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December 13, 2013

EX PARTE NOTICE

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: GN Docket Nos. 12-353 and 13-5; and WT Docket No. 13-135

Dear Ms. Dortch:

On November 29, the Internet Innovation Alliance (IIA) filed an October 8, 2013 white paper entitled “Telecommunications Competition: The Infrastructure-Investment Race,” authored by Anna-Maria Kovacs. The white paper, however, distorts critical facts. COMPTTEL stresses that the Commission’s consideration of IP transition policy must be based on accurate data and analysis and hereby provides a response to some of the claims made in the white paper. Angie Kronenberg also provided Patrick Halley of the Commission’s Transition Task Force the following COMPTTEL response via email today.

The nation’s transition to IP technology holds great promise for consumers and carriers. Indeed, competitive carriers have been at the forefront of introducing IP-based services to consumers, and many of our members’ networks already are all IP. Discussions on the best policies to support a successful transition of the industry to IP, one where competition flourishes and consumers are protected, should be based on hard data that is accurately portrayed, analyzed and supported. Unfortunately, much of the analysis underlying the core claims of the IIA white paper fail to meet such a standard. COMPTTEL has identified five critical flaws in the IIA Paper:

1. The claim that ILECs are continuing to make significant investment in legacy (time-division multiplexing, or TDM) networks is not supported by the underlying data.

The IIA paper claims that there is significant ongoing investment in “legacy” facilities by incumbent local telephone companies, alleging that such behavior is forced by unnecessary regulation. The underlying basis to this claim is a daisy-chain citation through a 2011 paper¹ to a

¹ Robert C. Atkinson, Ivy E. Shultz, Travis Korte, and Timothy Krompinger, “Broadband in American – 2nd Edition, Where It Is and Where It Is Going (According to Broadband Service Providers)”, May 2011 (“Broadband in American - 2nd Edition”).

2008 marketing report.² However, these source documents reached fundamentally the opposite conclusion of what the IIA paper asserts – that significant investment in obsolete facilities is occurring. The marketing report noted that (even more than five years ago) “broadband remains the primary capex driver;”³ that “there has been a pronounced shift in capex towards new, broadband platforms, and away from narrowband systems;”⁴ and that RBOC budgets have “a focus on key projects, such as broadband (FTTx, xDSL), Internet data and wireless backhaul.”⁵ Additionally, the 2011 analysis stated that “much of the capex is for general-purpose digital networks that can carry voice, data and video.”⁶ It is impossible to understand how the IIA paper can assert that ILECs are continuing to make significant investments in obsolete facilities when the source documents recognize that the ILECs are, in fact, upgrading their networks with new technology.

Moreover, the IIA paper completely ignores that the physical layer, which is comprised of costly network components – such as conduits and poles, as well as fiber and copper transmission links – are used (and shared) by both IP and TDM technologies. Consequently, it is not unusual for capex to be expended on facilities that are capable of supporting IP or TDM services. Indeed, the paper seems unaware that IP can be provided over TDM links, and that TDM-like services can be provided over IP, which may partially explain the paper’s confusion with the fact that capex expended on investments capable of supporting both new and legacy services is not capex wasted on obsolete facilities.

2. The claim that ILECs are being forced to waste capital and operating funds on obsolete networks by “monopoly era” regulation is not supported by any analysis.

As noted above, the assertion that the ILECs are (as claimed) today investing in obsolete facilities is not supported by the source data. If the investment itself is not occurring, then the claim that this phantom investment is the result of strict regulation is specious. More fundamentally, the characterization that the ILECs are restricted by regulations “that were developed for legacy networks operating as monopolies” ignores the significant changes in regulation, particularly state regulation, during the past two decades, and ignores the fact that it was competition – not deregulation – that provided them the incentive to upgrade.

Many rural ILECs have deployed IP technology in their networks without any of the drama of AT&T’s highly publicized approach. If there were actually significant regulatory barriers (and the IIA paper fails to identify any specific concerns), how is it that the smallest and most regulated local telephone companies – those that serve rural markets – have been able to move forward? If any issue is making it more difficult for AT&T to move to IP technology it is AT&T’s own (unfounded) assertion that its VoIP services are not telecommunications services.

² Skyline Marketing Group, CapEx Report 2008 Annual Report (“CapEx Report 2008”).

³ *CapEx Report 2008* at 1.

⁴ *Id.*

⁵ *Id.* at 13.

⁶ *Broadband in America – 2nd Edition* at 42.

As Verizon itself has noted, new technologies are introduced into networks all the time.⁷ A change in technology does not change the nature of the service.

3. The claim that U.S. communications traffic has almost completed the transition to IP is definitional gamesmanship.

The IIA paper claims that the transition to IP is largely over, basing the statement on a traffic comparison showing that voice traffic is a small fraction (1 percent) of Internet traffic. Given the enormous capacity requirements of the Internet – and the relatively small capacity requirements of voice service – the comparison is a meaningless, forgone conclusion that says nothing about the transition of the PSTN to IP technology, which is the principal issue of the IP transition.

Moreover, the IIA paper never acknowledges the particular importance of voice communications, especially to the nation’s business community, or that the vast majority – approximately 90 percent, according to USTelecom – of IP voice traffic is carried over closed or managed IP networks, not the public Internet.⁸ This distinction is important because many providers (and various customer segments) require the high level of quality that is made possible only with managed IP networks. As we have discussed numerous times, both AT&T and Verizon’s flagship VoIP services to their own customers are not “Over the Top” (OTT) services, i.e., they are not provided over the public Internet. In fact, they both clearly make a point in the marketing materials for these voice products that the services are delivered over managed networks, and not the Internet.⁹

4. The Telecommunications Act of 1996 has not failed.

The IIA paper broadly, and boldly, claims that the unbundling provisions of the Telecommunications Act have failed. Although presented in its summary and table of contents as a comprehensive conclusion, a closer look at the content of the paper reveals that the

⁷ Comments of Verizon and Verizon Wireless, GN Docket No. 13-5, pp. 1-2, Jul. 8, 2013.

⁸ The FCC reported 37 million interconnection VoIP subscriptions at the end of 2011. Local Telephone Competition, Status as of December 31, 2011, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2013, p. 1 (“January 2013 Local Competition Report”). For the same time period, USTELECOM estimated there to be a mere 3.5 million of OTT VoIP lines. USTELECOM, “Evidence of Voice Competition and ILEC Non-Dominance Mounts,” April 2, 2013, at 8 (“2013 USTELECOM Brief”). Available at: <http://www.ustelecom.org/news/research-briefs/ustelecom-research-brief-april-4-2013>.

⁹ “AT&T U-verse Voice service is provided over AT&T’s world-class managed network *and not the public Internet.*” AT&T: How AT&T U-verse Voice is different from the digital voice products of other providers, available at <http://www.att.com/esupport/article.jsp?sid=KB401031#fbid=L8RYx19uzva> (emphasis added); Verizon explains to its customers that to “understand the features and quality of FiOS Digital Voice, you first need to know that the service is not the same as the services you get with a little Internet adapter for your modem and phone, and it *does not ever touch the public Internet.*” Verizon Press Release, “FiOS Digital Voice: Here’s How It Works, Verizon’s Managed IP Network Links Customers’ Homes to Softswitch and Applications Service, Enabling Innovative Services,” June 3, 2010, available at <http://newscenter.verizon.com/press-releases/verizon/2010/fios-digital-voice-heres.html> (emphasis added).

conclusion is entirely limited to the residential consumer market, and apparently discounts the importance of the 1996 Act's interconnection provisions that have enabled cable entry into that market.

The IIA paper completely ignores the nation's business market, in which the Telecommunications Act (and the availability of unbundled network element (UNE)-based offerings) remain a critical source of competition. According to the FCC's local competition report for the period ending June 2012, there were 24.3 million business lines being served by CLECs (non-ILECs).¹⁰ Using USTelecom's estimate that 96 percent of cable telephony lines serve residential customers,¹¹ of the 28.5 million lines on coaxial cable,¹² only 1.1 million lines served business customers. In contrast, CLECs reported over 6.6 million lines provisioned over UNE loops,¹³ nearly all of which are used to serve business customers.

Additionally, while the IIA paper notes that AT&T's U-verse offering (a service offered by a sponsor of the IIA paper) is "the fastest growing fixed-broadband technology," it ignores that the basic U-verse architecture – which combines advanced electronics on a copper loop, with traffic aggregated at a point of interface with a fiber-network – is the identical physical architecture used by most CLECs to deploy Ethernet-over-copper technology to serve business customers with high speed broadband. Consequently, one cannot praise U-verse while simultaneously, and incorrectly, claiming that the Telecommunications Act has failed. This is particularly true, given that, as intended, the Telecommunications Act is responsible for bringing similar services, which compete with the incumbents' offerings, to the nation's business community.

5. The IIA paper ignores the financial benefit of depreciated plant.

The IIA paper points out that a firm with high fixed costs (i.e., costs that do not vary with the number of subscribers) will see an increase in the cost-per-subscriber as the number of subscribers declines. This is basic math. But the IIA paper never acknowledges that once the fixed cost has been largely recovered, even low levels of subscribership are financially attractive because the remaining investment cost (i.e., original cost less accumulated depreciation) is quite low.

Of particular note, in 2007 (the last year the FCC required that this data be made public), the three largest ILECs had already recovered 70 percent of their regulated investment in telephone plant (2007 ARMIS 43-03), and there has been more than five years of additional depreciation since that time. Given the fact that the invested capital of these ILECs is declining with each successive year, the level of subscribers can fall in parallel without creating the financial harm claimed by the IIA Paper.

¹⁰ Local Telephone Competition, Status as of June 30, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, June 2013, p. 5, Figure 4 ("June 2013 Local Competition Report").

¹¹ 2013 USTELECOM Brief at 8.

¹² June 2103 Local Competition Report at 17, Table 6.

¹³ *Id* at 10.

Should you have any questions concerning the foregoing, please do not hesitate to contact me.

Respectfully Submitted,

/s/

Karen Reidy

cc: Patrick Halley