

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

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

To: The Commission

**REPLY TO OPPOSITION TO
PETITION FOR CLARIFICATION
OR RECONSIDERATION**

Pursuant to Section 1.429(g) of the FCC’s Rules, Southern Company Services, Inc. ("Southern"), on behalf of itself and its operating affiliates, hereby replies to the Opposition filed by Public Knowledge and Future of Music Coalition (“PK”) with respect to Southern’s request for clarification or reconsideration of one aspect of the Commission’s *Report and Order* in the above-captioned rulemaking proceeding.¹ As explained herein, the opposition actually confirms that there is significant confusion about the Commission’s policies on specialized services and that the Commission should therefore provide greater clarity for both users of such services and the broadband providers that may wish to offer such services.

¹ Opposition of Public Knowledge and Future of Music Coalition to Petition for Clarification or Reconsideration, filed on December 16, 2011, in GN Docket No. 09-191 and WC Docket No. 07-52.

In its Opposition to Southern’s petition, PK first suggests that there is no need for the Commission to clarify its policies on specialized services that are used for “smart grid” services, such a grid control, stating its opinion that “a utility-related specialized service that was only offered to customers who requested it, that had a *de minimis* effect on the bandwidth available to broadband Internet access, and that did not compete with third-party, over-the-top Internet services, does not present a *prima facie* cause for concern.”² However, PK goes on to state that because these services “are not yet mature” the FCC is not in a position to “make any informed policy choice” on whether these services are likely to have anticompetitive effects.³ PK argues that Southern should instead file a “Petition for Declaratory Judgment” based on the particular facts of the specialized service Southern wants to use. However, PK cautions that even if Southern were to file such a petition (and thereby delay the entering of an agreement to take service until the FCC could invite comment on and address Southern’s petition), Southern would “have to square its position with the Commission’s stated desire to monitor the specialized services market as it develops rather than preemptively issuing rulings that could have unanticipated consequences.”⁴

If anything, PK’s Opposition highlights the dilemma faced by prospective customers of specialized services and broadband providers that may wish to offer such services; that is, absent further clarification it is not clear what the FCC intends to do with specialized services and which services might be subject to future challenges. As Southern noted in its Petition for Clarification, smart grid functionalities can range from automated metering infrastructure to supervisory control

² Opposition of PK, at 4.

³ *Id.*

⁴ *Id.* at 5, n.4.

and data acquisition systems with an increasing number of devices embedded deeply within the electric system. Broadband services provided by a carrier might not be appropriate to meet all utility communications requirements, but the FCC's Open Internet rules create additional concerns as to whether carriers will be able to offer specialized services for even those applications that utilities would trust placing onto a public network.

As a proponent of Open Internet rules, even PK cannot reconcile whether smart grid services would be exempt from the Open Internet rules (which it seems to suggest by arguing that clarification is not necessary) or whether these services might be brought within the ambit of the Open Internet rules but only after a carrier provides such services to a paying customer intending to rely on these services. PK's Opposition succinctly captures the dilemma that will exist for carriers and customers alike. Unless further clarified by the Commission, a specialized service arrangement runs the risk of being reclassified as broadband Internet access service simply because it was designed to provide the subscriber with greater reliability and higher quality than could be obtained under the provider's general (and nondiscriminatory) provision of broadband Internet access service pursuant to the Open Internet rules. Southern agrees with the Edison Electric Institute ("EEI") that "[i]t would serve no useful purpose to sweep the Smart Grid within the ambit of the Commission's Open Internet rules."⁵

Southern rejects PK's position that the FCC's policies on specialized services should remain vague and that customers needing specialized services must simply take their chances and respond to any complaints that might arise. As Southern noted in its Petition for Clarification, if public broadband networks are going to be of any value to smart grid applications, utilities 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. Southern disagrees with PK's comment that this uncertainty "is no different in degree or kind than that uncertainty that attends any new investment,"⁶ because the FCC has an opportunity to remove some of the uncertainty and confusion that it created in its Open Internet rules.

For the foregoing reasons, Southern renews its request that the Commission clarify, or if necessary reconsider, its policies and pronouncements in the *Open Internet Order* with respect to specialized services so that utilities and other enterprise customers will be able to develop contractual relationships with confidence that specialized services will not be made subject to the Open Internet rules for broadband Internet access services.

Respectfully submitted,

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⁵ Comments of the Edison Electric Institute, filed December 16, 2011, at 3.

⁶ Opposition of PK, at 5.

CERTIFICATE OF SERVICE

I, Andrea Olive, a secretary with the law firm of Fish & Richardson P.C., hereby certify that I have caused to be sent, by first class mail, postage prepaid, a copy of the foregoing "Reply to Opposition to Petition for Clarification or Reconsideration," this 27th day of December, 2011, to each of the following:

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