

Internet Innovation Alliance
FCC Ex Parte Filing

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

In this filing, the Internet Innovation Alliance (“IIA”) responds to recent *ex parte* submissions by Comptel and NASUCA that challenge an IIA Study in the public record, authored by Dr. Anna Maria Kovacs, titled *Telecommunications Competition: The Infrastructure-Investment Race*. Our filing below highlights the analytical deficiencies in the arguments proffered by Comptel and NASUCA, rebuts their claims, and reasserts the fundamental conclusions of Dr. Kovacs’ study: that consumers enjoy a highly competitive communications market in the U.S., that wireline broadband networks must be free to invest in IP-over-broadband, and that core consumer protections must be preserved.

Dr. Kovacs’ paper¹ shows that the *Telecommunications Act of 1996* was enormously successful in making the U.S. communications market competitive because it opened the door to competition between providers of services over various platforms. Today, consumers can choose among services provided over different technologies, and they mix and match to satisfy their needs:²

- In the consumer voice market, which was a monopoly in 1996 on the local side, consumers are now choosing among multiple providers of wireless and Voice over Internet Protocol (VoIP) services as well as traditional Plain Old Telephone Service (POTS). Indeed, by 2012 POTS’ share of households was reduced to 34% and only 5% used POTS without also using a wireless service. And, of course, the distinction between local and long-distance service, which was important in 1996, has become irrelevant.
- In the Multi-Channel Video Provider Distribution (MVPD) market, by 2012 satellite had gained 34% share and the telcos 10% share.
- In the Internet access market, which barely existed in 1996 and then only as dial-up, vibrant competition exists between wireline, cable, and wireless providers. By 2012, multiple wireless broadband providers shared 65% of the market, with wireline serving 14%, cable serving 20%, and others serving the last 1%.
- Unbundled Network Element (UNE)-based competition is no longer a meaningful factor in the consumer market, a point neither Comptel nor NASUCA disputes.³ By contrast, inter-platform competition is vibrant and sustainable.

Thus, while Comptel is correct that Dr. Kovacs does not consider UNE-based competition to have been successful, her paper makes it clear that the inter-platform competition introduced by the ’96 Act was extremely successful.

¹ Kovacs, Anna-Maria. *Telecommunications competition: The infrastructure-investment race*. October 8, 2013.

² Kovacs at 2-3, and 27-39.

³ With regard to Comptel’s claim that at mid-year 2012 there were 6.6 million CLEC UNEs in use in the business market, it is worth noting that the FCC’s *Local Competition Report* for mid-year 2012 shows conflicting data. Table 4 shows 6.6 million UNEs obtained by CLECs from ILECs, while Table 5 shows 3.1 million UNEs provided by ILECs to CLECs. Comptel FCC ex parte filing, December 13, 2013, at 4.

Dr. Kovacs also showed that thanks to the regulatory relief provided by the Federal Communications Commission (FCC) in its TRRO decision, wireline carriers are shifting their investment to broadband, after having spent far too much on legacy technologies⁴:

“Indeed, the ILECs are moving their focus away from legacy investment to broadband. *Broadband in America – 2d Edition*, a report prepared by a team led by Bob Atkinson of CITI in 2011, estimated that 53% of the capital investment (capex) made by the three largest ILECs, the Regional Bells (RBOCs), from 2006 through 2011 was spent on their legacy networks and only 47% was spent on broadband.⁵

The ILEC industry as a whole spent \$154 billion in capex during 2006 through 2011,⁶ while the cable industry spent \$81 billion in capex over the same period.⁷ Assuming the RBOCs’ spending on legacy infrastructure is characteristic of the ILEC industry as a whole, we estimate that the ILECs spent \$81 billion on legacy infrastructure during those six years, i.e. 53% of \$154 billion. In other words, the ILECs spent nearly twice as much capital investment as the cable companies, and all of that extra capital—and then some—can be accounted for by their spending on their legacy networks.

Having said that, the ratio has improved over time. In 2006, 69% of the ILEC capital was spent on legacy infrastructure and only 31% on broadband. By 2011, 42% was spent on the legacy networks and 58% on broadband.⁸ That is, of course, still far too much capital devoted to plant that is already obsolete, but it is a significant improvement.”

Dr. Kovacs’ comments rely on a study by Dr. Atkinson and the CITI research team, which did a very extensive analysis of the capital expenditures of the wireline, wireless, and cable industries in the 2006 through 2011 period, based on financial reports, analyst reports, and other materials. They looked carefully at the various technologies employed by these industries. They considered the issue of cost allocation.⁹

While failing to offer any independent research of its own, Comptel simply ignores all of CITI’s research and declares all legacy investment to be “phantom.”¹⁰ Furthermore, Comptel ignores the reality of new cash investment.¹¹ In an attempt to claim that ILECs have only minimal fixed-cost left in their networks, Comptel depreciates ILEC networks fully without crediting the new investments they have made. Comptel simply ignores the \$154 billion in new investment that the ILECs made in their wireline networks during 2006 through 2011, and the investments they continue to make.

⁴ Kovacs at 20.

⁵ Robert C. Atkinson, Ivy E. Schultz, Travis Korte, and Timothy Krompinger, *Broadband in America – 2d Edition*, May 2011, table 5, at 42. The same table appears on page 78 as Table 14, and pages 76-81 explain it and extend the forecast to 2015.

The CITI authors note that the report is the authors’ rather than an official CITI publication, because CITI does not author or publish reports. However, they also note that the work was done with CITI research resources.

⁶ Company financial reports for those that are publicly owned and estimates for the remainder.

⁷ Industry statistics on NCTA website.

⁸ Atkinson et al, table 5 at 42. We are making the simplifying assumption that the RBOC legacy capex as % of total capex ratio is typical of the entire ILEC industry.

⁹ The methodology is explained in detail on pages 6-8, and the material is extensively footnoted throughout.

¹⁰ Comptel at 2.

¹¹ Comptel at 4.

NASUCA's analysis is not that cavalier, but it does make two major mistakes. First, NASUCA conflates wireless investment with wireline investment, ignoring the more rapid technology-upgrade cycle of the wireless industry.¹² NASUCA quotes the Atkinson study as saying that two-thirds of AT&T's investment in 2009 will be oriented to broadband. As the Atkinson quote points out, however, this includes AT&T's wireless investment.¹³ And the Atkinson study characterizes wireless capex as "almost entirely driven by 'broadband'."¹⁴ Dr. Kovacs' figures for legacy investment, on the other hand, are just for the wireline side, as are the Atkinson study's in Table 5, which is titled "RBOC Wired Broadband Capex."¹⁵ The table shows only 52% of wireline capex devoted to broadband in 2009.

Second, NASUCA confuses a single-year 2011 target with spending over a six-year period. The Atkinson study envisions wired networks spending nearly 60% of capex—or more precisely 58% per Table 5—on broadband in 2011.¹⁶ However, for the 2006 through 2011 period, the Atkinson study shows 53% of the wireline capex being spent on legacy rather than broadband technologies. Dr. Kovacs' numbers reflect the Atkinson study accurately.

Dr. Kovacs' paper also demonstrated that the transition of traffic to IP is largely complete, stating that "even in 2012, there was less than 1% as much traditional circuit-switched traffic as there was IP traffic on U.S. networks."¹⁷ The remaining switched traffic is primarily voice traffic, but much of that will migrate to IP as wireless carriers move to Voice over LTE. Comptel's comments confirm that business traffic has also essentially completed the transition. Comptel states that 90% of business voice traffic runs in IP, making it clear that IP is a well-accepted medium for voice.¹⁸ Given that business traffic is largely data which runs essentially all in IP, Comptel's numbers support the paper's conclusion that 99% of U.S. communications traffic runs in IP, some as managed-IP and some over the open Internet.¹⁹

NASUCA also argues against the 1% statistic, but it does not claim that the statistic is factually wrong. Instead, it protests that this statistic diminishes the importance of voice service. However, the examples NASUCA then raises as requiring TDM—911, air-traffic control, alarm and medical monitoring—are extremely important, but not because they are voice services. A text to 911 is just as important as a voice call to 911. Data flowing from a medical device is no less important than the same information provided in a voice call. All bits, NASUCA says,²⁰ are not created equal. However, the most important bits at a given instant are not necessarily voice, but they do have to reach their destination. No disagreement exists on the fact that the TDM to IP transition requires significant care.

¹² Roycroft, Trevor R., "The IP/Broadband Transition—Public Policy Still Matters," November 15, 2013, executive summary and pages 3-5. (Hereafter referred to as NASUCA).

¹³ NASUCA at 4, quoting Atkinson at 42: "Approximately two-thirds of AT&T's 2009 investment will extend and enhance the company's wireless and wired broadband networks to provide more coverage, speed, and capacity."

¹⁴ Atkinson et al, at 41.

¹⁵ Both the quote and the table are on page 42 of the Atkinson study.

¹⁶ Atkinson at 42: "with broadband capex expected to reach nearly 60% of total wireline capex in 2011."

¹⁷ Kovacs at 8.

¹⁸ Comptel at 3.

¹⁹ Comptel appears to argue that managed-IP is not IP because it does not run over the open Internet. Managed-IP does, however, run over IP networks. Comptel appears to be engaging in the very "definitional gamesmanship" of which it accuses Dr. Kovacs on page 3.

²⁰ NASUCA at 11.

The fundamental issue that needs to be addressed is the one raised by Chairman Wheeler and his fellow FCC commissioners—how to preserve core values regardless of the technology platform being deployed: Public safety, universal access, consumer protection, and competition. As NASUCA’s examples point out, public safety is high on that list.

Dr. Kovacs also highlighted that point in her paper:

“Some of the goals behind the ILEC regulations remain relevant: ensuring that communications-access is available to all, that traffic will flow smoothly, that anyone on the network can reach anyone else, that public safety is well served—these goals still have to be satisfied. However, their implementation has to be different for IP broadband networks which face competition, whose architecture is different from that of circuit-switched narrowband networks, and whose physical media have different characteristics and capabilities.

For example, ensuring ongoing access to communications, especially in emergency situations, is just as important today as it was in the past. But the old solution of relying on reverse-powering from the central office to deal with power outages is no longer useful in most cases. That solution does not work over the “lines” that consumers most desire. Fiber-to-the-premise, hybrid fiber-coax, and wireless connections are unable to provide reverse-powering. Yet, these are the links more than 60% of consumers have chosen as their primary means of communication....

Consumers will be best protected if all resources are devoted to the networks that they have chosen to use, rather than being wasted on the networks most have abandoned and the rest are likely to abandon within a few years. Thus, ILECs need the same engineering freedom to evolve their networks as do their cable, wireless, and CDN siblings. They also need the same financial freedom to invest all of their capital in the network of the present and future, rather than being forced to devote much of it to the network of the past.”²¹

As Chairman Wheeler said at the FCC’s January 30th Open Meeting: “Our challenge is to preserve the values that consumers and businesses have come to expect from their networks, while unleashing new waves of investment and innovation, which will deliver untold benefits for the American people”.²²

IIA continues to look forward to working with the FCC and other interested stakeholders as the agency embarks in its oversight of initial market trials of high-speed broadband networks and implements regulations and policies designed to enhance investment in the upgrade and modernization of the nation’s aging telephone networks to next-generation broadband networks.

²¹ Kovacs at 13-14.

²² Statement of Chairman Wheeler, in GN Docket Nos. 13-5, 12-353, 10-51, 03-123, and WC Dockets No. 10-90 and 13-97 , FCC Open Meeting, January 30, 2014, at 1.