STATEMENT OF COMMISSIONER
MICHAEL J. COPPS, CONCURRING

Re: *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service,* WC Docket 06-10, Memorandum Opinion & Order.

I concur in today's decision for substantially the same reasons I concurred in our 2005 Order reclassifying DSL service as an information service. As I stated then and continue to believe today, consigning broadband services to an indeterminate Title I regulatory limbo is no substitute for a genuine national broadband strategy. Just relegating something to Title I doesn't provide the kind of certainty that either business or consumers are entitled to if broadband over power line is going to be the success we want it to be. And reclassification by itself gets us no closer to the kind of high speed broadband infrastructure this nation needs to be competitive in world markets and to expand economic and social opportunity here at home.

But as I have said before, I understand that when it comes to regulatory classification questions, the handwriting has long been on the wall. So, for the foreseeable future, new broadband services are destined to be classified as Title I services. This is not the world I would have chosen, but it is the world in which we live. I hope it is a world wherein broadband over power line can find a way to realize its potential and maybe even provide that needed "other pipe" for high-speed broadband deployment.

Even though there has been no real doubt for some time that this Commission would one day declare BPL an information service – given our decisions on DSL and cable modems and the Supreme Court's *Brand X* ruling – we are nowhere near finished defining what being an information service ***actually means***. Yes, we have clarified some questions about E911 and CALEA and decided (unwisely, in my view) that broadband providers need not contribute to universal service. But we still haven't addressed important questions about such things as privacy, disabilities access and the future of the Internet. Nor does our decision today provide any certainty on difficult questions raised by BPL as to cross-subsidization and pole attachments – issues that sound pretty dry and technical – but issues that can come back to bite both consumers paying bills and entrepreneurs trying to devise business plans.

We seem to proceed on the happy presumption that if providers are free from legacy Title II regulation they will magically devote their attention and capital to building broadband infrastructure. The results? Well, after several years of Title I reclassification, not many. As other nations race at warp speed into the digital future, this one plods along at turtle velocity. While I dearly hope that BPL providers make real inroads into the cable-telephone broadband duopoly that we have in this country, I really don't think our international standing in broadband is going to improve until this nation develops a real honest-to-goodness broadband strategy, just as every other industrialized nation has done. Consumers want – and consumers deserve – some real competition in this critical market. But avoiding the tough regulatory questions and merely renaming

things is not going to usher in that happy result. We are not providing the kind of certainty that business requires, nor any assurance to consumers about what rights they have in the new world of high speed which we hope some day to inhabit. The issues I am talking about today don't go away just because we call something by a different name. I would much rather see this Commission spending more time addressing real-world broadband needs and less time parsing regulatory language without filling in the blanks.

As for our BPL providers, I commend them on their efforts to bring a new broadband pipe into our homes and businesses – particularly in difficult-to-reach places – and I look forward to working with them to encourage an environment where they can truly realize their dreams.