

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Inquiry Concerning Deployment of Advanced) GN Docket No. 18-238
Telecommunications Capability to All Americans)
in a Reasonable and Timely Fashion)

COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Fourteenth Broadband Deployment Report Notice of Inquiry* to initiate the next annual assessment of the availability of advanced telecommunications capability to all Americans in a reasonable and timely fashion, and to solicit comment and information to help guide the Commission’s analysis.¹

I. INTRODUCTION

INCOMPAS is the preeminent national industry association for competitive providers of Internet and communications networks, including both wireline and wireless providers in the broadband marketplace. We represent companies that provide residential broadband Internet access service (“BIAS”), as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes; transit and backbone providers that carry broadband and Internet traffic; and online video distributors which offer video programming over BIAS to consumers. Each of

¹*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report Notice of Inquiry, GN Docket No. 18-238, FCC 18-119 (rel. Aug. 9, 2018) (“*Fourteenth Broadband NOI*”).

these members are providing and/or relying upon broadband capability, and the Commission's role in encouraging broadband deployment and protecting and promoting broadband competition is key to ensuring robust network deployment, and to guarantee residential and business customers will have choice for their broadband provider, as well as the services and applications they may choose to take over those broadband connections.

The Commission is mandated to annually measure the availability of advanced telecommunications services—which the Commission has long referred to as broadband.² When it is not being reasonably and timely made available, then the FCC has a mandate to take immediate action to accelerate deployment by removing barriers to investment and promoting competition.³ In addition to Section 706, in the 1996 Act, Congress also required the Commission to promote competition and consumer choice, and to protect consumers in the provision of communications services.⁴ Significant investment in the networks have been made by incumbents and competitors alike in the two decades since the 1996 Act, and the services offered to consumers and businesses over those networks have dramatically evolved in that timeframe. Many, but not all Americans, use broadband at home via fixed networks and on the go via mobile networks. Today, the American economy is more broadband dependent than ever before, transforming education, government, health care and many industries across the economy. The expectation is that the demand for broadband will continue to increase over time,

² 47 USC § 1302(b).

³ *Id.*

⁴ *See* 47 USC § 151.

especially as more consumers and businesses use connected devices and cloud services to conduct their business, entertain themselves, and manage their day-to-day lives.

INCOMPAS incorporates by reference its comments in last year's proceeding,⁵ as well as its recently filed comments in the Fixed Broadband Competition⁶ and the Commission's Form 477 proceedings.⁷ There are a number of issues we discuss in those comments that we urge the Commission to consider in this proceeding as well as how it can further advance broadband deployment and broadband choice and how it can properly assess its availability.⁸ Nonetheless, below we focus on three points:

First, it is time to be bold. The FCC should adopt 1 Gig as the fixed broadband standard for the nation. 1 Gig is already here, and where it is deployed, it is transforming communities. 1 Gig markets not only have faster speeds, but also more affordable prices. The U.S. should be

⁵ Comments of INCOMPAS, GN Docket No. 17-199 (filed Sept. 21, 2017) ("INCOMPAS' 2017 706 Comments").

⁶ Comments of INCOMPAS, GN Docket No. 18-231 (filed Aug. 17, 2018).

⁷ Comments of INCOMPAS, WC Docket No. 11-10 (filed Oct. 10, 2017).

⁸ INCOMPAS maintains that conclusions about the state of broadband availability (and competitive choice) should be based on accurate and verifiable data at the local market level; and that the FCC should assess availability for residential (mass market) BIAS and for BDS service that businesses of all sizes use, including schools, libraries, hospitals, public safety and local, state and federal government agencies, and mobile wireless companies for backhaul to towers. INCOMPAS posits that broadband connections and services for fixed and mobile networks must be actually physically available to consumers in order for the Commission to count them as available, including in its competition analysis. Unfortunately, the Commission's current Form 477 data is insufficient for purposes of such evaluation. There have been a number of concerns raised about the adequacy of the information and assessments from the FCC's current Form 477 data collections. The record there shows that specific location (addresses served) is available from providers for both BIAS and BDS, and INCOMPAS urges the Commission to adopt modifications to its Form 477 collection that would rectify the well-known insufficiencies. The Commission also should consider undertaking consumer and business surveys in its analyses to get the perspective of consumers and businesses as to what service options are available to them.

setting high goals, not settling for speeds that major BIAS providers have surpassed in their initial offerings to consumers. In turn, consumers are using much higher speeds today due to the growth in streaming and over-the-top services, as well as the number of users per subscription. 1 Gig is the present and the future. Fiber networks are the backbone for 5G, and the U.S. should be leading the globe by setting 1 Gig as the fixed broadband standard. It is time for the Commission to adopt a future proof definition of broadband for our nation.

Second, the Commission must continue to recognize the distinct differences between fixed and mobile broadband networks. Simply stated, mobile is not a full substitute for fixed service. American consumers and businesses rely on both fixed and mobile broadband networks. The privacy and protection of data and sensitive payment information is critical to businesses and consumers alike. The rise in cybersecurity threats is real, and businesses are more dependent on cloud services. They continue to expect to have access to both types of networks, and full substitutability has not been achieved.

Third, INCOMPAS' members support the Commission's efforts to lower barriers to broadband deployment, and the changes adopted this year are beginning to make a difference. However, as the Commission's NOI recognizes there is still an unfortunate gap, and too many Americans do not have access to fixed and/or mobile networks. As the Commission itself has noted, barricades to new competitive deployment, especially at the local level, have been blocking competition for several decades. We urge the Commission to reject the attempts by large incumbents to slow competitors' broadband deployment, including through USTelecom's Petition for Forbearance.⁹ Many fiber builders currently rely upon the services covered by the

⁹See USTelecom Forbearance Petition, WC Docket No. 18-141 (filed May 4, 2018).

Petition, it is the critical bridge to broadband that unites customers to competition. In many rural communities these connections are the only access many Americans have to broadband. If granted, this “competition cut off” will harm the ability of small broadband providers to use unbundled network elements (“UNEs”) to deploy to areas not currently served, as well as to offer broadband choice in other areas. Cutting off the bridge to broadband is contrary to the goals of Section 706 and the Commission, and the Commission should grant the Motions for Summary Denial in the proceeding.¹⁰

II. IT IS TIME TO UPGRADE THE FIXED BROADBAND SPEED TO 1 GIG

As INCOMPAS discussed last year, our competitive fiber providers are bringing 1 Gig to their communities.¹¹ In response, incumbents are investing more in their networks, including deploying their own fiber and/or upgrading their DOCSIS. Entry level service options by major BIAS providers are at least 50 Mbps up to 1 Gig.¹² Indeed, Ookla finds that the average U.S. internet download speed is now 93.98 Mbps.¹³ NCTA states that, “ensuring that the U.S. remains a global internet leader means that our networks have to stay ahead of demand. We must transition from an era defined by megabits to one which gigabit connectivity is

¹⁰ See INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association’s Motion for Summary Denial, WC Docket No. 18-141 (filed Aug. 6, 2018); Cox Motion for Partial Summary Denial, WC Docket No. 18-141 (filed Aug. 6, 2018).

¹¹ INCOMPAS’ 2017 706 Comments at 16-20.

¹² *Id.* at 18.

¹³ Ookla SpeedTest, United States, July 2018, available at <http://www.speedtest.net/global-index/united-states#fixed>.

unleashed.”¹⁴ We could not agree more. The U.S. should be the global leader in fixed broadband and deployment of fiber—which is the backbone for 5G and winning the global race to the future.

Broadband demand is growing across the economy. Consumers are using it to work, do their homework, entertain themselves, shop, and stay connected to friends and family, among many other uses. Multiple family members are using broadband simultaneously at homes across America, and the number of connected devices is growing. It is not surprising that broadband download speeds are increasing. Businesses also are using broadband connections more than ever before. Cloud services are growing, and entire industries are changing as they too are relying more on broadband connectivity. It is impacting the healthcare industry, manufacturing, agriculture, and retail, among many others. Businesses large and small must be connected to compete. Consumer and business broadband demand is expected to continue to grow, and in turn, competitive providers are responding and deploying new capabilities.

1 Gig is already here, and it is our future. We need it to win the global broadband race. It is time for the Commission to adopt a future proof definition of broadband for our nation. Accordingly, the FCC should set the fixed broadband speed definition at 1 Gig.

III. AMERICAN CONSUMERS AND BUSINESSES EXPECT TO HAVE BOTH FIXED AND BROADBAND NETWORKS AVAILABLE TO THEM

The FCC should continue to collect and measure the availability of both fixed and mobile broadband networks.¹⁵ American consumers and businesses expect to have both available to them. That being said, the experience of using these services can be distinctly different. When

¹⁴ The Future of Super-Fast Internet, *available at* <https://www.ncta.com/positions/the-future-of-super-fast-internet>.

¹⁵ *See also* INCOMPAS’ 2017 706 Comments at 7-11.

we are on the go, we use our mobile device to stay connected. We check email for work, talk on the phone, use apps to manage our business and have a social life. Sometimes our mobile connection is great, and sometimes it is not. Americans typically are paying more for their mobile broadband connection, so many users limit how much they use to avoid going over their data caps and paying more. When we are at our office or in our homes, our connections are faster, we can stream and consume long-form video much easier, and most of us do not have to worry about hitting a data cap. Most Americans and businesses continue to use a fixed broadband service because mobile is not a sufficient substitute.

Access to both fixed and mobile broadband are necessary to meet the needs of consumers; therefore, the Commission should not reverse course on its previous finding that benchmarks for both fixed and mobile broadband should be met.

IV. THE COMMISSION'S DEPLOYMENT AGENDA AND UNE POLICIES PROMOTE BROADBAND AVAILABILITY AND COMPETITION

INCOMPAS appreciates the Commission's focus to lower the barriers to broadband deployment and believes the Commission's recent actions to promote both wired and wireless broadband deployment are critical steps to encouraging and enabling more fiber builds that are crucial to fixed broadband deployment, broadband availability, and competition. Small, competitive fiber builders use the Commission's existing UNE and resale policy to build more and faster fixed broadband to residential consumers, small and medium-sized businesses, as well as schools, libraries, healthcare, public safety and other local and state government agencies.¹⁶ In fact, many competitive providers rely on services that are subject to USTelecom's

¹⁶ See Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141, at 37-55 (filed Aug. 6, 2018) ("Opposition").

Forbearance Petition—services such as UNE dark fiber, DS0s, etc.—to enter and compete in the broadband marketplace, including bringing broadband to areas without it for the first time.¹⁷

We incorporate into the record our opposition to the Petition and our economic filings in that proceeding that demonstrate competitors using UNEs (1) build more fiber than incumbents; (2) deliver faster broadband speeds than the incumbents; and (3) offer lower prices and better service to customers.¹⁸ Indeed, the current UNE policy incents competitors and incumbents alike to build more broadband; and in markets where a smaller, competitive broadband provider has deployed new fiber, they offer gigabit speeds at a fraction of the cost, and incumbent providers are forced to respond with network upgrades and lower prices.¹⁹

If the Commission grants the Petition as proposed, however, competitive fiber providers' ability to continue to build fiber will be significantly impacted—potentially leaving consumers with, at best a duopoly, but more likely with no broadband choice or only a monopoly. In turn, USTelecom's members, notably AT&T, Verizon, CenturyLink, and Frontier, will be able to charge substantially higher rates for broadband services, allowing them to earn substantially more on their existing copper network through rate increases. Where customers are captive and paying monopoly rates for slower services, AT&T and the other USTelecom members would not have an economic incentive to deploy fiber. Service quality is also likely to degrade, as it does

¹⁷ See USTelecom Forbearance Petition, WC Docket No. 18-141 (filed May 4, 2018).

¹⁸ See Opposition, Attachment 2, Declaration of William P. Zarakas, at 3-4 & 9-11.

¹⁹ See *id.*, Attachment 1, Declaration of David E.M. Sappington, at 14-17. Dr. Sappington also discusses how the UNE policy benefits consumers so that they are not limited to a monopoly or duopoly choice which both fail to produce the types of benefits that consumers enjoy in a competitive market. *Id.* 9-13. See also Comments of INCOMPAS, WC Docket No. 17-199, Exhibit A, David S. Evans, Economic Findings Concerning the State of Competition for Wired Broadband Provision to U.S. Households and Edge Providers, at 35-37 (filed Sept. 21, 2017).

in all monopoly markets—if there is no competitive threat, there is less incentive for rapid repair or service innovation.

USTelecom’s Petition is clearly detrimental to fixed broadband availability and competition. There is overwhelming opposition by a number of diverse stakeholders, including broadband providers, state and federal agencies, and consumer and public interest groups. Indeed, about nine thousand individual consumers and small businesses have submitted distinctive letters asking the Commission to preserve their competitive choice and reject this petition. The FCC should grant the Motions of Summary Denial so that fixed broadband availability and competition is preserved and promoted, and small, competitive providers can continue to deploy broadband to unserved areas.²⁰

IV. CONCLUSION

The Commission should set the fixed broadband speed at 1 Gig now. Today’s 25/3 Mbps benchmark does not reflect what is available in the market, Ookla’s latest average speed test in the U.S., or how American consumers and businesses are using their fixed broadband connections. It is simply unacceptable for the nation that invented the internet to remain stuck in a slow gear and risk losing the race to the future. We need a future proof fixed broadband definition of 1 Gig. Mobile broadband is not a substitute for fixed broadband. American consumers and businesses expect the availability of both, and the Commission should continue to measure the availability of both types of networks. Finally, small broadband providers use

²⁰ As we set forth in the Motion for Summary Denial, USTelecom failed to make a *prima facie* demonstration that its Petition should be considered. Accordingly, INCOMPAS et al. submits it should be summarily denied. *See* of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association’s Motion for Summary Denial, WC Docket No. 18-141 (filed Aug. 6, 2018).

UNEs to extend broadband availability and choice. The Commission should reject USTelecom and its members' attempt to remove the availability of UNEs at reasonable rates.

Respectfully submitted,

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