

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

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JUL 24 2009

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AMERICAN RADIO RELAY LEAGUE, INC.,)

PETITIONER)

v.)

FEDERAL COMMUNICATIONS COMMISSION)

AND)

UNITED STATES OF AMERICA,)

RESPONDENTS.)

No. 09-1180

**MOTION TO WITHDRAW PETITION FOR WRIT OF
MANDAMUS TO COMPEL COMPLIANCE WITH MANDATE**

Petitioner American Radio Relay League, Incorporated, hereby respectfully requests that this Honorable Court dismiss the “Petition for Writ of Mandamus to Compel Compliance with Mandate” filed by Petitioner on or about June 24, 2009 in the captioned proceeding. The said Petition has now been rendered moot by recent action of the Respondent Federal Communications Commission. Petitioner states as follows:

The Petition for Writ of Mandamus filed by Petitioner related to Respondent’s failure to comply with this Court’s Opinion and Judgment in Case No. 06-1343, captioned *American Radio Relay League, Inc. v. Federal Communications Commission and United States of America*, [524 F.3d 227

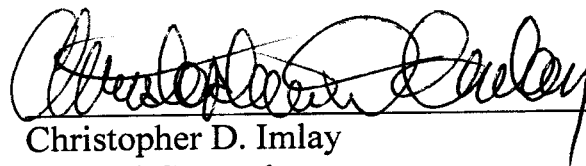
(D.C. Cir. 2008)]. In that case, the Court found that the Respondent Commission failed to satisfy the notice and comment requirements of the Administrative Procedure Act by redacting studies on which it relied in promulgating rules governing the use of the radio spectrum by Access Broadband over Power Line (BPL) Systems, and by failing to provide a reasoned explanation for its choice of an extrapolation factor for measuring Access BPL radio frequency emissions. The Court remanded the BPL rules to the Commission, stating, in summary, as follows: “On remand, the Commission shall afford a reasonable opportunity for public comment on the unredacted studies on which it relied in promulgating the rule, make the studies part of the rulemaking record, and provide a reasoned explanation of its choice of an extrapolation factor for Access BPL systems.” (*Slip Op.* at 25). The Petition for Writ of Mandamus was filed by Petitioner because, more than a year after the Court’s Mandate was issued, the Respondent had not complied with any portion of its obligations imposed by the Court. This Court has ordered the Respondent to file a response to the Petition for Writ of Mandamus by August 3, 2009.

However, late on July 17, 2009 the Respondent released a “*Request for Further Comment and Further Notice of Proposed Rule Making*”, FCC 09-60, in ET Dockets 04-37 and 03-104 (the Further Notice), which initiates

further proceedings in connection with the Access BPL rules. The Further Notice is responsive to the Court's remand order. It solicits public comment on the studies released by the Respondent; it was accompanied by the release of additional information not previously disclosed to the public by the Commission; it solicits comment thereon; and it proposes a different extrapolation standard for radio frequency emissions from Access BPL in lieu of the extrapolation standard previously adopted by the Commission. These actions, in the aggregate, effectively moot the Petition for Writ of Mandamus. It is therefore unnecessary for the Court to adjudicate the Petition for Writ of Mandamus and the Petitioner respectfully requests that the Petition be dismissed. It is also requested that the Respondent Federal Communications Commission be relieved of the obligation to file a response to the Petition by August 3, 2009, as such is unnecessary.

Respectfully submitted,

AMERICAN RADIO RELAY LEAGUE, INC.



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July 24, 2009

CERTIFICATE OF SERVICE

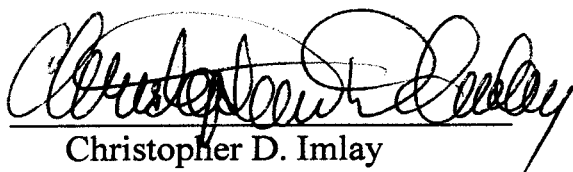
I hereby certify that on this 24th day of July 2009, I caused copies of the foregoing MOTION TO WITHDRAW PETITION FOR WRIT OF MANDAMUS TO COMPEL COMPLIANCE WITH MANDATE to be served by first class mail, postage prepaid, upon the following:

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