INCOMPAS
THE FUTURE OF COMPETITION

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INCOMPAS[1] supports the *Open Internet Order* as it is an engine for increased investment from new companies and new industries. Competitive broadband providers are investing in fiber and next generation services.

The failure to understand investment from Internet and competitive companies with a telescope focus on traditional, incumbent investment paints an incomplete picture.

Claims that network investments have been deterred due to the reclassification of broadband Internet access service have not been proven.[2] Indeed, the claims that incumbents' investments have been affected are contrary to statements from their executives and announcements they have made since the adoption of the *Open Internet Order*. Furthermore, these claims do not properly take into account the investments made by competitive broadband companies or all those reliant upon an open Internet. In sum, the documents state conclusively:

- **INCOMPAS' members continue to invest in their broadband networks and the services provided over those networks, and the *Open Internet Order* not only does not deter such investments, but actually enhances those investments.**
    - For example, ComSpan, a small ISP with a fiber-to-the-home network in the rural communities of Bandon, Myrtle Point, Coquille, and Reedsport, Oregon, does "not view the FCC's new rules as creating any new substantial burdens for [it]," but rather believes "that the rules will . . . help promote competition among [ISPs]." Opposition of Intervenors, *USTelecom et al. v. FCC*, ComSpan Decl. ¶¶ 5, 10. The company goes on to state that video over the Internet has the potential

[1] COMPTEL is now doing business as INCOMPAS. As the preeminent national industry association for competitive communications networks and service providers, INCOMPAS represents wireline and wireless providers in the broadband marketplace. Such providers include, for example, companies providing fiber-to-the-home as the third residential wireline provider in their communities in competition to the incumbent cable provider and the telephone company. In addition, INCOMPAS has among its membership, companies that focus on the business broadband marketplace and offer services to small businesses, medium and large enterprises with multi-locations, as well as schools, libraries, and local, state, and federal government agencies, including service to public safety offices. INCOMPAS also represents companies that provide residential and business wireless service, transit providers that carry broadband and Internet traffic, and online video distributors (OVDs) which offer video programming over broadband Internet access services to consumers. Each of these members are providing and/or relying upon broadband capability, and the Commission's role in encouraging broadband deployment and protecting and promoting an Open Internet, as well as broadband competition, is key to ensuring that residential and business customers will have choice for their broadband provider, and the services they may choose to take over those broadband connections.

[2] The documents attached include COMPTEL's Reply Comments in the FCC's Section 706 proceeding, GN Docket No. 15-191 and the Opposition of Intervenors to Petitioners' Motion for Stay in the Open Internet appellate case pending in the D.C. Circuit.

to allow small providers to forego offering linear video (which they currently do at a loss) that will allow them to invest more in their broadband networks. *Id.* ¶¶ 8-10.

  - Fatbeam, a fiber E-rate provider in the Northwest, states that it "intends to continue to expand its networks, deploy fiber and provide smaller third and fourth tier markets with competitive fiber optic broadband options." Opposition of Intervenors, Fatbeam Decl. ¶ 6.

  - Similarly, ISP Sonic also has stated it "intends to continue to expand its network footprint." Opposition of Intervenors, Sonic Decl. ¶ 9.

- **Claims that incumbents' investments have been affected are not supported by their executive's statements or their actions.**

  - Verizon's CEO has said of the reclassification adopted in the *Open Internet Order,* to date it has had no impact on Verizon's business and that Verizon has "invested $17 billion to $18 billion over the last decade and [it is] going to continue to do that now."[3]

  - Comcast Cable CEO Neil Smit has said: "[o]n Title II, it really hasn't affected the way we have been doing our business or will do our business."[4]

  - Cablevision's CEO James Dolan stated: "to be honest, we don't see at least what the [FCC] Chairman has been discussing as having any real effect on our business."[5]

- **To the extent there were declines in capex by certain ISPs, the companies themselves do not attribute it to anything related to the FCC's policies.**

  - For example, on a July 2015 call reporting on the company's second quarter 2015 results, when asked directly what was driving the downtick in spending, AT&T's CFO attributed the decline to its Project VIP initiative being completed and "not for lack of anything but for success. That's what's driving [AT&T's] changes . . . [AT&T is] going to continue to invest in capacity."[6] Moreover, this decline was

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[3] Remarks of Lowell McAdam, Chairman and CEO, Verizon Comm'ns, Inc., Goldman Sachs Communacopia Conference, at 13-14 (Sept. 17, 2015).

[4] Comcast Corp., Q1 2015 Earnings Call Transcript at 14 (May 4, 2015).

[5] *See* Shalini Ramachandran & Michael Calia, *Cablevision CEO Plays Down Business Effect of FCC Proposal*, WALL STREET JOURNAL, Feb. 25, 2015.

[6] *See* AT&T Earnings Report: Q2 2015 Conference Call Transcript, The Street Transcripts, July 26, 2015, *available at* http://www.thestreet.com/story/13230810/6/att-t-earnings-report-q2-2015-conference-call-transcript.html.

consistent with what the company stated in its filing to the Securities and Exchange Commission in November 2014 prior to the *Open Internet Order*.[7]

- Likewise, before the *Open Internet Order* was adopted, Verizon's CFO stated that he has been "consistent with the fact" that the Verizon will spend more capex in wireless and curtail capex in wireline, noting that it is "getting to end the of [its] commitment to build around FiOS."[8]

- Also telling is the fact that the capex of Comcast—the nation's largest ISP—is up in the first half of 2015.[9]

- **Companies have continued to propose and close mergers involving broadband networks delivering broadband Internet access service, such as the Charter/Time Warner Cable proposed merger and the Cablevision proposed purchase by Altice.[10] Moreover, large incumbent LECs, including AT&T, have accepted CAF Phase II funding which requires them to build broadband networks.**

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[7] AT&T Inc. Form 8-K, Nov. 7, 2014 *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271714000126/form8k.htm (*stating* "AT&T continues to expect capital expenditures during 2014 to be in the $21 billion range. AT&T expects 2014 to be the peak investment year for Project VIP and anticipates that the Wireless and Wireline segments' spend to be proportionally consistent to 2013. AT&T expects 2015 capital expenditures for its existing businesses to be in the $18 billion range.").

[8] Verizon 4Q 2014 Quarter Earnings Conference Call Webcast Jan. 22, 2015, *available at* http://www.verizon.com/about/investors/quarterly-reports/4q-2014-quarter-earnings-conference-call-webcast/.

[9] Comcast Reports 2nd Quarter 2015 Results, July 23, 2015, *available at* http://www.cmcsa.com/releasedetail.cfm?ReleaseID=923465.

[10] *Charter Strikes $55 Billion Deal for Time Warner Cable John Malone orchestrates complicated pact that includes Bright House, Liberty Broadband*, WALL STREET JOURNAL, May 26, 2015, *available at* http://www.wsj.com/articles/charter-to-merge-with-time-warner-in-55-billion-deal-1432635774; *Altice Agrees to Buy Cablevision for $10 Billion Deal by cable entrepreneur Drahi would create No. 4 cable operator in the U.S.*, WALL STREET JOURNAL, Sept. 17, 2015, *available at* http://www.wsj.com/articles/altice-to-buy-cablevision-for-10-billion-1442472485?alg=y. AT&T has consummated its merger with DirecTV. *AT&T Closes $49 Billion DirecTV Buy, Combination, after lengthy regulatory review, creates largest U.S. pay-TV company*, WALL STREET JOURNAL, July 24, 2015, *available at* http://www.wsj.com/articles/at-t-closes-49-billion-directv-acquisition-1437766932.

Additional Facts to Consider Concerning Capital Expenditures Argument

Arguments that discuss Capital Expenditures (CAPEX) for first half of 2015 are inaccurate and misleading:

- Arguments largely rely on one single article by Hal Singer (*Forbes*, August 2015).

- Companies cited in Singer's article for reduction in CAPEX are limited to a select few large incumbent ISPs and large cable ISPs.

    - Singer's analysis is fundamentally flawed, largely because his article does not address the CAPEX of the remaining industry participants including competitive wireless and wireline providers, Internet companies, and OTT video providers.

- Relying on aggregate CAPEX numbers, especially based on one or two quarters, also is misleading for a number of additional reasons:

    - A reduction in quarterly CAPEX does not make a trend; investment in infrastructure tends to increase or decrease over time, depending on actual investment programs (*e.g.*, investments dollars declined when AT&T completed its VIP project because it had finished the costly work associated with that large undertaking, not because it had a change of heart about whether to continue with the program).

    - Furthermore, large telecom companies invest in a wide range of infrastructure, including wireline and wireless plant. Looking at aggregate investment data in aggregate does not inform whether or not investment in broadband is expected to decline.

    - CAPEX is used to upgrade and/or acquire general property, buildings, equipment, infrastructure and other physical assets – not just broadband deployment.

    - CAPEX is generally broken out into these separate categories to reflect real and planned increases/decreases.

    - Planned CAPEX from previous years may have reached their planned termination as the upgrades/repairs/deployment/acquisition were completed.

- Also, investors seem to be expecting that the ISPs are going to continue to invest in and expand their businesses. There is little evidence that the equity markets have negatively responded to these supposed CAPEX decreases, as described by Singer and others.