

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

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 No. 06-10

In this Order, the Commission clarifies that the regulatory framework for Broadband-over-Power Line (BPL)-enabled Internet access service should be consistent with the framework established for broadband Internet access services provided over cable modem and wireline broadband facilities. I support this Order because it is consistent with our broader efforts to treat similar services in a similar manner across technology platforms.

In BPL-enabled Internet access, we have a relative newcomer to the Internet access service market but an exciting technology that has the potential to be a new broadband pipe into the home.¹ Fostering BPL services is an important goal because we continue to see a residential broadband market in which, according to FCC statistics, telephone and cable operators control a nearly 98 percent share, with many consumers lacking any meaningful choice of providers. So, if we are to give our communities the communications tools to compete on the global economic stage, it is critical that we take steps to promote much-needed competition in the provision of broadband services.

The legal approach we take here may not be my preferred option but I concur in today's decision for the same reasons that I concurred in our decision last year to reclassify wireline broadband Internet access services.² As I made clear at the time we adopted the *Wireline Broadband Internet Access Order*, the reclassification approach raises some difficult questions about the legal and policy framework for broadband services. My underlying concern with the reclassification approach has always been that it takes the Commission outside the ambit of those core legal protections and grounding afforded by Congress. Yet, I have been willing to move forward because we are acting in a manner consistent with the Supreme Court's guidance in the *Brand X* decision, and this Order, in turn, will give us an opportunity to adopt a consistent approach for cable, wireline, and power line broadband services.

Even as we move forward with this Order today, it is worth mentioning some of the important issues that we shouldn't lose sight of: chief among those is the protection of consumers. Indeed, my support for this approach last year was conditioned on the Commission's decision to use its Title I authority to address important consumer protection and other concerns that continue to be relevant in the broadband age. I premised my support for the *Wireline Broadband Internet Access Order* on our decision to adopt a concurrent and important Notice of Proposed Rulemaking (*Broadband Consumer Protection Notice*) that sought comment on how we can ensure that we continue to meet our consumer protection obligations in the Act. It's now been more than a year since we opened that inquiry, so it's more important than ever that we make this proceeding a priority.

¹ FCC, *High Speed Services for Internet Access: Status as of December 31, 2005*, Table 2 (showing 5,071 advanced services lines provided over "power line and other" technologies) (July 2006).

² Concurring Statement of Commissioner Jonathan S. Adelstein, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, FCC 05-150, Report and Order and Notice of Proposed Rulemaking (August 5, 2005) (*Wireline Broadband Internet Access Order and Broadband Consumer Protection Notice*).

Consumers must be at the top of our list, not the bottom, as we move into the broadband era. Our experience with the widespread and unauthorized proliferation of consumer telephone call records has been a sharp reminder that this Commission has an obligation to ensure that consumers' privacy expectations are met. But that privacy concern is not limited to the narrowband world. Consumers don't care whether their sensitive information is transferred by copper wire, fiber optic cable, or over a power line connection. They merely want us to implement and enforce the legal protections afforded by Congress. We should act immediately to make sure that we have adequate safeguards in place to protect the consumers' sensitive information.

We also need to advance the discussion of other sensitive issues, like our Truth-in-Billing rules, access for persons with disabilities, and the preservation and advancement of universal service. Universal service is a particularly important issue because the Commission has a statutory obligation to ensure the sound footing of our federal programs that ensure access for school, libraries, low income consumers, and hard to reach areas. Last year, when the Commission adopted the *Wireline Broadband Internet Access Order*, the Commission also adopted a transitional plan to ensure the stability of universal service contributions while it considered the broader question of whether facilities-based providers of broadband services should be required to contribute. We've had more than a year since we adopted the *Broadband Consumer Protection Notice* and the transitional plan for universal service, so it is certainly time for the Commission to move forward promptly to address these issues.

On another issue, I appreciate the willingness of Chairman Martin and my colleagues to work with me to ensure that this Order does not unnecessarily limit states' ability to address important issues related to the oversight of BPL. I know that it was important to the BPL industry and my colleagues to address the classification of BPL, so I am glad that we were able to resolve these issues collaboratively.

We would all like to see the injection of a new player in the broadband market and to reap the benefits that increased competition will bring to consumers. So, now that we have removed any question about the regulatory classification of BPL services, we will all watch with anticipation for BPL's continued growth. For all these reasons, I concur in today's Order.