

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

In the Matter of	)	
	)	
Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE**

The Edison Electric Institute ("EEI"), on behalf of its member companies, hereby submits the following comments in response to the Public Notice of the Federal Communications Commission ("FCC" or "Commission") with regard to the Petition for Clarification or Reconsideration ("Petition") filed by Southern Company Services, Inc. ("Southern") on behalf of itself and its operating affiliates.<sup>1</sup> In this Petition, Southern urges the Commission to clarify its policies on specialized services, as set forth in the *Open Internet Order*,<sup>2</sup> so that enterprise customers, such as electric utilities, have greater assurance that they can contract for specialized services from broadband providers without risk that the Commission will impose new terms and conditions that could fundamentally alter the nature of specialized services.<sup>3</sup> EEI supports Southern's Petition.

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<sup>1</sup> See Public Notice, Petition for Reconsideration of Action in Rulemaking Proceeding, WC Docket No. 07-52, GN Docket No. 09-191; Report No. 2936, 76 Fed. Reg. 74721 (December 1, 2011).

<sup>2</sup> *In re Preserving the Open Internet; Broadband Industry Practices*, Report and Order in GN Docket No. 09-191 and WC Docket No. 07-52, 25 FCC Rcd 17905 (2010) (hereinafter "*Open Internet Order*").

<sup>3</sup> Petition at 1.

EEI is an association of the United States investor-owned electric utilities and industry associates worldwide. Its U.S. members serve almost 95 percent of all customers served by the shareholder-owned segment of the U.S. industry, about 70 percent of all electricity customers, and generate about 70 percent of the electricity delivered in the U.S. EEI frequently represents its U.S. members before Federal agencies, courts, and Congress in matters of common concern, and has filed comments before the Commission in various proceedings affecting interests of its members.

The electric utilities represented by EEI "use a variety of networks, including wired and wireless, licensed and unlicensed, private and commercial, fixed and mobile, broadband and narrowband"<sup>4</sup> and, as a consequence, are in fact among this country's largest users of broadband communications networks and services. EEI's members may be directly affected by the instant proceeding. Their primary interest in this proceeding is the advancement of policies that promote the continued survivability and availability of broadband networks and services for communications in order to support the safe, reliable and efficient delivery of essential utility services to the public at large.

As the Commission has noted in *The National Broadband Plan* "[b]roadband and advanced communications infrastructure will play an important role in achieving national goals of energy independence and efficiency."<sup>5</sup> The unfettered development of the Smart Grid in its various forms is an essential element if these national needs are to be met in a timely fashion. In

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<sup>4</sup> Fed. Commc'ns Comm'n, *Connecting America: The National Broadband Plan* 251 (2010), available at <http://www.broadband.gov/download-plan> [*National Broadband Plan*].

<sup>5</sup> *Id.* at 257.

turn, communications "are fundamental to all aspects of the Smart Grid, including generation, transmission, distribution and consumption."<sup>6</sup>

Southern is correct in its concern that any interpretation of the Commissions *Open Internet Order* which would preclude broadband service providers from developing "specialized services that could meet utilities' need for specialized broadband services with greater reliability and lower latency than mass market Internet access services" might have a chilling effect on both the development of the Smart Grid and the overall use by electric utilities of communications services provided by commercial carriers.<sup>7</sup> Similarly, an electric utility "must have assurance that a broadband service provider can maintain the necessary quality of service throughout its network and over a period of time sufficient to justify the utility's investment in system design and engineering services, end-user devices, and other equipment that the utility must provide to support the service."<sup>8</sup> It would serve no public purpose to inadvertently sweep the Smart Grid within the ambit of the Commission *Open Internet* rules.

Consequently, EEI urges the Commission to grant Southern's Petition for Clarification or Reconsideration, and further to avoid any interpretation of its *Open Internet Order* which would subject the Smart Grid to Commission regulation and impair the ongoing deployment of the Smart Grid.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE

/s/ David K. Owens

David K. Owens

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<sup>6</sup> *Id.* at 249.

<sup>7</sup> Petition at 4.

<sup>8</sup> *Id.* at 6.

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Dated: December 16, 2011