Contribution Reform and Smart Grids

Ex Parte Presentation

September 13, 2012

WC Docket No. 06-122 & GN Docket No. 09-51

Smart Grid Deployment is a National Priority

- **Energy Independence and Security Act of 2007, Pub. L. No. 110-140 § 1301**

  "It is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of the following, which together characterize a Smart Grid" including: "Identification and lowering of unreasonable or unnecessary barriers to adoption of smart grid technologies"

- **The National Broadband Plan, Chapter 12.1, pgs. 247-249**

  "The Smart Grid is a national priority for several reasons. It will increase the reliability of the electric grid, more efficiently integrate renewable generation, reduce peak demand and support the widespread adoption of electric vehicles."

  Recommendation 12.2: "States should reduce impediments and financial disincentives to using commercial service providers for Smart Grid communications."

- **The FCC should not raise financial or regulatory barriers to Smart Grid deployment**

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The FCC's Authority to Mandate Contributions is Limited

- Section 254(d) of the Act outlines the boundaries of the FCC's authority to require contributions to the universal service fund.

- "Every telecommunications carrier that provides interstate telecommunications services shall contribute…."

- "Any other provider of interstate telecommunications may be required to contribute… if the public interest so requires."

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The FCC Lacks the Authority Under the Act To Require Contributions for Smart Grids

- Smart Grid technologies are not "Interstate Telecommunications"
  - Smart Grids typically operate within intrastate distribution networks
  - The FCC has no jurisdiction to assess federal universal service contribution on intrastate telecommunications revenues. *TOPUC v. FCC*, 183 F.3d 393, 417-18.

- Smart Grid technologies are not "Telecommunications Services"
  - Smart Grid technologies typically are not "offered for a fee to the public"

- Smart Grid technologies are not "Telecommunications"
  - Smart Grid technologies change the form and content of information sent and received

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The Public Interest Does Not Require Smart Grids to Contribute

- Mandating contributions would slow deployment of Smart Grids by raising deployment costs

- The resulting regulatory overlap would slow deployment by creating conflicts between the FCC, FERC, and state regulatory authorities

- Mandating contributions would trigger federal and state ratemaking cases to assess and recover the contribution charges -- a federal “energy” tax?
  - *See, e.g.*, 16 U.S.C. 824d (“every public utility shall file with [FERC]… schedules showing all rates and charges” for FERC jurisdictional sales)

- Smart Grid revenues – to the extent they exist at all – would be difficult to identify and allocate for jurisdictional purposes

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Smart Grid Services Should Not Contribute to the USF

- Smart Grid services are not “interstate telecommunications services,” and thus contributions are not mandatory

- The public interest does not require Smart Grids to contribute to the universal service fund, and thus contributions are not permissive

- The public interest – as articulated by Congress in the Energy Independence Act and by the FCC in the National Broadband Plan – would best be served by exempting Smart Grids from contributing to the universal service fund

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Questions?

For more information, see the

Reply Comments of Edison Electric Institute (filed Aug. 6, 2012)

Available at:
http://apps.fcc.gov/ecfs/document/view?id=7021996888