June 3, 2016

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Wheeler:

As the Commission continues its examination of various zero-rated products in the broadband Internet access service (“BIAS”) marketplace, INCOMPAS\(^1\) believes that it is important that the agency, in its case-by-case review of zero rating plans, remain mindful of its finding in the *Open Internet Order* that “new service offerings, depending on how they are structured, could benefit consumers and competition.”\(^2\) In particular, INCOMPAS member T-Mobile currently offers a “Binge On” program to its mobile customers. As you know, Binge On uses adaptive video technology to allow customers to stretch their data and watch video up to three times longer at DVD quality or better. Binge On has proven to be popular among mobile broadband customers and has helped T-Mobile to win and retain customers from its much larger rivals by giving customers access to more video without fear of overage charges. Several of INCOMPAS’ over-the-top video provider members have opted to participate in the Binge On program.

INCOMPAS believes that Binge On supports and promotes your overriding policy objective—the promotion of competition—in the mobile broadband marketplace and the video marketplace as it allows consumers to explore more over-the-top video options on the go.\(^3\) Overwhelming consumer enthusiasm for Binge On shows just how much users benefit from the program. T-Mobile’s customers are able to watch up to double the amount of content they

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\(^1\) INCOMPAS represents a diverse membership, some of whom do not join in this letter and the views expressed herein.

\(^2\) *Open Internet Order*, FCC 15-24, at ¶ 152 (2015). INCOMPAS also believes that a case-by-case review of zero rating plans may result in some plans being found to be inconsistent with the Commission’s Open Internet policy. It is important that the Commission review the facts of each plan before making such a determination.

\(^3\) INCOMPAS, like others, remains concerned about data caps from incumbent, dominant wireline BIAS providers, but INCOMPAS supports the Commission’s finding that particularly in the wireless BIAS ecosystem, zero-rating plans can provide benefits to consumers. As the Commission stated in the *Open Internet Order*, “evidence in the record suggests that [zero-rating] models may in some instances provide benefits to consumers, with particular reference to their use in the provision of mobile services.” *Id.* ¶ 151.
previously consumed and have watched more than 377 million hours of video streamed over Binge On, stretching their data further without any increase in what they pay or with the worry of overage charges.\textsuperscript{4} Not only do 92\% of T-Mobile customers say they’ll be watching more videos as a result of the program, 89\% of U.S. wireless consumers say the program would be appealing if offered by their own provider. Fully 94\% say that they would try a new online service if it were part of a free data offering like Binge On.\textsuperscript{5} With video streaming now functioning as the number one use of mobile data—growing 145\% in the last two years alone—these pro-consumer, pro-competitive benefits are enormously significant.

Binge On not only encourages users to try out new wireless and video services, it puts customers and content providers alike in control. We understand that some are questioning the use of zero rating, but where both consumers and edge providers have clear notice and transparent opt-out mechanisms, with no user fees (or penalties for not using the program), and with easy to use access, allowing them to have choice in participating in the program of a competitive BIAS provider, we believe that such programs are within the spirit of the Open Internet rules. Additionally, T-Mobile has worked closely with a wide variety of edge providers to craft an open platform, bringing in more than 80 providers in the six months since launch, and responding to edge provider feedback by enabling self-optimization and easy opt-out. Further, T-Mobile’s program does not discriminate among edge providers and is open for additional participation by edge providers. In all, we believe that this program does not violate the Commission’s Open Internet policy and is consistent with the Commission’s objective that access to an Open Internet promotes the “virtuous cycle,” driving innovation and investment both at the edges of the network as well as in the network\textsuperscript{6}—all while giving mobile consumers more choice.


\textsuperscript{5} \textit{Id.}

\textsuperscript{6} \textit{Open Internet Order} \S 2.
With the above control mechanisms for consumers and edge providers in place, INCOMPAS could not agree more with your description last November of Binge On as “highly innovative and highly competitive.” We look forward to the Commission’s continued support of such innovation and competition and their pro-consumer effects.

Sincerely,

Chip Pickering
Chief Executive Officer