

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUN - 1 2007

RECEIVED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN RADIO RELAY LEAGUE, INC.,)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS)

COMMISSION and)

UNITED STATES OF AMERICA,)

Respondents.)

Case No. 06-1343

NOTICE OF INTERVENORS SUPPORTING PETITIONER

Intervenors the Association for Maximum Service Television, Inc. (MSTV) and the National Association of Broadcasters (NAB) hereby submit the following notice in the above-captioned case.¹

MSTV and NAB actively participated in the proceedings before the FCC. As MSTV and NAB made clear throughout the underlying proceeding at the FCC, they do not oppose deployment of broadband service over power lines. However, MSTV and NAB's member television stations are licensed to use frequencies that the FCC has now authorized broadband over power lines (BPL) systems to employ. These stations have invested billions of dollars in facilities to provide interference-free service to their communities, including

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the FCC and other federal agencies, and the Courts.

investment in new digital transmission facilities as part of the government-mandated transition from analog to digital television (DTV). Their ability to reach their audiences with emergency information and other highly valued services depends on their signals being transmitted and received without interference.

MSTV and NAB intervened in support of Petitioner American Radio Relay League, Inc.'s (ARRL) challenge to the Federal Communications Commission's (FCC) decisions implementing BPL, out of concern that the agency failed to give adequate consideration to the potential impact that broad authorization could have on the transition to DTV. Specifically, although the FCC acknowledged, in response to a study submitted by MSTV with its Petition for Reconsideration,² that "there is a potential for BPL interference to DTV reception if a BPL system operates adjacent to or within the spectrum of a locally-used VHF TV station,"³ it dismissed that concern without an adequate basis for doing so.

MSTV and NAB agree with Petitioner that the Court should remand this case to the FCC. MSTV demonstrated in its Petition for Reconsideration that permitting BPL systems to use spectrum above 50 MHz, in the low VHF band where TV channels 2–6 are located, poses a significant threat of interference to the public's reception of television stations operating on those channels, resulting in complete loss of service to viewers of stations on those channels. The MSTV study showed that BPL signals over 50 MHz would cause "material interference" with low VHF channels 2–6 to a level that would "render[] these channels unusable in many realistic

² MSTV Petition for Reconsideration, Ex. 1, JA __.

³ Reconsideration Order, 21 FCC Rcd 9308 ¶ 69, JA __.

cases.”⁴ Argument IV of Petitioner’s brief similarly points out that, by limiting BPL systems to the band between 30 and 50 MHz, the FCC could have authorized BPL while protecting licensed services.

MSTV and NAB accordingly urged the Commission to confine BPL services to the spectrum below 50 MHz. The parties explained that such a plan would allow the agency to protect the public’s television service on low VHF channels from interference while also allowing development of new services utilizing BPL technologies. Further, MSTV and NAB pointed out that nothing in the record demonstrated a need for BPL operations above 50 MHz and, indeed, that BPL services are being delivered by a system operating between 30 and 50 MHz.⁵

In dismissing MSTV’s reasonable solution, the FCC did not adequately weigh the competing public policy concern raised by MSTV and NAB. As noted in Petitioner ARRL’s brief, such a failure is arbitrary and capricious. Accordingly, MSTV and NAB agree with the Petitioner that this case should be remanded to the FCC for additional consideration of reasonable alternatives.

⁴ MSTV Petition for Reconsideration at 8 (quoting M. Winston Caldwell & R. Evans Wetmore, Fox Technology Group, *Interference Effects into Low VHF Television Arising From Broadband Over Power Line*, at 1 (February 2005)), JA ___.

⁵ See *id.* at 4, JA ___.

Respectfully submitted,



Robert A. Long, Jr.
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-5612

*Counsel for the Association for
Maximum Service Television, Inc.*

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
THE NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street NW
Washington, D.C. 20036
(202) 429-5430

Dated: June 1, 2007

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June 2007, I caused true and correct copies of the foregoing Notice of Intervenor Supporting Petitioner to be served on the following parties by U.S. mail, postage prepaid, to the following addresses:

John Edward Ingle
C. Grey Pash, Jr.
Office of the General Counsel
Federal Communications Commission
445 12th Street, SW - Room 8-A741
Washington, DC 20554

*Counsel for Respondent Federal Communications
Commission*

William T. Lake
Jonathan J. Frankel
Dileep S. Srihari
Daniel A. Zibel
Wilmer Cutler Pickering Hale & Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

*Counsel for Petitioner American Radio Relay League,
Inc.*

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
The National Association of Broadcasters
1771 N Street NW
Washington, D.C. 20036

*Counsel for Intervenor the National Association of
Broadcasters*

Mitchell Lazarus
Harry F. Cole
Fletcher, Heald & Hildreth, PC
Arlington, VA 22209

Counsel for Intervenor CURRENT Technologies, Inc.

Robert B. Nicholson
Robert J. Wiggers
Antitrust Division, Appellate Section
United States Department of Justice
950 Pennsylvania Avenue, NW, Room 3224
Washington, DC 20530

Counsel for Respondent United States

Christopher D. Imlay
Booth, Freret, Imlay & Tepper P.C.
14356 Cape May Road
Silver Spring, MD 20904

*Counsel for Petitioner American Radio Relay League,
Inc.*

John B. Richards
Thomas B. Magee
Keller & Heckman LLP
1001 G Street, NW, Suite 500W
Washington, D.C. 20001

Counsel for Intervenor Duke Energy Corp.

David L. Donovan
Association for Maximum Service Television, Inc.
4100 Wisconsin Ave., NW
Washington, DC 20016

Counsel for Intervenor MSTV

Brett Kilbourne
United Telecom Council
1901 Pennsylvania Ave., NW
Washington, DC 20006

Counsel for Intervenor United Telecom Council

George Y. Wheeler
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, DC 20006

Counsel for Intervenor Ambient Corporation

James N. Horwood
Spiegel & McDiarmid
1333 New Hampshire Ave., NW
Washington, DC 20036

Counsel for the City of Manassas, Virginia



Ann O'Connell