**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | WP Docket No. 07-100 |
| Amendment of Part 90 of the Commission's Rules | ) | |
| | ) | |

# COMMENTS OF SOUTHERN COMPANY SERVICES, INC.

Jeffrey L. Sheldon
LEVINE, BLASZAK, BLOCK & BOOTHBY, LLP
2001 L Street, N.W., Suite 900
Washington, DC 20036
202-857-2574
jsheldon@lb3law.com

Its Attorney

July 6, 2018

## TABLE OF CONTENTS

## EXECUTIVE SUMMARY

Southern Company Services, Inc., a wholly-owned subsidiary service company of Southern Company, a utility holding company, continues to support an expansion of eligibility for the 4.9 GHz band to include utilities and other Critical Infrastructure Industries ("CII") as co-primary licensees. There are a number of reasons why the 4.9 GHz band has not been used to its greatest potential, and most of those were identified years ago. Giving utilities access to this important spectrum resource will help them fulfill their public safety/public service obligations, and will promote a common equipment ecosystem to drive down equipment costs and stimulate investment through economies of scale – two of the Commission's stated goals for this proceeding.[1]

Southern recommends that expanded eligibility be afforded to entities that meet the definition of "public safety radio services" in Section 309(j)(2) of the Communications Act.[2] The Commission previously determined that this term includes electric, gas, and water utilities because they have extensive infrastructure that is used to provide essential services to the public at large; reliability and availability of communications systems for these entities are necessary to prevent and respond to disasters or crises affecting the public at large.

Southern supports immediate co-primary access to all channels at 4.9 GHz. There is little reason to further delay expanding access to this spectrum, particularly when expanded use of this spectrum will help maximize spectral efficiency and usage, reduce equipment costs, and stimulate investment.

Expanding eligibility to utilities and other CII is far preferable to the alternatives suggested in the *Sixth Further Notice of Proposed Rulemaking*.

---

[1] *Sixth Further Notice of Proposed Rulemaking* in WP Docket No. 07-100, FCC 18-33, released March 23, 2018, at para. 3.

[2] 47 U.S.C. §309(j)(2).

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Amendment of Part 90 of the Commission's Rules | ) | WP Docket No. 07-100 |
| | ) | |
| | ) | |

**COMMENTS OF**
**SOUTHERN COMPANY SERVICES, INC.**

Southern Company Services, Inc. ("Southern"), on behalf of itself and its energy affiliates, hereby submits its comments on certain of the issues raised in the *Sixth Further Notice of Proposed Rulemaking* ("*Sixth Further Notice*") in the above-captioned matter regarding use of the 4940-4990 MHz ("4.9 GHz") band to meet public safety communications requirements.[3] In particular, Southern addresses the issues in Section III.K. of the Sixth Further Notice on eligibility, shared use, and other alternatives to promote more intensive use of this spectrum.

## I. Introduction

### A. Southern Company Services

Southern Company Services, Inc. is a wholly-owned subsidiary service company of Southern Company, a holding company based in Atlanta, Georgia, which operates eleven regulated utilities serving nine million customers in nine states. Southern Company owns four electric utility subsidiaries – Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company – which provide retail and wholesale electric service

---

[3] *Sixth Further Notice of Proposed Rulemaking* in WP Docket No. 07-100, FCC 18-33, released March 23, 2018. A summary of the *Sixth Further Notice* was published in the Federal Register on May 7, 2018, 83 Fed. Reg. 20011.

throughout a 120,000-square mile service area in Alabama, Georgia, Florida, and Mississippi.[4] Southern Company supplies wholesale electric power to municipalities, rural electric cooperatives, and other distribution providers through its Southern Power subsidiary, which operates natural gas, solar, wind, and biomass generating facilities in nine states. Southern Company Gas provides natural gas distribution and storage in five states: Illinois, Georgia, Virginia, Florida, and Tennessee.

Members of the Southern Company family use a variety of communications technologies and services to support the safe and efficient generation, transmission, and distribution of energy services to their retail and wholesale customers. Southern filed Comments in 2012 on the *Fifth Further Notice of Proposed Rulemaking* in this proceeding and is pleased to have this opportunity to provide these additional comments in support of expanded eligibility for utilities and other Critical Infrastructure Industries.[5]

**B. Background of this Proceeding**

The 4.9 GHz band was allocated for public safety use in 2002.[6] Licensing and service rules were adopted the following year, including the establishment of eligibility rules in Subpart Y of Part 90 that permit licensing only by state or local government entities or by non-government organizations ("NGOs") that have authorization or sponsorship from a government

---

[4] Southern Company recently announced that it entered into agreements to sell Gulf Power Company and other assets in Florida, subject to regulatory approvals and other conditions. https://www.southerncompany.com/newsroom/2018/may-2018/gulf-power.html (last visited June 18, 2018).

[5] *Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking* in WP Docket No. 07-100, PS Docket No. 06-229, and WT Docket No 06-150, 27 FCC Rcd 6577 (2012) ("*Fifth Further Notice*")

[6] *Second Report and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 00-32, 17 FCC Rcd 3955 (2002) ("*FNPRM*").

public safety agency. When it adopted those rules, the Commission thought they would "encourage public safety entities to explore strategic partnerships" with NGOs concerning use of the spectrum.[7] The Commission noted that the public safety community had "acknowledged the importance of interoperability with [utilities, railroads and similar entities] during both times of emergency and non-emergency." It expressed optimism that "the mutual need for interaction will foster cooperation and sharing arrangements, and [it] encourage[d] state and local public safety organizations to work with critical infrastructure industry to ensure that in times of crises they too have access to this critical spectrum resource."[8]

However, it quickly became apparent that the rules adopted in 2003 did not encourage strategic partnerships between public safety and CII. Southern and other NGOs have been reluctant to enter agreements with public safety entities for access to 4.9 GHz spectrum because, under the rules as adopted, the government sponsor may unilaterally terminate its sponsorship of the NGO at any time, with or without cause. NGOs have been understandably reluctant to enter agreements to deploy systems reliant on 4.9 GHz spectrum when their investment in infrastructure could be rendered worthless at any time, including when access to the spectrum is needed most.

Southern, along with many other parties, pointed out in 2012 that the dearth of public-private partnerships at 4.9 GHz was due to this flaw in the rules as adopted in 2003. There was strong interest within the CII community for access to 4.9 GHz spectrum when the band was first allocated in 2002, but the eligibility and licensing rules presented financial and operational risks

---

[7] *Memorandum Opinion and Order and Third Report and Order* in WT Docket No. 00-32, 18 FCC Rcd 9152, 9160 (2003) ("*MO&O*")

[8] *Id*. at 9162.

for any CII entity contemplating use of this spectrum. For an electric utility that relies on wireless communications for critical applications in both routine and emergency conditions, those risks were unacceptable. Southern firmly believes that if the rules adopted in 2003 had better protected NGOs' investment and right to use the spectrum, there would have been substantially greater use of the band a long time ago.

The Commission explains that the *Sixth Further Notice* draws on comments filed in 2012 with respect to earlier proposals for the 4.9 GHz band, comments filed in 2013 on a broad-based consensus proposal from the National Public Safety Telecommunications Council ("NPSTC")[9], and a 2015 report from APCO International.[10] The Commission also describes its goals in this proceeding as follows: "(a) to support the needs of public safety while opening the band to other compatible uses, (b) to maximize spectral efficiency and usage, (c) to promote a common equipment ecosystem that will drive down equipment costs and stimulate investment through economies of scale, (d) to encourage innovation, and (e) to ensure that secondary users do not cause interference to primary users."[11]

The Commission has an opportunity in this proceeding to correct a number of problems with the 2003 rules that have discouraged serious investment this band. It has been 15 years since eligibility and service rules were adopted, and six years since the FCC first asked for ideas on how to facilitate greater use. The delay in addressing these issues has led some to question whether public safety agencies or CII entities no longer have sufficient interest in or need for this

---

[9] NPSTC, 4.9 GHz NPSTC Plan Recommendations Final Report, WP Docket No. 07-100, PS Docket No. 06-229, WT Docket No. 06-150, (dated Oct. 24, 2013) ("NPSTC Plan").

[10] *Sixth Further Notice* at para. 3.

[11] *Id*. at para. 6.

spectrum. To the contrary, Southern believes that use of this band will greatly expand with certain changes in the rules, and without the need to make a wholesale reallocation of the band.

## II. Eligibility, Shared Use and Other Alternatives

### A. The FCC Should Expand Eligibility to Utilities and Other Critical Infrastructure Industries on a Primary Basis

The Commission notes that the majority of commenters responding to the *Fifth Further Notice* and to the NPSTC Plan supported expanding eligibility to CII entities.[12] The Commission now invites comment on whether offering CII co-primary status with public safety is likely to create incentives for increased investment in the band.

Southern strongly supports expanding eligibility to make CII co-primary with public safety at 4.9 GHz, and firmly believes this will create the appropriate incentives for investment in the band. This change will also better facilitate collaborative arrangements between public safety and CII users. Southern is not aware of any other spectrum bands that afford eligibility to certain classes of users with the caveat that a third-party can revoke their operating authority for no cause whatsoever. Current eligibility rules for the 4.9 GHz band do not even rise to the level of "secondary" licensing status as it is commonly understood because (a) the CII entity must first negotiate a sponsorship arrangement with a public safety agency; and (b) the CII entity has operating rights only insofar as the public safety sponsor allows the CII entity to continue operating, regardless of whether the CII entity is actually causing interference or in any other way disrupting public safety communications. Even a lessee under a spectrum leasing arrangement has greater rights that can be protected by contract.

---

[12] *Sixth Further Notice* at para. 67.

Eligibility for CII entities should not be conditioned on using the band to provide "public safety services" as that term is defined in Section 337(f)(1)(A) of the Communications Act of 1934, as amended.[13] As an initial matter, and unlike the 700 MHz Public Safety allocation, the 4.9 GHz band is not subject to statutory definitions on eligibility or permissible use. Applying this very specific statutory requirement to 4.9 GHz could be read as continuing to require each non-governmental CII entity to obtain sponsorship from a public safety agency, which has been the primary reason CII users have not been willing to invest in the 4.9 GHz band or partner with public safety agencies. Moreover, enforcement of such a requirement would be virtually impossible, and could lead to second-guessing as to whether any given traffic carried on 4.9 GHz frequencies has a "sole or principal purpose" of protecting "safety of life, health, or property."

The Commission previously addressed this issue in relation to the 4.9 GHz band and how it could impact CII use of the spectrum. When establishing the current eligibility rules, the FCC noted that, although the primary function of power, petroleum and railroad industries is "not necessarily to provide public safety services,"

> the nature of their day-to-day operations provides little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare.[14]

This is a very concise and accurate explanation of the critical importance of communications to a utility's delivery of power for the protection of public safety, health and welfare. If anything, utilities' reliance on communications has grown over the last 18 years, with

---

[13] *Id.* at para. 71.

[14] *MO&O* at 9162, citing to Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as Amended, *Report and Order and Further Notice of Proposed Rule Making* in WT Docket No. 99-87, 15 FCC Rcd 22709 (2000) ("*Implementation of Sections 309(j) and 337*").

the advent of more sophisticated data acquisition, control, and automation systems, including communications needed for "Smart Grid" applications. The Commission recognized the need for spectrum for Smart Grid networks, and the similar communications needs of utilities and public safety agencies, in the National Broadband Plan.[15] All parties to the NPSTC Plan also agreed that "CII plays a vital role in incident response to protect life and property."[16]

Utilities' role in protecting the safety of life, health and property has not changed over the years, but the public's reliance on commercial power continues to grow. The Commission previously explained that "utility companies need to possess the ability to coordinate critical activities during or following storms or other natural disasters that disrupt delivery of vital services to the public such as provision of electric, gas, and water supplies."[17] The Commission identified two characteristics shared by utilities and other CII that show why they meet statutory definition of "public safety radio services:"

> 77. … First, these entities have an infrastructure that they use primarily for the purpose of providing essential public services to the population at large. In this context, an infrastructure can be described as fixed physical facilities that extend beyond the licensee's place of business to areas where the public at large live and work and are therefore exposed to adverse results stemming from a breakdown in the licensee's infrastructure. The second common characteristic is that the reliability and availability of the communications systems for these entities is necessary for them, as part of their regular mission, to prevent or respond to a disaster or crisis affecting the public at large. Specifically, the public depends on these services, which affect the daily lives of members of the public and interruption in the service may have dangerous consequences. …
>
> 78. For instance, an electric utility meets both prongs of the two-part standard. Power lines extend far beyond the utility's power plant and into areas where

---

[15] Federal Communications Commission, *Connecting America: The National Broadband Plan* (March 16, 2010), https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf, Recommendations 12.4 and 12.5 at pages 252-3.

[16] NPSTC Plan at 10.

[17] *Implementation of Sections 309(j) and 337* at para. 76.

> members of the public live and work. A breakdown in the electric utility's infrastructure or fixed physical facilities (*e.g.*, a live wire) creates a dangerous condition for members of the public. Additionally, a dependable communications system is necessary for an electric utility to respond to an interruption in service that may hinder the delivery of vital services (*e.g.*, without power, a home may lack heat in the winter or air conditioning in the summer). …[18]

Allowing utilities to have primary access to the 4.9 GHz band would help reduce equipment costs for public safety users and would help utilities operate more resilient and reliable utility facilities for service to the public, to government agencies, and to other critical infrastructure entities, including commercial communications service providers. The NPSTC Plan also recognized that CII access to the 4.9 GHz "could enhance the delivery of public safety services by CII."[19]

Southern recommends that eligibility for primary licensing be based on the definition of Critical Infrastructure Industry entities in Section 90.7 of the Commission's Rules:

> *Critical Infrastructure Industry (CII).* State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

This definition is premised on the definition of "public safety radio services" in Section 309(j)(2) of the Communications Act of 1934, as amended, which reflects congressional support for making adequate spectrum resources available for CII entities, outside of the competitive bidding process, so that they can fulfill their public service obligations.[20] The definition is

---

[18] *Id.* at paras. 77-78.

[19] NPSTC Plan at 10.

[20] Section 309(j)(2) was added by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997). See also the accompanying Conference Report explaining that even

straight-forward, is based on congressional policy recognizing the quasi-public safety nature of the services provided by these entities, and does not require examination of the specific nature of the communications traffic.

When the Commission first invited comment on eligibility for the 4.9 GHz band, it correctly noted the importance of CII, as defined in Section 309(j)(2) of the Communications Act, having reliable communications:

> 33. …The very nature of the services provided by these entities involve potential hazards whereby reliable radio communications is an essential tool in either avoiding the occurrence of such hazards, or responding to emergency circumstances. Furthermore, such entities need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public. We also recognize that in the course of their duties, these entities will need to interact with the traditional public safety service providers, and the inability to do so may affect the ability of both groups of public safety entities to fulfill their missions.[21]

A CII applicant should be deemed eligible for licensing if it certifies that it meets the definition of "Critical Infrastructure Industry" and that it will use the spectrum in furtherance of its CII services. This is consistent with how the Commission evaluates Public Safety licensing eligibility. The Commission has not sought to ensure, through oversight or enforcement, that government agencies strictly limit use of Public Safety frequencies to traffic that is "public safety" in nature. There is an implicit assumption that Public Safety licensees will self-regulate the use of these frequencies to support their public safety functions.

---

though the services provided by these entities are private in nature, they protect the safety of life, health or property and are not made commercially available to the public. H.R. Rep. No. 105217, 105th Cong., 1st Sess., at 572.

[21] *FNPRM* at 3971.

Southern agrees with the Commission's tentative conclusion that the benefits of co-primary use by both CII and public safety can be realized at slight or no cost to public safety.[22] With the pool of potential licensees limited to public safety and CII there is no need to require preferential algorithms to be built into equipment. This would add to equipment costs, and, without a centralized administrator to dynamically manage prioritization on an incident-by-incident basis, it would be unreasonable to presume that a Public Safety licensee should always have priority over a CII user, regardless of the situation. For example, in the event of downed electrical lines following storms or accidents, emergency responders must wait for the local utility to deenergize and remove the line before attempting other rescue efforts. Similarly, gas utilities are called to the scene of structure fires to disconnect gas lines before emergency responders can enter the building. In these and other situations, it would be contrary to the public interest for all "Public Safety" users to automatically have priority over utility crews.

The Commission has invited comment on the NPSTC's proposal to give CII immediate access to Channels 6 and 7 (5 MHz each) during the first three years, and to allow a CII entity to apply for the other channels during the first three years – only it must give 30-days' notice so that Public Safety eligibles will have an opportunity to file applications that would have priority over the CII application.[23] As an alternative, the Commission has asked whether CII should have immediate access to Channels 12 and 13 (5 MHz each), which could be coupled with access to narrowband channels 14-18 (1 MHz each) to create 15 MHz of contiguous spectrum for CII access on a co-primary basis.[24]

---

[22] *Sixth Further Notice* at para. 71.

[23] *Id*. at para. 66.

[24] *Id*. at para 72.

Southern continues to support CII having immediate co-primary access to all channels. As was discussed earlier, there has been relatively little use of the 4.9 GHz band for a variety of reasons. If more productive use is to be made of this spectrum it makes little sense to further constrain CII access to the band. Allowing CII access across the band will help reduce equipment costs for the benefit of all eligible users and, more importantly, will give CII the flexibility to use this spectrum in furtherance of public safety, health and welfare.

The Commission notes that its general approach in recent years has been to make spectrum available for flexible use rather than allocations to specific industries.[25] This band presents the potential for a hybrid approach to "flexible" use, whereby eligibility is initially limited to Public Safety and CII because of their unique roles in supporting public safety, health and welfare; while also affording those entities flexibility to use the spectrum for applications that support their core missions. Limiting access to specific channels by type of user increases the complexity of managing this band, discourages CII from helping to develop an equipment ecosystem for the band, stifles innovation, and could prevent access to spectrum that is needed to meet critical public purposes.

**B. Leasing Should Not Be Authorized at 4.9 GHz**

The Commission asks whether it should remove the current limitation on spectrum leasing at 4.9 GHz and allow public safety licensees that have obtained exclusive spectrum rights to lease spectrum capacity to CII or commercial entities generally.[26] The Commission has also invited comment on the complications that could arise if public safety licensees were permitted to lease access to their licensed 4.9 GHz spectrum, including how to ensure public safety

---

[25] *Sixth Further Notice* at para. 73.

[26] *Id.* at para. 72.

applications have priority, how other uses could be "interrupted," whether lessees should have primary status, and how to prevent abuse through diversion of leasing revenue to non-public safety purposes.[27]

Just reviewing the list of issues that would have to be addressed makes it clear that the relative costs of a leasing option would far exceed the benefit. Allowing public safety licensees to lease access to their spectrum is counter to the premise that this spectrum should be used to promote and protect public safety, health and welfare. For CII users, a leasing regime would mean having to find a public safety licensee willing to lease its spectrum and negotiate terms for access the spectrum. The terms will, almost by definition, give the CII user less flexibility and control that it would have under a direct-licensing arrangement. It also means CII users would have to compete for such leases against commercial communications providers. Finally, leasing would require significant expenditure of resources by the Commission to oversee and enforce whatever restrictions are adopted to ensure that this "public safety" spectrum remains primarily available for public safety purposes. In short, the minimal benefits of leasing are far outweighed by simply expanding eligibility to CII entities that already have a demonstrated need to use the spectrum for public safety purposes consistent with the needs of traditional Public Safety licensees.

### C. Two-Tiered Sharing on a Secondary Basis Is Unworkable

The Commission invited comment on a "two-tier" sharing approach under which primary licensees in the band (Tier 1 users) would share the band with non-public safety users (Tier 2 users) on a secondary basis. The Commission has invited comment on the additional

---

[27] *Id*. at paras. 75-78.

complications that would have to be addressed to implement such a two-tiered sharing arrangement, such as whether frequency coordination could be conducted on a real-time and dynamic basis to protect Tier 1 users; whether this would require development of an automated database system to enable dynamic sharing by Tier 2 secondary users without interference to Tier 1 users; whether the database should be centralized or distributed; how the database would identify potentially-interfering Tier 2 users and direct them to change channels or shut down; and whether the costs and burdens of establishing and maintaining such a system would exceed the benefits of a two-tiered sharing approach.[28]

As with the safeguards that would have to be incorporated into a leasing approach, the two-tiered sharing approach would entail expenditure of significant resources by both Tier 1 and Tier 2 users, with no guarantee that Tier 1 users will be protected or that Tier 2 users will be able to make any appreciable use of the spectrum. This approach offers very few tangible benefits in exchange for the very real costs of developing and managing a database; incorporating compatible technologies in Tier 2 and, potentially, Tier 1, equipment; delaying expanded use of the band until these systems are developed, tested and placed in operation; and the ongoing costs to the user community and the Commission in resolving interference cases that are not prevented despite the best-intentioned sharing technologies.

**D. The Band Should Not Be Redesignated for Commercial Use**

As a final alternative, the Commission asks if the 4.9 GHz band should be redesignated, in whole or in part, for commercial use because the spectrum has been "underutilized" for public safety services. The Commission identifies a number of issues that would have to be addressed if

---

[28] *Id.* at paras. 82-84

it were reallocated from public safety to commercial use, including the amount of spectrum to be reallocated; whether licenses for the redesignated spectrum should be auctioned and/or made available on an unlicensed basis under Part 15; the technical rules that would be appropriate; whether use should be mobile or fixed; and what should be done about Public Safety incumbents.[29]

As discussed above, the 4.9 GHz band has been relatively lightly used because of a number of issues that the Commission identified years ago, but that have not yet been addressed. The *Fifth Further Notice,* adopted in 2012, noted that lack of growth in the band and requested comment on rule changes that would allow increased utilization. One year later, the NPSTC submitted its consensus plan on how to make more efficient and effective use of this spectrum, including through expanded eligibility for CII. As noted in the *Sixth Further Notice*, a majority of commenters responding to the *Fifth Further Notice* and to the NPSTC Plan supported expanding eligibility to CII entities.

The deficiencies in the rules for this band were identified many years ago, yet there has been no action to revise the rules. It is disingenuous to suggest that the user community has shown a lack of interest in using the band for public safety services over the last 16 years when the rules continue to suffer from deficiencies that were identified over six years ago. Many parties submitted comments in 2012 that noted the problems with the current rules, and that offered recommendations intended to enable and incentivize greater use of the band. Shortly thereafter, NPSTC was able to reach consensus among a wide variety of users on a plan to allow greater use of the band in support of public safety, health, and welfare.

---

[29] *Id.* at paras. 85-86.

It should come as no surprise that the band has continued to languish under rules adopted in the 2002-2003 timeframe. The user community should not be faulted for failing to make more productive use of the band when nothing has changed in the more than six years since the public was first invited to offer comments on how to improve use of this band. Thus, when considering action on the *Sixth Further Notice*, the Commission should be mindful of the status of this band prior to 2012, the issues that were identified in response to the *Fifth Further Notice*, the recommendations in the NPSTC Plan in 2013, the comments on those recommendations, and the amount of time this proceeding has been pending.[30] Review of the complete record – and not just the current status of the band – shows that the most cost-effective solution only involves rule changes that will better accommodate CII access to the band, and that does not require a wholesale reallocation of the band to entirely different entities for entirely different purposes. Reallocating this spectrum from public safety to commercial service would be a radical departure and inconsistent with the public interest in promoting spectrum use for protection of public safety, health and welfare.[31]

---

[30] An agency must consider whether delay in taking action will deprive a party of a right or would leave a party without effective relief if the proceedings extend for too long a period of time. *Sierra Club v. Thomas*, 828 F.2d 783, 795 (D.C. Cir. 1987). The requirement that agency action not be arbitrary or capricious includes a requirement that the agency respond to relevant and significant public comments, including those that were filed earlier in the proceeding. *Ohio Valley Environmental Coalition v. U.S. Army Corps of Engineer*s, 2013 WL 1305732 (S.D.W.Va. March 28, 2013), *aff'd* 828 F.3d 316 (4th Cir. 2016).

[31] *FCC v. Fox Television Stations*, 556 U.S. 502 (2009) (when changing a policy, including when prior policy has engendered serious reliance interests that must be taken into account, a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy). Section 1 of the Communications Act establishes one of the primary purposes of the Commission as "promoting safety of life and property through the use of wire and radio communications." 47 U.S.C. §151.

**WHEREFORE, THE PREMISES CONSIDERED**, Southern Company Services, Inc. respectfully requests that the Commission take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**SOUTHERN COMPANY SERVICES, INC.**

By: /s/ Jeffrey L. Sheldon

Jeffrey L. Sheldon
LEVINE, BLASZAK, BLOCK & BOOTHBY, LLP
2001 L Street, N.W., Suite 900
Washington, DC 20036
202-857-2574
jsheldon@lb3law.com

Its Attorney

July 6, 2018