

**BEFORE THE
DEPARTMENT OF COMMERCE**

National Telecommunications and Information Administration

Docket No. 150224183-5183-01

**Privacy, Transparency, and Accountability
Regarding Commercial and Private Use
of Unmanned Aircraft Systems**

**Comments of
Southern Company**

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Southern Company ("Southern") appreciates this opportunity to comment on the National Telecommunications and Information Administration's ("NTIA") request for public comment on privacy, transparency, and accountability regarding commercial and private use of unmanned aircraft systems ("UAS"). Southern respectfully submits these comments for consideration.

Southern sees significant public benefit from the use of UAS by the utility industry. And Southern agrees that UAS technology, like any other technology, should not be used to illegally violate an individual's privacy. However, existing state tort law and anti-voyeurism statutes adequately address privacy issues, and to the extent that any additional regulations or standards are promulgated specific to UAS, they should include an appropriate exception for UAS operations by or for an electric utility.

Statement of Interest

Southern is the leading energy supplier in the Southeastern United States, serving more than 4.5 million customers through its subsidiaries with clean, safe, reliable, and affordable electricity generated from a full portfolio of energy resources: new nuclear, 21st century coal, natural gas, renewables, and energy efficiency. Southern's subsidiaries include four vertically integrated electric utilities—Alabama Power, Georgia Power, Gulf Power, and Mississippi Power—as well as Southern Power, which owns generation assets in nine states and sells electricity in the wholesale market to municipalities, electric cooperatives, and investor-owned utilities. Southern is an industry leader when it comes to researching, developing and applying new technologies to its business. Southern has invested more than \$2 billion in robust, proprietary research and development since 1970, helping improve the way it produces and delivers electricity to its customers.

Comments

UAS technology has the potential to greatly improve the manner by which Southern's subsidiaries deliver clean, safe, reliable, and affordable electricity to their customers. Once fully deployed, UAS technology will play a vital role in the siting, construction, repair, maintenance, replacement, and inspection of electric utility facilities and infrastructure. Additionally, UAS technology can assist in the evaluation of vegetation growth and other issues related to maintaining clearances on utility easements and rights-of-way, facilitate routing and siting to more efficiently expand utility access, and help utilities respond to emergency situations and other catastrophic events such as hurricanes and tornadoes.

As mentioned above, Southern agrees that UAS technology should not be used to illegally violate an individual's privacy. However, invasion of privacy is generally actionable under state law. The Restatement of Torts provides that "one

who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another...is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”¹ The accompanying comment to the Restatement explains that the tort may be committed with or without mechanical aids and the intrusion on another’s privacy alone subjects the defendant to liability. The cause of action exists even if “there is not publication or other use of any kind of the photograph or information outlined.”²

In addition to existing state law protecting the public’s privacy, some states are enacting specific UAS legislation addressing privacy. For example, in Texas, “a person commits an offense if the person uses an unmanned aircraft to capture an image of an individual or privately owned real property...with the intent to conduct surveillance on the individual or property captured in the image.”³ Other states with UAS privacy laws include, but are not limited to, Indiana, Idaho, Tennessee, North Carolina, and Wisconsin.⁴

Notably however, both Texas and Tennessee’s privacy laws grant a special exception for UAS operations conducted by or for electric utilities. For example, the Texas law provides:

“It is lawful to capture an image using an unmanned aircraft in this state:

....

(5) if the image is captured by or for an electric or natural gas utility:

(A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;

(B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;

(C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and

¹ See Restatement 2d of Torts, § 652B (1977); See also *Baugh v. Fleming*, 2009 Tex. App. LEXIS 9847 (Texas Court of Appeals, Third Circuit) (affirming judgment for invasion of privacy after appellants filmed through appellees’ kitchen window in an attempt to prove that appellees’ barking dog was a nuisance).

² Restatement 2d of Torts, § 652B cmt. b (1977).

³ TEX. GOV’T CODE ANN. § 423.003 (2013).

⁴ See The National Conference of State Legislatures, 2013 and 2014 State Unmanned Aircraft Systems (UAS) Legislation available at <http://www.ncsl.org/research/civil-and-criminal-justice/unmanned-aerial-vehicles.aspx> and <http://www.ncsl.org/research/civil-and-criminal-justice/2014-state-unmanned-aircraft-systems-uas-legislation.aspx>

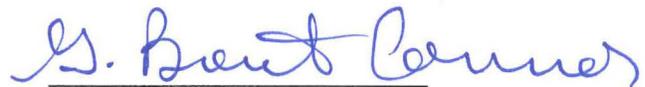
(D) for utility facility routing and siting for the purpose of providing utility service;”⁵

NTIA should also recognize the public benefit UAS technology will provide the electric utility industry and should ensure that any privacy regulation or standard promulgated above and beyond the already existing state laws includes an appropriate exception for electric utilities.

NTIA also requested comments regarding transparency and accountability of UAS programs. Given that the use of UAS by Southern’s subsidiaries would primarily be in connection with their own assets and infrastructure or otherwise on property on which they own or have a right to be present, the current legal framework seems adequate to ensure that electric utilities are transparent and accountable.

Thank you for providing Southern the opportunity to comment on this issue.

Respectfully submitted,



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⁵ TEX. GOV'T CODE ANN. § 423.002 (2013); *See also* TENN. CODE ANN. § 39-13-902 (2015) (similar exception).