, according to the city and its partners, was extremely popular with the test market and was considered to have been a success; the service is now being offered to the city's 35,000 residents. However, in Manassas as well as in other areas where BPL is being deployed, there have been some concerns and difficulties. For example, amateur radio operators have stated their concern that BPL will interfere with their radio signals.[8] Efforts are being made by industry and government to address these concerns while still continuing BPL deployment.

In addition to providing new choices for consumers and increased competition in the broadband market, BPL can provide other benefits, both to the electric utilities and to others. As tests and commercial deployments continue, the electric utilities can capitalize on their existing relationships with consumers and the ubiquity of their networks. Also, BPL can be sold either as a retail service under the electric utility's brand or as a wholesale service to third-party ISPs, offering smaller broadband providers another wire to the customer — and electric utilities have expressed interest in providing such open access on a wholesale basis.[9]

Concerns among electric utilities and investors about BPL deployment do remain, however. Although the pilot tests have been successful, the viability of large-scale commercial implementation remains unproven. Also, while name recognition will help the electric utilities as they roll out their service, there is also concern that they may have an unfair competitive advantage over smaller, less established providers. In this case, however, this may not be a significant concern

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[6] The head end is "the cable television company's local facility that originates and communicates cable modem and cable TV services to its subscribers. The cable company's head-end includes the [equipment used to provide] high-speed Internet access to cable subscribers. ISP Glossary. Available online at [http://isp.webopedia.com/TERM/C/cable_headend.html].

[7] A thorough overview of the Manassas project is available from the American Public Power Association. This document is available online at [http://www.appanet.org/LegislativeRegulatory/ Broadband/news/Manassas9222003.pdf].

[8] The American Radio Relay League commissioned a report on BPL interference that was submitted to the FCC as part of ARRL's comments in the BPL proceeding. This report is critical of BPL deployment and its effects on amateur radio frequencies. *BPL Trial Systems Electromagnetic Emission Tests*, Metavox, Inc. March 20, 2004. Available online at [http://www.arrl.org/announce/regulatory/et04-37/ARRL_04-37_Comments_Exhibit_A.pdf]

[9] "Broadband Over Powerlines," Angel M. Cartagena, Jr., *Electric Perspectives*, March/April 2004. This article is available online at [http://www.eei.org/magazine/editorial_content/nonav_stories/ 2004-03-01- Broadband.htm].

because of the size of the established broadband providers, the telephone and cable companies.[10] Finally, although BPL is likely to be deployed further out into rural areas than either cable or DSL, it remains to be seen if BPL is as economical to deploy in those areas as policymakers and rural consumers hope.

The FCC opened a rulemaking proceeding on the technical issues related to BPL deployment in February 2004 and adopted a Report and Order on the proceeding in October 2004 (ET Docket 04-37, FCC 04-245)[11] (see "Regulatory Activity — Federal Communications Commission," page 6). Congress may wish to monitor how the FCC implements the rules that will guide BPL development and deployment, as well as monitor more general issues surrounding BPL, such as industry and societal issues, regulatory and industry governance issues, and technical issues. These final three items are discussed in detail at the end of this report (see "Issues for Congress," page 10).

Stakeholders

In addition to marketplace competitors and consumers, the key stakeholders in this issue are the BPL industry, amateur radio operators (represented primarily by he Amateur Radio Relay League (ARRL)), and various government entities.

In favor of BPL deployment and the FCC's rules is the BPL industry: the electric power companies, Internet service providers (ISPs), BPL equipment manufacturers, BPL system solutions companies (such as Main.net), and the trade associations representing those companies. Trade associations involved include the Edison Electric Institute, the Powerline Communications Association (PLCA), the PLC Forum, United Power Line Council (UPLC), and the United Telecom Council (UTC).[12] These groups have a financial stake in bringing BPL successfully to market and are eager to enter the broadband business.

Amateur radio users had been opposed to BPL deployment because of concerns over its potential negative impact — specifically, interference — on amateur radio frequencies by BPL emissions. However, after the FCC adopted the BPL Report and

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[10] "The first wave of BPL roll-outs doesn't pose much of a threat to the Comcasts and Verizons of the industry, which boast millions of customers and have been selling high-speed access since the late '90s. Some 22 million U.S. households already subscribe to a broadband service, according to Forrester Research analyst Jed Kolko, making it one of the biggest hits of the digital age." Maryanne Murray Buechner, "Power Play: Electric grids May Become the Next Providers of Broadband Internet Access," *Time*, May 3, 2004. Available online at [http://www.time.com/time/insidebiz/article/0,9171,1101040503-629395,00.html].

[11] The news release with a summary of the key elements of the Report and Order is available online at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253125A1.pdf].

[12] Website addresses for these groups are listed at the end of this report.

Order, the ARRL issued a statement indicating that, for the most part, its concerns had been taken into account in the proceeding.[13]

In addition to the abovementioned groups, several government entities have an interest in how BPL is deployed. Specifically, local and regional emergency responders, the Department of Defense, the Federal Emergency Management Agency (now part of the Department of Homeland Security), and the National Telecommunications and Information Administration (NTIA) within the Department of Commerce have expressed both concern and support for BPL. Although these groups express concerns similar to those of ARRL — namely that BPL could potentially interfere with emergency communications and steps need to be taken to ensure noninterference — they also express support for BPL because they believe it will contribute to a more secure and better-managed electric transmission and distribution network.[14] The NTIA expresses support for BPL because of its potential to further close the "digital divide,"[15] one of its major goals. Further, because of the services that can be offered over BPL (e.g., Voice over Internet Protocol [VoIP]), the law enforcement community is also concerned about the regulatory treatment of BPL – specifically, whether BPL services should be subject to federal wiretap requirements set forth in the Communications Assistance for Law Enforcement Act (CALEA).

The FCC has the largest role in how BPL will be deployed. It not only is the regulatory agency that developed the rules governing BPL, it also has a statutory obligation under Section 706 of the Telecommunications Act of 1996 to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[16] The FCC, therefore, will maintain a significant influence on how the market for BPL service develops.

Federal Communications Commission Activity

The FCC has been investigating BPL since 2003 and adopted rules regulating BPL systems in October 2004; it is also addressing BPL-related issues in its CALEA and IP-Enabled Services Proceedings.

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[13] Amateur Radio Relay League, "FCC Acknowledges Interference Potential of BPL as it Okays Rules to Deploy It." October 14, 2004. Available online at [http://www.arrl.org/news/stories/2004/10/14/1/?nc=1].

[14] See *supra* note 5.

[15] The "digital divide" refers to the "gap between those who can effectively use new information and communication tools, such as the Internet, and those who cannot." While a consensus does not exist on the extent of the divide (and whether the divide is growing or narrowing), there is general agreement that some degree of divide exists. The Digital Divide Network, *Digital Divide Basics*. Available online at [http://www.digitaldividenetwork.org/content/sections/index.cfm?key=2].

[16] See Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

Broadband over Powerline Systems Proceeding

In April 2003, the FCC issued a Notice of Inquiry (NOI),[17] *Inquiry Regarding Carrier Current Systems, including Broadband over Powerline Systems*,[18] to gather comments concerning whether it should amend its Part 15 Rules[19] "to facilitate the deployment of Access BPL while ensuring that licensed services continue to be protected."[20] The FCC received over five thousand initial and reply comments in response to its NOI during July and August 2003. These comments were discussed at length in the FCC's February 2004 Notice of Proposed Rulemaking (NPRM), *Carrier Current Systems, including Broadband over Power Line Systems and Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems*.[21] The FCC adopted its Report and Order in this proceeding in October 2004. Specifically, the Order

- Set forth rules imposing new technical requirements on BPL devices, such as the capability to avoid using any specific frequency and to remotely adjust or shut down any unit

- Established "excluded frequency bands" within which BPL must avoid operating entirely to protect aeronautical and aircraft receivers communications; and establishes "exclusion zones" in locations close to sensitive operations, such as coast guard or radio astronomy stations, within which BPL must avoid operating on certain frequencies

- Established consultation requirements with public safety agencies, federal government sensitive stations, and aeronautical stations

- Established a publicly available BPL notification database to facilitate an organized approach to identification and resolution of harmful interference

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[17] A Notice of Inquiry "is the earliest step in the FCC's process and typically asks questions in an effort to gather enough information to make informed proposals on a given topic." A Notice of Proposed Rulemaking is "a request for comment on specific proposals made by the Commission. After the FCC reviews the comments filed in response to an NPRM, it can issue a Report and Order adopting new rules." FCC Fact Sheet, available online at [http://www.fcc.gov/Bureaus/ Common_Carrier/Factsheets/ispfact.html].

[18] *Inquiry Regarding Carrier Current Systems, including Broadband over Powerline Systems*, Notice of Inquiry (NOI), ET Docket 03-104, 18 FCC Rcd 8498 (2003). A summary of this NOI can be found *Federal Register*, Vol. 68, No. 100, May 23, 2003, pp. 28182-28186. This document is available online at [http://hraunfoss.fcc.gov/ edocs_public/attachmatch/FCC-03-100A1.pdf].

[19] 47 C.F.R. Section 15. The FCC's Part 15 Rules are discussed on page 9 of this report.

[20] NOI, para. 2.

[21] See *supra* note 5.

- Changed the equipment authorization for BPL systems from verification to certification[22]

- Improved measurement procedures for all equipment that use RF energy to communicate over power lines.

Since the Order was released, 17 petitions for reconsideration have been filed, by both the amateur radio community and the BPL industry. The FCC released a Public Notice on February 28, 2005, announcing the petitions. Oppositions to petitions were due on March 23, 2005, and replies to the oppositions were due April 4, 2005.

Communications Assistance for Law Enforcement Act Proceeding

On March 10, 2004, the Federal Bureau of Investigation (FBI), the Department of Justice, and the Drug Enforcement Administration petitioned the FCC to identify additional telecommunications services not identified specifically within CALEA that should be subject to it, including services that can be offered via BPL.[23] The services named in the FBI petition include some now considered beyond the scope of CALEA by many observers, including services that fall under the FCC's definition of "information services" under the Communications Act of 1934. The FBI believes that CALEA gives the FCC a broader framework to determine that a service is a "telecommunications service." Comments and replies to the petition were due April 12 and April 27, 2004, respectively.

On August 4, 2004, in response to the FBI petition and after considering the comments and replies from interested parties, the FCC released an NPRM and Declaratory Ruling, *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*.[24] In the NPRM, the FCC tentatively concluded that CALEA applies to facilities-based providers of any type of broadband Internet access service – including wireline, cable modem, satellite, wireless, and powerline (i.e., BPL) – and to managed or mediated VoIP services. These tentative conclusions were based on an FCC proposal that these services fall under CALEA as "a replacement for a substantial portion of the local telephone exchange service." Comments and replies to the NPRM were due November 8 and

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[22] Verification is a self-approval process; certification involves an approved third party. See [http://ftp.fcc.gov/oet/ea/procedures.html] for specific information.

[23] Joint Petition for Expedited Rulemaking of United States Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration, RM-10865, March 10, 2004.

[24] *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, Notice of Proposed Rulemaking and Declaratory Ruling*, FCC 04-187, ET Docket 04-295, RM-10865, adopted August 4, 2004, released August 9, 2004. Available online at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-187A1.pdf]. See also Federal Register 69, page 56976. The declaratory ruling is unrelated to BPL and is not discussed in this report.

December 7, 2004, respectively, and it is anticipated that the FCC will issue its report during 2005.

IP-Enabled Services Proceeding

On March 10, 2004, the FCC released an NPRM, *In the Matter of IP_Enabled Services*.[25] This rulemaking, still under consideration at the FCC, will likely affect BPL in that it will determine how the services that will be offered via BPL will be regulated. Comments and replies to the NPRM were due May 28 and June 28, 2004, respectively, and it is anticipated that the FCC will issue its report during 2005.

Wireless Broadband Task Force Report

On March 8, 2005, the FCC's Wireless Broadband Access Task Force released its report to the Commission containing its findings and recommendations (GN Docket No. 04-163).[26] The report highlights how some BPL providers are using Wi-Fi (i.e., wireless networking) to complement their service offerings, either employing Wi-Fi access points within the BPL network to transmit information from one power line to another or to use wireless networking technologies to reach from utility poles to individual homes. Comments to the report were due April 22, 2005, and replies are due May 23, 2005.

National Telecommunications and Information Administration Activity

In April 2004, the NTIA released Phase 1 of a study on the potential for BPL to interfere with radio frequencies used by Government users for homeland security, defense, and emergency response.[27] In that report, initiated by NTIA in response to the FCC's NOI, the NTIA described federal government usage of the 1.7-80 MHz spectrum, identified associated interference concerns, and outlined the studies it

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[25] *In the Matter of IP-Enabled Services, Notice of Proposed Rulemaking,* FCC 04-187, WC Docket No. 04-28, adopted February 12, 2004, released March 10, 2004. Available online at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-28A1.pdf]. See also Federal Register 69, page 16193.

[26] The report was written by FCC staff and was not voted on or approved by the Commission. Therefore, neither the report nor any of its recommendations necessarily reflect the views of the FCC. This report is available online at [http://www.fcc.gov/wbatf].

[27] See *supra* note 6. Phase 2 of NTIA's study will evaluate the effectiveness of its Phase 1 recommendations and address potential interference via ionospheric propagation of BPL emissions from mature large-scale deployments of BPL networks. The ARRL requested that the FCC extend the NPRM comment deadline until June 13, 2004 (the deadline is currently June 1, 2004) to accommodate the delayed release of this report. The ARRL stated it would like to have 60 days to review the NTIA study prior to submitting comments. The FCC denied the request. See *Carrier Current Systems, including Broadband over Power Line Systems* (ET Docket 03-104) *and Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems* (ET Docket 04-37), Order Denying Extension of Time, DA 04- 1175, April 30, 2004.

planned to conduct to address those concerns. The report (1) contains findings on interference risks to radio reception in the immediate vicinity of overhead power lines used by BPL systems (Access BPL only); (2) suggests means for reducing these risks, and (3) identifies techniques for mitigating interference should it occur.[28]

One of the most important findings of the report was that existing Part 15 compliance measurement procedures for BPL tended to significantly underestimate BPL peak field strength.[29] Such underestimation increases the risk of interference. According the report, as currently applied to BPL systems, Part 15 measurement guidelines do not address the unique characteristics of BPL emissions. Overall, the report concludes that BPL could interfere with licensed radio spectrum, even though under the current Part 15 testing parameters, emission levels would be within the limits. Therefore, it was recommended that the compliance measurement procedures be refined.

The NTIA stated, however, that refining the compliance measurement procedures should not impede deployment of BPL because the technology can reportedly be deployed within a more narrow range of frequencies that will not cause interference.[30] For these reasons, the NTIA did not recommend that the FCC relax Part 15 field strength limits for BPL systems. Instead, NTIA recommended new measurement provisions derived from existing guidelines, including using measurement antenna heights near the height of power lines; measuring at a uniform distance of ten meters from the BPL device and power lines; and measuring using a calibrated rod antenna or a loop antenna in connection with appropriate factors relating magnetic and electric field strength levels at frequencies below 30 MHz.[31]

Overall, NTIA supported the continued development and deployment of BPL and suggested several means by which BPL interference could be prevented or eliminated. For example, mandatory registration of certain aspects of BPL systems would give radio operators the information needed to advise BPL operators of any anticipated interference problems or suspected actual interference. NTIA also recommended that BPL developers consider, for example, routinely using the minimum output power needed from each BPL device; avoiding locally used radio frequencies; using filters and terminations to extinguish BPL signals on power lines where they are not needed; and carefully selecting BPL signal frequencies to decrease radiation.[32]

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[28] NTIA Report, pp. 5-7.

[29] The FCC's Part 15 Rules govern the operation of unlicenced radiofrequency devices, for example, cordless phones, computers, wireless baby monitors, and garage door openers. As a general condition of operation, Part 15 devices may not cause harmful interference to authorized radio services and must accept any interference that they receive. The Part 15 rules have allowed the development of new unlicenced devices while protecting authorized users of the radio spectrum from harmful interference. 47 C.F.R. Section 15.

[30] NTIA Report, pp. 5-7.

[31] Ibid.

[32] Ibid.

Activity in the 109th Congress

With respect to the FCC's BPL Order, on April 21, 2005, the House of Representatives passed H.Res. 230,[33] to express the sense that the FCC should reconsider and revise its rules governing BPL "based on a comprehensive evaluation of the interference potential of those systems to public safety services and other licensed radio services."

Issues for Congress

Issues for potential attention and action in the 109th Congress may be divided into three categories:

- Industry and societal issues, such as the impact of BPL on competition in broadband services, and the potential for BPL to reach previously unserved and underserved populations

- Larger regulatory and industry governance issues, such as how the regulatory classification of BPL might affect other FCC regulations and proceedings (e.g., the appropriate regulatory classification of IP-based services and law enforcement's CALEA petition) and electric utility regulations (e.g., reliability mandates, Federal Energy Regulatory Commission (FERC) regulations, and Public Utility Holding Company Act (PUHCA) exemptions)[34]

- Technical issues, such as how BPL should be implemented to minimize interference with other services (e.g., amateur radio frequencies) and what effect BPL technology may have on reliability and security of the transmission and distribution systems and homeland security goals (i.e., BPL may provide benefits as well as potential problems).

Each issue is discussed below.

Industry Competition and Societal Issues

Since the passage of the 1996 Telecommunications Act, Congress has sought to increase both competition between broadband service providers, as well as the availability and adoption of broadband services.[35] Although the current competitive

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[33] This document is available online at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:hr230ih.txt.pdf].

[34] Although electric utility entry into telecommunications is addressed in the 1996 Act, issues dealing primarily with electric utility regulation are beyond the scope of this report. For more information on those issues, see CRS Issue Brief IB10006, "Electricity: The Road Toward Restructuring," by Amy Abel and Larry Parker.

[35] As mentioned above, the FCC has a mandate under Section 706 of the 1996 Act to (continued...)

environment for broadband service could be considered fairly robust, with significant competition between cable and DSL providers, both policymakers and consumers alike would likely welcome a third wide-spread, facilities-based option for receiving that service (satellite broadband service is not widely available as it usually requires a dial-up "uplink" to the Internet). BPL could provide that opportunity for the "third wire" to the home.

While further increasing consumer choice is a goal of both Congress and the FCC, there are still consumers who have no options or perhaps only one option for receiving broadband service.[36] Some of those consumers are likely part of those populations that are traditionally underserved, (e.g., rural residents, low-income consumers) and for them, BPL may also provide at least a partial solution. BPL, not being limited, technically, by distance and not requiring upgrades to the electric lines themselves, is significantly easier to deploy to what might be considered by cable and DSL providers to be "undesirable" areas. Of course, cost and potential profitability are still issues in those areas and there will always be areas where deployment is simply not realistic either technologically or economically, or both.

Congress may wish to continue monitoring how the FCC balances ensuring that BPL, as a new technology, is given every opportunity to reach the market, while also ensuring that it is not given an unfair regulatory advantage over other similar services. In the coming months, the electric utilities will roll out their commercial BPL offerings. As this deployment takes place, the FCC's role in ensuring that the utilities are given incentives for wide BPL deployment, while also considering additional policy questions that arise, will be watched to assess the success of both the FCC and of BPL.

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[35] (...continued)
promote broadband deployment.

[36] According to a Pew Internet Project report issued in April 2004, "Availability can figure into broadband adoption in two ways. First, the physical infrastructure to provide broadband is an obvious prerequisite to having service. Second, the availability of multiple providers may matter, as the existence of some competition in the market may be conducive to adoption among consumers.

"With respect to broadband infrastructure, 77% of Americans say they live in an area in which broadband is available, 8% said they do not live in an area where broadband is available, and 15% say they do not know. This compares with 71% of Americans who said in October 2002 that broadband is available where they live, 12% who said it was not available, and 17% who did not know. Of those who live in a place where they say broadband is not available, 54% say they would like to get it, higher than the 40% average for dial-up users.

"When asked whether there is more than one broadband provider in their area, 61% of those who have broadband or know it is available said multiple providers serve their area. One in six (17%) said one provider serves their area and 22% did not know. Broadband users who lived in areas with multiple service providers said they paid $38.50 per month for service, while those who said they had one option for service paid an average of $42.80 per month." Pew Internet Project, *Broadband Penetration on the Upswing: 55% of Adult Internet Users Have Broadband at Home or Work*, April 19, 2004. Available online at [http://www.pewinternet.org/reports/pdfs/PIP_Broadband04.DataMemo.pdf].

Regulatory and Industry-Governance Issues

Broadband over powerlines is just the latest in a growing list of technologies and services that challenge the current structure of the FCC and the statutory and regulatory "stove pipes" required by the Telecommunications Act of 1996. While BPL is a technology for the delivery of the Internet, it challenges traditional and embedded thinking and paradigms about telecommunications and information services because it does not fit neatly into an existing category of service. If the 109th Congress decides to revisit the 1996 Telecommunications Act, which it appears poised to do, it may consider the impact that such new technologies are having on the way lawmakers and regulators have traditionally looked at underlying transmission technologies.[37]

With respect to IP-enabled services that would be provided over BPL, the one with the most legal and regulatory impact may be IP-based voice service — called Voice over Internet Protocol or VoIP. VoIP is different from traditional telephone service in that it does not employ a single, dedicated path between the calling parties (called circuit switching). Instead, VoIP "translates" analog voice into digital "packets" and transmits those packets along multiple paths (called packet switching) and reassembles the packets at the receiving end.[38] This is the same format, or protocol, used to transmit email, instant messages, video, and other data via the Internet. Thus, voice is no longer a separate service — voice data looks just like every other kind of data.

Until now, VoIP has been provided by companies that are in one way or another "communications providers," whether that be voice, data, or video communication. However, electricity companies have not generally been in the business of providing resale communications. Law enforcement and public safety officials are already concerned about how VoIP, as well as other IP-enabled services, will affect their ability to perform wiretaps under CALEA and respond to emergency calls (E911).[39]

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[37] During April and May 2004, the Senate and the House held four hearings on issues related to the implementation of the Telecommunications Act of 1996. The Senate Committee on Commerce, Science, and Transportation has held three hearings on the Telecommunications Act of 1996 and related issues: *Telecommunications Policy Review: Lessons Learned from the Telecom Act of 1996* (April 27, 2004), *Telecommunications Policy: A Look Ahead* (April 28, 2004), and *Telecommunications Policy Review: A View from Industry* (May 12, 2004). The Chairman's remarks and witness statements are available online at [http://commerce.senate.gov]. The House Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce held one hearing on this issue on May 19, 2004, *Competition in the Communications Marketplace: How Convergence Is Blurring the Lines Between Voice, Video, and Data Services*. These hearings were viewed as informational, fact-finding efforts to set the groundwork for a reexamination of the 1996 Act during the 109th Congress.

[38] The packets, once delivered, may be converted back into an analog signal or left in digital form depending on the receiving party's terminal equipment (i.e, a telephone, a computer, etc.).

[39] *Joint Petition for Rulemaking to Resolve Various Outstanding Issues Concerning the* (continued...)

This blurring of lines between voice and other types of data has raised other questions, as well, such as state versus federal jurisdiction over such calls, intercarrier compensation for call termination on the public switched network, and universal service. These issues may become even more complex with the entry of electric utilities into the communications business since they will be offering IP-enabled services, both directly to the consumer as well as to third-party vendors (i.e., Internet service providers). As the market develops a tension may develop over whether these new entrants should be required to adhere to existing requirements, or perhaps how existing requirements should be changed to better reflect the current technological and competitive environment.

Technical Issues

The FCC focused on technical issues in its BPL proceeding. These issues included how BPL should be implemented to minimize interference with other services (e.g., amateur radio frequencies) and what effect BPL technology could have on reliability and security of the transmission and distribution systems (i.e., BPL may provide benefits as well as potentially cause problems). Although the FCC's regulations mandate the technical standards under which BPL will be deployed, those standards will very likely have an impact on the previous two categories of issues and, therefore, Congress may have an interest in monitoring the development of these technical issues as well.

Interference with other licensed services. Some stakeholders expressed varying degrees of concern over the potential of BPL to disrupt licensed radio services, including amateur, public safety, and emergency response frequencies.[40] The FCC addressed those concerns in its BPL proceeding.

Service reliability and security issues. Other stakeholders stated during the proceeding that BPL upgrades by the electric utilities have the potential to enhance the security and reliability of the transmission and distribution networks. For example, BPL technology can provide electricity outage detection, home energy management, distribution transformer overload analysis, demand side management, supervisory control and data acquisition (SCADA) data transmission, safety checks

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[39] (...continued)
Implementation of the Communications Assistance for Law Enforcement Act, RM-10865, March 10, 2004 (FBI Joint Petition), and *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket 04-36, March 10, 2004, respectively. Information on these issues can be found on the VOIP and CALEA pages at the FCC website at [http://www.fcc.gov/voip/] and [http://www.fcc.gov/calea/]. The FBI Joint Petition is available online at [http://www.askcalea.net/docs/ 20040310.calea.jper.pdf]. Further information on CALEA can be found online at [http://www.askcalea.net].

[40] NPRM, paras. 14-26. Commenters included the American Radio Relay League, the National Telecommunications and Information Administration, the National Research Council (through its Committee on Radio Frequencies, or CORF), the North American Short Wave Radio Association, the Association of Public Safety Communications Officials, and the Federal Emergency Management Agency.

for isolated circuits, power quality monitoring, phase loss detection, line testing, and outage localization, among other things.[41] However, while the first four functions simply provide additional operational monitoring and control abilities, the fact that enhanced data may be supplied to the SCADA system via BPL could be of concern to electric utility companies and homeland/infrastructure security officials. The FCC did not address this issue in its rulemaking proceeding. However, some parties that did not participate in the rulemaking have expressed concern that BPL would make the transmission and distribution system vulnerable to individuals or groups trying to steal or corrupt consumers' Internet data or the utilities' monitoring data, or even to terrorists trying to cause a large-scale disruption of the nation's electricity supply.[42] If sensitive operational information, as well as consumers' personal data, is being sent over the lines the physical security of those lines and the integrity of the data on them become a serious concern. Although BPL may offer significant social and competitive benefits, the possible negative impact that BPL may have on reliability and security may be a more important factor in BPL deployment.

For Additional Reading

CRS Products

CRS Issue Brief IB10045, *Broadband Internet Access: Background and Issues*, by Angele A. Gilroy and Lennard G. Kruger.

CRS Issue Brief IB10006, *Electricity: The Road Toward Restructuring*, by Amy Abel and Larry Parker.

Websites

American Public Power Association, [http://www.appanet.org]

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[41] NOI, Comments of PPL Telecom, LLC, section IV. Available online at [http://www.neca.org/wawatch/wwpdf/070803_40.pdf]. SCADA systems provide the command and control functions for some critical infrastructures such as the electric, telecommunications, gas, and nuclear industries. SCADA is "a computer system for gathering and analyzing real time data. A SCADA system gathers information, such as where a leak on a pipeline has occurred, transfers the information back to a central site, alerting the home station that the leak has occurred, carrying out necessary analysis and control, such as determining if the leak is critical, and displaying the information in a logical and organized fashion. SCADA systems can be relatively simple, such as one that monitors environmental conditions of a small office building, or incredibly complex, such as a system that monitors all the activity in a nuclear power plant or the activity of a municipal water system." Webopedia: Online Computer Directory for Computer and Internet Terms and Definitions, [http://www.webopedia.com/TERM/S/SCADA.html].

[42] For an article and discussion highlighting these concerns, see David Coursey, *Why Broadband over Powerlines is a Bad Idea*, ZDNet, February 27, 2004. Available online at [http://reviews-zdnet.com.com/4520-7298_16-5123406.html]. See especially [http://reviews-zdnet.com.com/5208-6118-0.html?forumID=1&threadID=322&messageID=8603&start=151] for a discussion of alleged BPL vulnerabilities.

American Radio Relay League, [http://www.arrl.org]

Edison Electric Institute, [http://www.eei.org]

Federal Communications Commission, [http://www.fcc.gov/]

- FCC NOI: [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-100A1.pdf]
- FCC NPRM: [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-29A1.pdf]

National Telecommunications and Information Administration, [http://www.ntia.doc.gov/]

- NTIA BPL Report: [http://www.ntia.doc.gov/ntiahome /fccfilings/2004/ bpl/index.html]

Powerline Communications Association, [http://www.plca.net]

PLC Forum, [http://www.plcforum.org]

United Power Line Council, [http://www.uplc.org]

United Telecom Council, [http://www.utc.org]

Other Reports and Documents

"Broadband Over Powerlines," Angel M. Cartagena, Jr., *Electric Perspectives*, March/April 2004, [http://www.eei.org/magazine/editorial_content/nonav_stories/2004-03-01- Broadband.htm]

"The Final Connection," Brett Kilbourne, *Electric Perspectives*, July/August 2001, [http://www.eei.org/magazine/editorial_content/nonav_stories/2001-07-01-connection.htm]

"How Broadband over Powerlines Works," Robert Valdes, [http://computer.howstuffworks.com/bpl.htm/printable] (undated)