Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52
	)	
Petition for Clarification or Reconsideration	)	Public Notice, Report No. 2936
Filed by Southern Company Services, Inc.	)	

REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom) respectfully submits the following reply comments on the above-captioned Petition filed by Southern Company Services, Inc. (Southern).

In its Petition, Southern asks the Commission to clarify or, if necessary, reconsider the *Open Internet Order* to make clear that the net neutrality rules do not apply to smart grid services, particularly those involving enhanced quality of service capabilities that exceed "best-effort" services.[1] Southern is concerned that without such a clarification/reconsideration, the net neutrality rules could be deemed to apply to smart grid services, which would have a

[1] Petition for Clarification or Reconsideration, Southern Company Services, Inc., GN Docket No. 09-191, WC Docket No. 07-52, at 1, 7 (Oct. 24, 2011) (*Petition*). *See Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201 (Dec. 23, 2010) (*Open Internet Order*).

"chilling effect" on broadband providers' willingness to develop these and other "specialized services."[2]

USTelecom strongly agrees with the underlying substantive premise of Southern's Petition: the Commission's net neutrality rules do not apply currently – and should not be applied in the future – to smart grid and other specialized services. However, we do not believe that further clarification or reconsideration by the Commission is necessary at this time for at least three independent reasons.

First, the *Open Internet Order* already confirms that smart grid services are not subject to the Commission's net neutrality rules. Those rules apply only to broadband Internet access services which, by definition, "provide the capability to transmit data to and receive data from *all or substantially all Internet end points*."[3] But smart grid services do not provide such open-ended Internet connectivity. Rather they enable communications between a relatively narrow subset of end points, *e.g.*, communications between an electric utility and its supervisory control and data acquisition systems, or between an electric utility and smart meters (or similar devices) at customer premises. As such, these smart grid services are not intended to enable, and are likely incapable of enabling, communications with all or substantially all Internet end points. Indeed, the Commission itself has already determined that broadband services offering connectivity only between a particular device, such as an "energy consumption monitor," and a small number of Internet endpoints is a "specialized service" and not a broadband Internet access

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[2] *Petition* at 6. *See also* Edison Electric Institute Comments at 3.

[3] *Open Internet Order* ¶ 44 (emphasis added).

service subject to the net neutrality rules.[4] Thus, there is nothing the Commission needs to clarify or reconsider on this point in the *Order*.[5]

Second, while Southern is correct that the Commission hinted that it might some day revisit whether specialized services should be subject to some type of net neutrality regulation, the Commission said it would first need to see "signs that specialized services are in any way retarding the growth of or constricting capacity available for broadband services."[6] But there is no evidence whatsoever before the Commission to suggest that specialized services are actually having such effects in the marketplace. To the contrary, in the year since the Commission adopted the *Open Internet Order*, broadband providers have continued to aggressively deploy new fixed and mobile broadband Internet access services with ever higher speeds.[7] Indeed, fixed services offered at 24, 50, or even 100 Mbps are becoming increasingly commonplace. And newly deployed 4G LTE mobile broadband services are now delivering speeds above 10 Mbps – a level of wireless performance that would have been unimaginable just a few years ago.[8] Thus,

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[4] *Open Internet Order* ¶ 47. In addition, because the net neutrality rules are applicable only to "mass-market retail" broadband Internet access services, they would clearly not apply to broadband services used to provide connectivity for an electric utility's supervisory control and data acquisition systems. *See id.* ¶¶ 44-45 (describing "mass market" services as those "sold on a standardized basis to residential customers, small businesses and other end-user customers such as schools and libraries").

[5] *See* Joint Opposition of Public Knowledge and Future of Music Coalition at 4 (opining that smart grid services "do[] not present a *prima facie* cause for concern" under the net neutrality rules).

[6] *Open Internet Order* ¶ 114.

[7] *See, e.g.*, Leichtman Research Group, *Over 635,000 Add Broadband in the third Quarter of 2011*, Press Release (Nov. 18, 2011) (the 18 largest broadband providers in the U.S. added 2.3 million subscribers in the first 9 months of 2011); AT&T U-verse High Speed Internet at http://www.att.com/u-verse/explore/internet-landing.jsp?fbid=ZHNUuDo3WH3; Xfinity Internet from Comcast at http://www.comcast.com/Corporate/Learn/HighSpeedInternet/highspeedinternet.html; Time Warner Cable Internet Plans at http://www.timewarnercable.com/nynj/learn/hso/internetplans.html; Verizon FiOS Internet Plans at http://www22.verizon.com/home/fiosinternet/plans/.

[8] *See, e.g.*, *AT&T, Verizon LTE nets offer similar data download, Web browsing speeds*, Computerworld (Dec. 20, 2011) (describing study by Metrico Wireless finding that "average LTE download speeds topped 10 Mbps on each network").

there is no marketplace trend that would warrant the Commission revisiting its decision on specialized services in the *Order*.

Third, although Southern expresses a general concern that the *Open Internet Order* could discourage broadband providers from developing smart grid services, Southern does not identify any particular smart grid services – either in the market today, currently under development, or on the drawing board for the future – that, in its view, might run afoul of the Commission's net neutrality rules. Thus, there is no specific service and accompanying factual record here that would enable the Commission to offer meaningful additional guidance about the scope of its net neutrality rules vis-à-vis smart grid services.

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For all of these reasons, USTelecom does not believe it would be a productive or efficient use of the Commission's resources to attempt to clarify and/or reconsider the decision in the *Open Internet Order* regarding smart grid and other specialized services. To be sure, if and when the development or deployment of a particular new smart grid service implicates network management issues related to the Commission's net neutrality rules, the interested parties should attempt to work through those issues[9] and, if necessary, should seek additional guidance from the Commission. However, the *Open Internet Order*, on its face, expresses the Commission's clear intent that smart grid and other specialized services are not subject to the Commission's net neutrality rules and, accordingly, no further clarification is necessary or appropriate at this juncture.

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[9] *See, e.g.*, Broadband Internet Technical Advisory Group, http://www.bitag.org/ (the mission of the BITAG is "to bring together engineers and other similar technical experts to develop consensus on broadband network management practices or other related technical issues that can affect users' Internet experience").

Respectfully submitted,

Glenn T. Reynolds
Vice President for Policy
United States Telecom Association
607 14th Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-7271

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