

February 2, 2018

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation, 2018 Broadband Deployment Report: Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-79; Petition Filed By Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code, MB Docket No. 17-91; Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142; and Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10

Dear Ms. Dortch,

On January 31, 2018, the undersigned, Karen Reidy, and Christopher Shipley of INCOMPAS separately met with Amy Bender of Commissioner O’Rielly’s office and Jay Schwarz of Chairman Pai’s office concerning the above-referenced proceedings. On February 1, 2018, we also met separately with Claude Aiken of Commissioner Clyburn’s office and Jamie Susskind of Commissioner Carr’s office, and on February 2, we met with Travis Litman of Commissioner Rosenworcel’s office concerning the same proceedings.

We discussed INCOMPAS’ comments submitted in the Commission’s 2018 Broadband Deployment Report docket.¹ INCOMPAS’ members are building competitive fixed and mobile broadband networks to meet consumer demand.² Our companies delivering broadband via fiber to the home are offering 1 Gig service—driving higher speeds and lower prices for consumers. In response, incumbent broadband providers are upgrading their networks and lowering their prices.³ We urged that the Commission consider that the large, incumbent ISPs are marketing 50

¹ INCOMPAS Comments, GN Docket No. 17-199 (Sept. 21, 2017).

² We support the availability of both fixed and mobile networks and are pleased that the Commission’s report will continue to recognize that Americans need both and that mobile broadband service is not a full substitute for fixed broadband service. *Id.* at 7-11.

³ *See id.* at 16-18.

Mbps and higher to new customers, and in areas where they face a fiber-to-the-premise competitor, they are offering 1 Gig service.⁴ More family members are connecting to Wi-Fi in their homes, and there is an explosion of over-the-top services, including cloud computing and video streaming. It is estimated that up to twenty-two million adults cut the cord from traditional MVPDs in 2017.⁵ It is evident that Americans' viewing habits are shifting to over-the-top video streaming, saving consumers money and giving them access to more choices. Similarly, cloud migration is up 38%, and businesses are relying more on the cloud than ever before.⁶ Accordingly, INCOMPAS stated the following—broadband speeds and demand are increasing, and we believe it is important for the Commission's 706 assessment to take this into account. We also asserted that the Commission's review should include broadband to businesses, schools and libraries, and healthcare facilities given the importance of the availability of high-speed broadband for the whole economy. In addition, we referenced our comments in the Form 477 proceeding wherein we noted that many businesses rely upon dedicated broadband service, and the collection and analysis of such information would be a benefit to understanding the impact of these services and their availability from competitive providers. Moreover, we urged the Commission to do further analysis on the availability of competitive services and their impact on consumers, including businesses. This would be consistent with the GAO's recent recommendation to the Commission.⁷

⁴ *See id.* at 18.

⁵ Cord-Cutting Explodes: 22 Million U.S. Adults Will Have Canceled Cable, Satellite TV by End of 2017, *Variety*, available at <http://variety.com/2017/biz/news/cord-cutting-2017-estimates-cancel-cable-satellite-tv-1202556594/>. *See also* Microsoft Comments, GN Docket No. 17-199, at 3 (Sept. 21, 2017) (“Today, as both the technology and internet speeds have improved, the technology is heavily utilized and has enabled considerable economic growth. Individuals can produce and distribute their own video content for widespread consumption and consumers can enjoy video content on the go and on more devices than ever before.”).

⁶ The Cloud Computing Report: An Introduction to Cloud Solutions and Their Use Cases, *Business Insider*, available at <http://www.businessinsider.com/the-cloud-computing-report-an-introduction-to-cloud-solutions-and-their-use-cases-2017-1>. *See also* Microsoft Comments, GN Docket No. 17-199, at 3-4 (Sept. 21, 2017) (“The growth of the cloud, and the technological capabilities it will enable, have some people describing the current era as the dawn of the Fourth Industrial Revolution. By enabling the collection, storage, and analysis of data at unprecedented scale, speed, and depth, the cloud makes it possible to find correlations that used to be too small to detect and discern the inner workings of systems that have been far too complicated to comprehend. With cloud computing and advanced analytic capabilities as a foundation, we are able to make rapid advances in artificial intelligence, robotics, genomics, materials sciences, 3-D printing, and much more. This, coupled with devices that connect us to information and one another at any time and from any location, means that opportunities to reimagine how businesses operate, connect with customers, and how people develop or consume products and services, are basically endless.”).

⁷ *See* GAO Report, Broadband Additional Stakeholder Input Could Inform FCC Actions to Promote Competition (Sept. 2017), available at <https://www.gao.gov/assets/690/688628.pdf>

INCOMPAS agrees with the Commission that its focus on lowering barriers to broadband deployment has the potential to increase the availability of broadband to all consumers. For the fixed and mobile competitors we represent, as well as the members who offer over-the-top services, robust broadband and competitive networks will bring benefits, including more services and lower-cost options. We encouraged the Commission to move to adopt certain proposals made in its wireline and wireless broadband deployment proceedings. For one, the Commission should adopt procedures that provide new attachers the option of using a one-touch make ready process for pole attachments. We noted how our fiber members who are deploying for both fixed and mobile networks experience significant delays due to the current sequential make-ready work of each attacher in the communications space.⁸ There is substantial support in the record for the Commission to adopt one-touch make ready, and recently the Broadband Deployment Advisory Committee's working group recommended FCC adoption of a one-touch make ready policy.⁹ Given the critical need for the vast deployment of small cells to meet wireless needs and for 5G networks, we also urged the Commission to (1) exempt small cell deployment from Section 106 review; (2) decrease the shot clocks for wireless siting review to 60 days for collocations (including small cells) and 90 days for all other siting request and implement a deemed grant for siting applications so that localities are incentivized to act on the applications; and (3) limit fees for rights-of-way and siting applications to the costs associated with the review and adding of the new facilities.

INCOMPAS also discussed that access to multiple tenant environments ("MTEs") has been challenging for competitive providers, and we discussed how the ability to access MTEs is a significant economic factor for firms and their ability to deliver competitive broadband networks to areas that are lacking competitive broadband choice. We noted that certain agreements between incumbent providers and building owners, such as exclusive marketing, graduated revenue sharing, and exclusive wiring and rooftop arrangements restrict competitive access, even when consumers have requested competitive services. We support the Commission moving to a Notice of Proposed Rulemaking to further consider prohibiting practices that are an end-run around its current rules which are intended to promote competitive options.¹⁰ We also

(recommending (in part) that the Commission gather and analyze the varying levels of broadband deployment and how that affects broadband prices and service quality).

⁸ See Comments of INCOMPAS at 5-10, WC Docket No. 17-84, filed Jun. 15, 2018. See also, CMA Strategy Consulting, "Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy," attached to Ex Parte Letter from Katharine Saunders, Verizon, to Marlene Dortch, FCC, WC Docket No. 17-84, at 5 (Nov. 13, 2017).

⁹ See Report of the Competitive Access to Broadband Infrastructure Working Group Presented to the Broadband Deployment Advisory Committee of the Federal Communications Commission Jan. 23 and 24, 2018, available at <https://www.fcc.gov/sites/default/files/bdac-competitiveaccess-report-012018.pdf>.

¹⁰ See Reply Comments of INCOMPAS, GN Docket No. 17-142, at 7-14 (Aug. 22, 2017) (describing the many forms of exclusivity agreements that incumbent providers use to prevent competitors from offering services in MTEs).

discussed how those cities that have implemented mandatory access laws to promote competitive broadband access to MTEs should not be preempted by FCC regulation. In San Francisco, where the city implemented such a law, one INCOMPAS member is now able to provide fiber to 300 buildings it previously was excluded from, bringing a lower-cost, higher-speed 1 Gig option to consumers in those buildings.¹¹

The Commission's Broadband Deployment Report is a noteworthy and important endeavor for the nation to see how we are faring on the availability and affordability of broadband. INCOMPAS and its members are focused on how to deliver competitive options to consumers—both fixed and mobile—and including businesses, schools, libraries, other governmental entities, and healthcare facilities and the services that are delivered over broadband. We look forward to our continued work with the Commission on lowering the barriers to deployment and enabling more competitive options.

Respectfully submitted,

/s/Angie Kronenberg

Angie Kronenberg
Chief Advocate & General Counsel

cc: Amy Bender
Jay Schwarz
Claude Aiken
Jamie Susskind
Travis Litman

¹¹ See Reply Comments of CALTEL, GN Docket No. 17-142, at 3 (Aug. 22, 2017).