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November 21, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Via Electronic Filing

Re: GN Docket No. 14-28, *Protecting and Promoting the Open Internet*
GN Docket No. 10-127, *Framework for Broadband Internet Service*

Dear Ms. Dortch,

On Wednesday, November 19, 2014, the United States Telecom Association (USTA) submitted a "study" by economists Kevin A. Hassett and Robert J. Shapiro purporting to find that a return to Congress's deregulatory Title II legal structure for broadband telecommunications services would cause a near one-third drop in capital investment.[1]

This result is facially absurd.

And it is an absurd result in large part because the supposed "study" is deeply flawed.

The USTA study is not at all structured in a manner that could produce *any* reasonable estimate of the impact of a restoration of Congress's statutory framework for two-way communications services. The best, most charitable interpretation of USTA's analysis is the benign conclusion that telecom carriers have not made appreciable *new* investments since 2009 in networks they have *already built*, during a period when demand for wireline PSTN voice services *continued* its decline begun many years earlier.

With this brief letter, we outline these patently obvious flaws with USTA's filing.

- The study purports, but fails miserably, to separate out investments in Title II services from those made in non-Title II services. The key econometric tool used to arrive at the basis of its subsequent prediction of investment assumes that no wireless services are Title II services, when that is patently false as a matter of law because Title II does indeed apply to CMRS.

[1] *See* Letter from Patrick S. Brogan, Vice President, Industry Analysis, United States Telecommunications Association, GN Docket No. 14-28 (filed Nov. 19, 2014) (attaching a paper by Kevin A. Hassett and Robert J. Shapiro, "The Impact of Title II Regulation of Internet Providers On Their Capital Investments," Nov. 2014 ("USTA Study")).

- This mistaken assumption, combined with other inherent flaws, leads to the study's biased and facially absurd conclusion that restoration of Title II's core obligations (which apply today to CMRS and Enterprise broadband services) would devastate capital investment. Indeed, to the extent that the study's authors identify the regulatory structure that applies to wireless carriers as preferable to their supposedly onerous Title II straw man, this is in fact the very same light-touch Title II structure that the President and Free Press have identified as the proper legal framework under the Communications Act for mass-market broadband Internet access services.

- The study ignores the reality that once last mile networks are built, they do not need to be built again, especially in the face of declining demand for a particular type of service. For the authors to observe that there was less investment in wireline than in wireless networks following the 2009 recession is a benign observation that offers no guidance as to how carriers will allocate capital in the future, in response to future market demand for data transmission services. The authors have merely observed the well-known fact that wireline networks were largely constructed prior to 2009, while mobile wireless data networks were not (a figure which included the non-network capital investments associated with the services offered over these networks).

- The study ignores the fact that the declining consumer demand for Title II public switched telephone network (PSTN) voice services (which began long before 2009, the start of the time period that the study analyzes) is a reflection of consumer switching away from PSTN services and substituting Title II CMRS voice services and quasi-Title II interconnected VoIP services offered by cable MSOs. Again, to the extent that the authors have identified anything, it is that the deregulatory application of Title II advocated by the President will not matter at all to future investment decisions made by carriers in response to such demand.

- The study ignores strong counterfactual evidence conclusively showing that carriers made massive investments while subjected to the full suite of Title II statutes, something that is not currently on the table.

- The study ignores contemporary evidence of massive network investments that ILECs (and MSOs) are making in the carrier Ethernet market, which is regulated under Title II, a fact that USTA member AT&T has repeatedly noted before the Commission.[2]

[2] *See* Comments of AT&T Inc., WC Docket No. 05-25, at 2-3 (filed Apr. 16, 2013) ("[T]he Commission granted AT&T a carefully measured degree of forbearance. . . . from dominant carrier tariff filing and cost support requirements, but it made clear that Sections 201 and 202 and the Section 208 complaint process would continue to apply. . . . The enhanced competitive choices available to enterprise customers today confirm the Commission's judgment in granting forbearance. . . . ILEC and non-ILEC competitors alike have invested billions of dollars to deploy state-of-the-art broadband networks, confirming the Commission's conclusion that forbearance would promote the paramount federal policy of fostering deployment of advanced

We fully expect that each and every economist, researcher, lawyer and telecommunications policy analyst working for the Commission will also identify these flaws, and that USTA's analysis will subsequently be ignored. However, this made-to-order industry study gives USTA the predictions it wants, facts be damned. The purpose of this is less to convince those who are seeking the truth, and more to serve as a talking point that will be repeated enough to become conventional wisdom. Thus, the job for the Commission is now not only to faithfully apply the statute, but also to publicly push back against this and other cynical attempts to mislead policymakers.

Facts Trump Theory, And Facts Trump Flawed Predictions. Carriers Are Continuing To Make Massive Investments in Title II Packet-Switched Networks, and Have Said That They Will Continue To Do So Regardless of a Return to Title II.

The crux of the USTA study's conclusion is that a return to Congress's deregulatory title II structure will decrease telecom company capital investments by nearly one-third. USTA reaches this conclusion despite the fact that big enterprise broadband networks and mobile voice networks are regulated in the same manner under Title II that is proposed for broadband Internet access, and the fact that each of these telecommunications sectors has seen massive increases in investment and adoption all while regulated as such Title II telecommunication services.

USTA also makes this dire prediction in the face of the historical fact that telecommunications industry investment, including RBOC last mile investments, reached a peak under a much more thorough implementation of Title II than that outlined by President Obama in his November 10th speech.[3] Indeed, USTA draws its bizarre conclusion despite the historical fact that DSL availability went from zero to 4 out of every 5 U.S. homes while DSL was under Title II, with carriers required to offer resale to third party ISPs.[4] USTA reaches its conclusion despite the historical fact that CMRS availability went from zero to 99.9 percent of the country while under Title II, with 93 percent of the U.S. covered by at least four Title II CMRS providers.[5] And the study reaches this conclusion despite the historical fact that cable MSOs had

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services. Indeed, these intensely competitive packet-based services represent the epicenter of the broadband investment that the Commission's national broadband polices seek to promote.").

[3] *See* Comments of Free Press, GN Docket Nos. 14-28, 10-127, at 6 (filed July 18, 2014) ("Free Press Comments") (noting that "[a]verage annual investment by telecom carriers was 55 percent higher under the period of Title II's application than it has been in the years since the FCC removed broadband from Title II").

[4] *See* "High-Speed Services for Internet Access: Status as of June 30, 2006," Industry Analysis and Technology Division, Wireline Competition Bureau, (Jan. 2007), at Table 14 (noting that DSL had been deployed to 79 percent of end user premises where ILECs offered telephone services by June 2006).

[5] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, ¶45 (2013) ("[A]s of October 2012, approximately 312 million people, or 99.9 percent of the total U.S. population, were covered by at least one facilities-based provider offering mobile voice and/or data service. . . . Looking at areas with multiple providers, the

their greatest period of network investment during the two years that followed the Ninth Circuit Court of Appeals' decision that classified cable modem as a Title II service.[6]

These are the facts. USTA has predictions. Facts should always trump predictions. Facts must trump predictions made with flawed and misleading empirical methodologies.

Today, as in the past, market realities drive investment. As we've explained in the record previously,[7] cable MSOs physical networks are fully deployed, and can offer multiple gigabits of technology with very little future spending. Similarly, wireless carriers have reached near full deployment of LTE services across their footprints, driven by consumer demand that has boosted profit margins to record levels. Demand for these packet-switched telecommunications services are only expected to grow (as are profits), and the cable and wireless networks that are already built are ready to handle this demand. Indeed, the level of network capital intensity (capital expenditures made in the network divided by revenues) has steadily declined across the entire ISP industry, even as the demand for higher capacity services has increased. This is the promise to carriers, of efficiency in the broadband telecommunications era, being realized.

As for ILECs, while of course demand also drives their investment decisions, the realities of Wall Street's short-term focus – combined with the ILECs' cost disadvantages inherent in copper versus cable's coaxial infrastructure – restrict how incumbent phone companies will build networks. This reality exists regardless of the regulatory climate. When it costs a LEC $500 to $800 per home passed to deploy fiber versus the pennies per home cost that cable companies enjoy to upgrade to DOCSIS 3.x, publicly traded ILECs and their impatient investors will look elsewhere for growth, hoping that incremental investments and targeted fiber deployments can keep the LEC competitive enough to generate an acceptable Return on Invested Capital (ROIC).

Indeed, USTA member Verizon Communications long ago stopped investing in residential fiber, despite access to cheap debt and generous bonus depreciation capital investment tax incentives. Verizon made this decision to halt fiber deployment while its retail ISP offerings were classified as an information service. AT&T, despite all the promises it made more than a decade ago in the *Triennial Review*, never bothered to deploy retail fiber-to-the-home services.

However, it is important to note that Verizon, AT&T, other ILECs and Cable MSOs are investing heavily in carrier Ethernet deployments, services that are classified by the Commission as Title II telecommunications services. These collective observations of ILECs lead to the quite

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October 2012 data show that approximately 97 percent of the U.S. population is covered by the networks of at least three mobile voice providers, close to 93 percent is covered by the networks of at least four mobile voice providers, and about 80 percent is covered by five.").

[6] *See* Free Press Comments at 6 (noting that "[t]he cable industry's average annual network investments were 250 percent higher in the years before the FCC declared cable modem service not subject to Title II than it has been in the subsequent years. The highest investment year in history for cable networks followed the 9th Circuit's ruling that cable modem service contained a Title II common carrier offering.").

[7] *See, e.g.*, *id.* at 110.

obvious conclusion: competition, demand and expectations about demand are the primary drivers of investment decisions. In residential broadband, the ILECs' already-deployed networks can generate enough cash flow for the foreseeable future, and they see no reason to make system-wide investments in fiber-to-the-home services which will take more than 5 years to recover. In enterprise broadband, ILECs face substantial new competition from cable MSOs offering Ethernet-over-Coax services, and from CLECs offering fiber and copper-based Ethernet services. Business demand for these services is increasing sharply. And the per-unit deployment costs are low. The <u>fact</u> is that ILEC carrier Ethernet services are affirmatively classified and regulated as Title II telecommunications services, and USTA members and other carriers are making massive investments to deploy these networks.

USTA members, as a result of their role as legacy monopoly ILECs, own infrastructure that is not economically duplicated, and thus has a high potential to generate free cash flow over the long term without any substantial new investments (only spikes for incremental investments). Indeed, on November 12, 2014, Randall Stephenson, the CEO of USTA member AT&T stated:

> I have said consistently when people ask me, what should I think about in terms of capital requirements for this business? I say take our normal service revenues, multiply it times 15 percent, and if you're in a spreadsheet, do a click-and-drag as far as you want to forecast, and 15 percent is kind of where we live. With this reduction back to $18 billion [following the completion of "Project VIP's" IP-DSLAM incremental upgrades, Title II carrier Ethernet deployments to 1 million business locations, and completion of AT&T wireless' HSPA+ to LTE upgrades], taking those projects out, we're now back to kind of a normal 15 percent run rate. This is where the business lives long term. There will be technology migrations that will cause you to bubble again over time, but by and large this is where you live.[8]

Note the key admission in that explanation of how the largest LEC in the country makes its capital investment decisions: these investments are based on "normal service revenues," which are of course a reflection of consumer demand. There is nothing in Mr. Stephenson's depiction that indicates regulation factors into this at all. It is important to note that in the same interview Mr. Stephenson indicated AT&T would "pause" its plans to *potentially* deploy fiber services in additional communities. (That is, "pausing" something that had not yet started or even gotten close.) However, the Commission should not give AT&T's so-called pause any credence when it comes to supposed regulatory causes.

It is a fact that AT&T never had actual plans to deploy fiber to 100 additional communities, but only promised in a press release to *initiate conversations* with these municipalities about *possibly* deploying fiber in the future.[9] The reality is AT&T just this month

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[8] Comments of Randall Stephenson, Chairman and CEO, AT&T Inc., at the Wells Fargo Technology, Media & Telecom Conference, Nov. 12, 2014.

[9] *See* "AT&T Eyes 100 U.S. Cities and Municipalities for its Ultra-Fast Fiber Network," AT&T Newsroom, April 21, 2014 ("AT&T will work with local leaders in these markets <u>to discuss ways</u> to bring the service to their communities. Similar to previously announced metro

made another acquisition that will require additional capital (its purchase of Mexican cellular carrier Iusacell).[10] Another reality is that Mr. Stephenson in the same speech indicated that the company will not be pausing its *actual* planned fiber deployments, which include deployments of Title II carrier Ethernet services to one million business locations.[11]

Also, on the same day and at the same investor conference where Mr. Stephenson made his comments, Verizon Communications' Executive Vice President and Chief Financial Officer Fran Shammo answered with a simple "No" when asked if the President's push for Title II reclassification would "affect your investment in broadband?"[12]

The ILECs' networks are high cash flow and dividend-generating infrastructures subject to little competition and exogenous declines in demand. This is something investors understand well, and it explains the high valuations these companies receive from Wall Street. Indeed, last week the stock prices for the major USTA member companies, AT&T, Verizon and CenturyLink were all up following President Obama's announcement.[13] The market, in its wisdom, refutes USTA's entire premise that somehow reclassification is bad for ILECs' or ISPs' business.[14]

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area selections in Austin and Dallas and advanced discussions in Raleigh-Durham and Winston-Salem, communities that have suitable network facilities, and show the strongest investment cases based on anticipated demand and the most receptive policies will influence these <u>future selections</u> and coverage maps within selected areas.").

[10] *See* Marina Lopes and Christine Murray, "Analysis - AT&T's Mexico deal a cheap foothold outside saturated U.S. market," *Reuters*, Nov. 11, 2014 ("To be sure, extending AT&T's high-speed service across the border will require significant investment in Iusacell's patchy network, marketing and new retail stores."); *see also* Thomas Gryta, "AT&T Gets a Foothold in Mexico," *Wall Street Journal*, Nov. 10, 2014 ("Standard & Poor's put the company's A-minus credit rating on negative outlook Monday, reflecting in part the possibility that the acquisition of Iusacell could lead to more international investment.").

[11] *See infra* notes 19 and 20.

[12] Comments of Fran Shammo, Executive Vice President and Chief Financial Officer, Verizon Communications, at the Wells Fargo Technology, Media & Telecom Conference, Nov. 12, 2014.

[13] From the closing values on Friday November 7th, 2014 to the closing values on Friday November 14th, 2014, AT&T's shares gained 2.84 percent; Verizon's shares gained 1.26 percent; CenturyLink's shares gained 3.45 percent; Frontier Communications' shares gained 5.75 percent; Fairpoint's shares gained 4.44 percent; Windstream's shares gained 1.88 percent; and Cincinnati Bell's shares gained 2.06 percent. These gains all outpaced the broader market that week, with the Dow Jones Industrial Average increasing 0.35 percent; the S&P 500 increasing 0.39 percent; and the NASDAQ increasing 1.21 percent. We do not believe the Commission's public policy analysis should put much, if any, weight into the short-term fluctuations of the stock market. But to the extent that stock movements indicate anything, these higher valuations indicate that investors did not have any concerns that the possible return to Title II would impact these ILECs' future revenues, profits, or dividend payments.

[14] While publicly traded cable stocks declined slightly following the President's announcement, this decline appears to be mostly related to investor concerns about how this

Indeed, not one single publicly traded company has advised Wall Street investors of any potential meaningful change in capital spending stemming from a return to Title II. As Bernstein Research stated in a recent investor note:

> We note that during the three years in which the 2010 rules were in place while Verizon pursued its (unnecessary) litigation there did not appear to be any effect on investment decisions from the resulting litigation uncertainty. Further, the evidence carriers produce to support their argument that Title II classification will reduce investment tends to consist of commentary from analysts and network-equipment suppliers, as well the results of their own discretionary choices. . . . Overall, if carriers choose to use the threat of Title II as an excuse to eliminate unnecessary capex and cut opex, blaming it on the FCC, this may not be a bad thing for investors, as we doubt they would sacrifice investments that are truly necessary to remain competitive against cable on the fixed side and other wireless carriers in the mobile market, but may eliminate discretionary projects (that in any case generally tend to destroy value).[15]

These investor and analyst sentiments reflect what any honest economist would admit: investment is driven by consumer demand and competition, not hyperbole about regulation. And uncertainty is an inherent feature in investment, regardless of the industry. In telecom, to the extent that there is regulatory uncertainty, that is no greater than the other forms of uncertainty that plague much more competitive, low-entry barrier industries. Nothing about a restoration of Title II's deregulatory framework will change these business fundamentals. This framework currently applies to mobile voice and enterprise broadband services, sectors that have seen and continue to see massive investment. There is no reason at all to expect that the extension of this same framework to mass-market retail broadband would impact revenues or investments, since it is merely a legal recognition of the reality that carriers freely admit: broadband Internet access services are currently offered as *de facto* common carrier telecommunications services, no different from Title II enterprise broadband services.

USTA's flimsy study is nothing more than a cynical attempt to scare Washington policymakers. The study's predictions are absurd, and fly in the face of the fact that the market today operates in the same manner it would under a return to deregulatory application of Title II.

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news may impact the currently delayed review of the Comcast-Time Warner Cable-Charter transaction. Indeed, JP Morgan recently issued a note to its clients stating "[w]e wouldn't change any of the fundamental assumptions on cable companies under our coverage under Title II, and shares are likely to rebound over time." In the note, the firm describes what Bernstein research and other analysts have all noted: the only potential impact to investment could come were the Commission to regulate rates, something that (as we described in our initial comments) the Commission has not engaged in for Title II CMRS or Enterprise Broadband services, nor that it has anything but ancient history of engaging in for non-monopoly markets. See "Net Neutrality: Prepared for Title II but We Take Less Negative View," J.P. Morgan, North American Equity Research, Nov. 11, 2014.

[15] Bernstein Research Note, Nov. 17, 2014.

The USTA Study Concludes What Its Methodology Cannot Measure

On its face, the result produced by the USTA study is absurd, given the historical and current market realities of investment in wired and wireless networks used to offer services that are governed by a range of Title II regulations,. When a researcher's theoretical model arrives at an absurd result that conflicts with historical and contemporary evidence, good practice dictates that the researcher check his or her model to see what went wrong.

In this case, what went wrong is USTA's model, which is deeply flawed. Apparently in a rush to get the talking point out, USTA's researchers did not follow good practice.

The basic methodology used in the USTA study attempted to estimate the capital investments in Title II services versus those made in non-Title II services by various companies; but the approach was fundamentally flawed and inaccurate, containing several fatal assumptions that lead to an obviously absurd result. The key empirical estimation involves regressing wireline investments on wireless investments by the same set of companies.[16] The authors built this model to estimate the future spending on Title II versus non-Title II services. But as everyone who understands telecom law and policy should know, wireless and wired networks alike offer a mixture of services regulated under different Titles of the Act, including Title II; and services regulated under the same Title can be subjected to more or less economic regulation depending on specific circumstances.

Thus, the first problem with the USTA study is that it does not accurately separate out investments that are under Title II regulation from those that are not. This is because the authors made the incorrect assumption that wired equates to "Title II regulated" and wireless does not. But as USTA well understands, in many instances, the same physical infrastructure is used to carry three different services – voice, video and data – each regulated differently. This is true for wireline and wireless services, and for the wireline and wireless networks in which providers invest. And the authors also fail to realize that many LEC deployments of supposed non-Title II

[16] The authors state, "[b]y observing the co-movements of wireless and wireline investments for multiple firms over time, we can estimate a model that can predict the wireline capital investments that should follow or accompany a given surge in capital spending. Given that, we can estimate both the share of wireline investment with significant co-movements with <u>relatively unconstrained wireless investment</u>, and the share of wireline that does not." USTA Study at 8, (emphasis added). This is a wholly inaccurate characterization of the regulatory status of wireline and wireless networks. CMRS services are regulated as Title II services, under a non-dominant carrier framework. Every customer that purchases a smartphone with a data plan is purchasing a Title II (voice), quasi-Title II (VoLTE and SMS) and non-Title II (data, voice mail) basket of services, with the Title II services accounting in many cases for the bulk of the recurring monthly service charge. Similarly, when a LEC deploys a broadband line, it does so pursuant to state authority over telecom services, and it utilizes the regulatory benefits of Section 224 of Title II. Enterprise broadband services are Title II services, but are subject to less Title II regulation than CMRS services.

services are in fact infrastructure deployments authorized by state utility commissions as telecom service deployments.[17]

Therefore, USTA's entire model for estimating Title II versus non-Title II investment consists of a clumsy assumption, based on regressing wireline investments on wireless investments, and so built on the incorrect assumption that the wireless *investment* was made in a "relatively unconstrained" regulated environment as compared to wireline investment. But as USTA knows well, both wireline and wireless segments are regulated under Title II in part, Title I in part, and Title VI in part. The study's authors simply cannot arrive at the estimate they're seeking with this approach.

The study's second, and most glaring flaw is that it fails to account for investments already made, and hence not needed, prior to the study's beginning time period of 2009. In other words, LECs had already made substantial investments in backbone, middle mile and last mile wireline networks prior to 2009, offering on these facilities services that currently are regulated under Title I, Title II and Title VI. These are substantial capital investments that once made, simply do not need to be made again. Once a LEC puts a fiber optic wire is in the ground, it does not need to put it there again. This reality is reflected in the data illustrated in Figure 1 of Free Press's initial comments in this proceeding, *see* Free Press Comments at 100, which reflect the massive fiber investments made by LECs and IXCs in the late 1990s.

That the study's authors put so much stock into wireless investments after 2009 in contrast with LEC wireline investments is also misleading. In 2009, the economy was in recession, and all capital spending in <u>new</u> technologies was artificially low. Also at this time, wireless broadband data was a relatively novel service, and thus networks were not fully built and new investments needed to be made (investment in networks that again, are regulated under Title I, Title II and Title III, to varying degrees under each title depending on the carrier and the service). Once the economy recovered, demand for wireless services increased even more. And unlike in the case of wireline – where backbone and middle mile fiber were fully deployed, and where cable modem and DSL were fully deployed too – there were new networks to be built. The USTA study's authors simply do not address this fundamental reality, because doing so would collapse their prediction like a flimsy house of cards.

The study's third major flaw is that its basic premise (arrived at via a highly flawed methodology) is essentially that investment in the Public Switched Telephone Network declined since 2009 and broadband investment increased under Title I – therefore Title I is good and Title II is bad. But even the study's authors recognize that demand matters, and it is built into how they weight their already biased and flawed model. Demand for basic wireline circuit-switched voice services has been in decline for more than a decade, as demand for Title II classified mobile voice services, and quasi-Title II-classified interconnected VoIP services increased. Buried in a footnote, the authors write "we note that PSTN voice was declining sharply, with or without Title II regulation." Indeed, it was! This recognition is buried, despite it being the fundamental premise on which they base their analysis.

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[17] *See e.g.* Mike Masnick, "Verizon: 'Title II Is Not The Answer... Except When It Gives Us Massive Subsidies, Then It's Totally The Answer,'" *Techdirt*, Oct. 13, 2014.

Thus, the study is not only fatally flawed because it fails to identify actual Title II investment versus non-Title II investment, but also because demand for a particular type of Title II service was already in decline and the authors incorrectly assumed that consumers were substituting non-Title II services, when in fact services such as CMRS and interconnected VoIP are explicitly classified as Title II or function as quasi-Title II offerings.

Being charitable to the authors, the best that they can conclude is that no one should expect carriers to rebuild infrastructure they've already built, in order to meet declining demand for a service that they now offer via newer technologies, but which newer services themselves remain under Title II.

The study's fourth major flaw is that it ignores the current massive investments LECs (and MSOs) are making in Title II enterprise broadband services. For example, AT&T is currently touting its fiber investments to 1 million businesses. These are deployments of carrier Ethernet services,[18] which the Commission affirmatively classifies as Title II services, subject to a light-touch application of the statute.[19] Indeed, Title II carrier Ethernet services are one of the largest areas of investment by LECs and MSOs alike. Just this week Comcast announced new carrier Ethernet deployments to both businesses and residential customers, indicating the company's bullish feelings on these Title II Ethernet services.[20]

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[18] *See, e.g.*, "AT&T Using Carrier Ethernet To Take Fiber To The Building In A Big Way," *Carrier Ethernet News*, Nov. 21, 2013 ("AT&T has been making announcements updating the progress of its Project Velocity IP (VIP) – Fiber to the Building investment plan across its 22-state wireline service area, including North Carolina and Louisiana. Under the Fiber to the Building program, AT&T aims to install fiber into multi-tenant office buildings through the end of 2015. The goal is to add one million more business customer locations to AT&T's fiber-based, Carrier Ethernet network, said Matt Beattie, AT&T executive director – Fiber to the Building. 'Project VIP is not just a network build-out project, it is a transformation of the way we deliver services,' he explained. 'The Fiber to the Building program is part of Project VIP, an investment plan to expand and enhance our wireline and wireless IP networks.'").

[19] *See, e.g.*, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705, ¶ 12 (2007) ("Based on our analysis of marketplace conditions for the services at issue here, we grant AT&T forbearance from the application of our dominant carrier tariff filing, cost support, discontinuance, and domestic transfer of control and certain Computer Inquiry requirements to broadband services with regard to (1) its existing non-TDM-based, packet-switched services capable of transmitting 200 kbps or greater in each direction; and (2) its existing non-TDM-based, optical transmission services. These services include Frame Relay Services, ATM Services, LAN Services, Ethernet-Based Services, Video Transmission Services, Optical Network Services, and Wave-Based Services.").

[20] *See, e.g.*, "Comcast Business Extends Fiber Network to Bring Multi-Gigabit Ethernet Services to Commercial Areas in Albuquerque and Santa Fe," Comcast Cable Press Release, Nov. 19, 2014; *see also, e.g.*, Mari Silbey, "Comcast Takes Ethernet Everywhere," *Light*

Completely shattering USTA's entire premise and gloomy prediction is the fact that according to one estimate, carriers invested a whopping $70 billion in Title II carrier Ethernet services in 2013 alone, and are expected to spend $100 billion by 2017.[21] This demonstrates what we have repeatedly told the Commission: the type of doom and gloom exhibited by USTA is simply untethered from reality. Title II is a highly flexible and deregulatory framework that Congress intended the Commission to continue applying to all two-way transmission networks, regardless of the underlying technology.

The study's fifth major flaw is that it reaches a wildly inaccurate (and supposed to be scary) conclusion, while ignoring the realities of forbearance. This is something the authors admitted to reporters, and it should on its own be considered a grain of salt so huge as to be lethal.[22] The authors' own flawed model may not be able to account for forbearance; but we have a natural experiment in the form of CMRS and enterprise broadband, which are very instructive cases that the study's authors chose to ignore.

In conclusion, USTA's study is simply not structured in a way to reach the conclusion it reaches, which shouldn't be surprising given the speed at which it was churned out. Policy makers should treat it as the cheap propaganda it is.

Respectfully submitted,

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Reading, Nov. 19, 2014 ("The largest cable company in the US is readying a new Ethernet @Home service that will extend Ethernet connectivity from office locations to teleworkers at home. The service isn't set to launch until next month, but Comcast Corp. let the cat out of the bag early when it submitted an application for an award with the Metro Ethernet Forum (MEF).").

[21] *See* Paul Pierron, "Captains of Disruption in the Telecom World: Carrier Ethernet," *Fiberlight*, May 23, 2014.

[22] *See* Communications Daily, Nov. 20, 2014 ("Responding to a question, Shapiro said it's not possible to factor how forbearance from Title II, as reclassification's proponents advocate, would affect their projections. 'To what level [there will be forbearance], how long it would take, what the legal process would be are all in a state of uncertainty. . . .'").