

submissions from Public Knowledge⁵ and The Open Technology Institute of The New America Foundation⁶ in support of the INCOMPAS Motion—demonstrates the public interest on this important question. That is why INCOMPAS formally requests that the Commission issue a Public Notice soliciting comment on the INCOMPAS Motion. Given the Commission’s extension of the deadline for reply comments until August 30th, the Commission could issue such the notice on August 16th and with a deadline of August 23rd, which would still be a week before the deadline for replies. Indeed, the new schedule also provides the Commission time to convene the meeting that INCOMPAS has requested among counsel this week to discuss how, if the Motion were granted, the relevant highly confidential and confidential information would be protected. That meeting would be without prejudice, of course, to the Commission’s decision on the merits of the Motion, but it would provide the Commission with valuable information. Issuing such a Public Notice would be firmly within established Commission precedent.⁷

⁵ Public Knowledge’s Support of Motion of INCOMPAS to Modify Protective Orders, WC Docket No. 17-108 (July 31, 2017).

⁶ New America’s Open Technology Institute’s Support of INCOMPAS Motion to Modify Protective Orders, WC Docket No. 17-108 (Aug. 3, 2017).

⁷ See Applications of AT&T Mobility Spectrum LLC, Tampnet Inc., Tampnet Licensee LLC, Broadpoint License Co., LLC, and Broadpoint Wireless License Co., LLC for Consent to Assign Licenses and Approval of Long-Term De Facto Transfer Spectrum Leasing Arrangements, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, *Public Notice*, 30 FCC Rcd. 11597, 11598 (2015) (issuing a Public Notice to allow for comments on the propriety of bringing confidential information from one docket into another docket).

INCOMPAS has already addressed Verizon's arguments, which substantively overlap with other oppositions,⁸ in its Response. That Verizon waited until the filing deadline passed and nonetheless ignored the INCOMPAS Response further undermines its contentions.⁹ The Commission has placed the issue of whether broadband providers have the incentive and ability to harm an open Internet front and center in this proceeding. INCOMPAS's requested information is therefore a necessary link in the chain of evidence in the issue before the Commission and meets the standard of *CBS Corp.*¹⁰ Contrary to opposing parties' conjured nightmare scenarios, INCOMPAS's Motion is structured carefully and narrowly to ensure full protection of confidential and highly confidential information.¹¹ INCOMPAS agrees with the need to fully protect that information. But INCOMPAS's cited precedent demonstrates that the Commission has the power to expand or modify protective orders outside of their original proceeding.¹²

⁸ See, e.g., Verizon Opposition at 3-5 (arguing that that the disclosure request is overly broad); *id.* at 6 (arguing that granting the request would chill entities' future participation in proceedings that may include confidential or highly confidential information); *id.* at 7 (arguing that *CBS Corp.* is not satisfied here); *id.* at 8-9 (arguing that INCOMPAS relies on inapposite precedent).

⁹ To take one example, Verizon does not analyze whether each of the severable requests made in the INCOMPAS Motion would involve any of its information and it ignores the careful elaboration on the scope of the requests contained in the INCOMPAS Response. See Response at 19-21. Thus, Verizon does not tell the Commission whether entry of the transaction orders themselves in unredacted form subject to a protective order limited in the manner described by INCOMPAS would cause it any concern, much less supply the kind of detail about such a concern that, even in public form, would allow the Commission or any interested commenters to take its measure.

¹⁰ See Response at 2-23.

¹¹ See Response at 18-20.

¹² See Response at 24.

The claim that this Motion should have been filed in those other merger proceedings is also without merit. There is no rule requiring such filing, and it would violate due process and administrative-law principles for the Commission to accede to the request to create a new rule now and apply it retroactively. But, to the extent that the concern behind this erroneous claim rests on a view that parties involved in the merger proceedings should have an additional chance to comment on the INCOMPAS Motion, then the requested Public Notice, which the Commission can enter in whatever dockets it wishes, provides a full solution.

As before, INCOMPAS respectfully requests that the Commission address INCOMPAS's Motion quickly to permit interested stakeholders to fully develop the record in this proceeding.

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