

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

In the Matter of)	
)	
Updating the Commission’s Rules for Over-the-Air Reception Devices)	WT Docket No. 19-71
)	
)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking* seeking comment on its proposal to eliminate the restriction that currently excludes hub and relay antennas from the scope of the Commission’s over-the-air reception devices (“OTARD”) provisions.¹

I. INTRODUCTION

INCOMPAS, the Internet and competitive networks association, is the preeminent national industry association for providers of Internet services and competitive communications networks. We represent companies that provide competitive 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. Our members include small fiber providers that are building more fiber than and are offering services that are competitive to large incumbents such as AT&T and Comcast. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all

¹ *Updating the Commission’s Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Notice of Proposed Rulemaking, FCC 19-36 (rel. April 12, 2019) (“NPRM”).

sizes. We have wireless and satellite members that are offering services to residential and business customers. Finally, we represent transit and backbone providers that carry broadband and Internet traffic, and online content and video distributors (“OVDs”) that offer various content and communications services and video programming over BIAS to consumers.

INCOMPAS is active in promoting the growth of next generation networks through pro-competition policies that have unleashed network investment, and will pave the way for the critical deployment of wired and wireless networks, including 5G service. INCOMPAS seeks to lower the barriers to broadband deployment by advancing policies that permit competitive access to poles, ducts, and conduits. We support dig-once and touch-once policies, accelerating wireline and wireless broadband deployment, including the FCC’s adoption of streamlined processes last year,² and we support ending monopoly agreements and practices for multi-tenant environments (“MTEs”). INCOMPAS also advocates for maintaining critical competitive statutory policies that promote the widespread deployment of broadband and the potential of next-generation networks to bridge the digital divide and bring faster speeds and more opportunities to consumers.

Fixed wireless is a solution that some of our members use to deliver critical voice and broadband services to their customers. INCOMPAS supports the Commission’s proposal to eliminate the restriction that currently excludes hub and relay antennas from the scope of the Commission’s OTARD provisions. The record shows that fixed wireless providers have faced

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Development*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (rel. Aug. 3, 2018); see also *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WT Docket No. 17-79 (rel. March 30, 2018).

obstacles from deploying hub and relay antennas and that by extending the OTARD protections as proposed, the Commission will be enabling and accelerating broadband deployment and competition, and providing consumers the opportunity to access online content and OVD programming through fixed wireless networks, which will benefit consumers.

II. EXTENDING OTARD PROTECTIONS WILL BENEFIT CONSUMERS.

Fixed wireless broadband networks operate throughout the U.S. in urban, suburban, and rural America, and in many instances wireline providers use fixed wireless solutions to offer broadband where wireline may not be a viable solution. As the record demonstrates, fixed wireless can serve as a competitive offering in the marketplace, but it also can serve as the only broadband solution in some cases. It is important that the Commission continue to adopt policies that further enable the delivery of broadband to consumers.

First, where consumers still need access to broadband infrastructure, it is critical that the Commission take the necessary steps to address potential deterrents to infrastructure availability. A number of entities filed comments in the proceeding describing the local and private restrictions and/or long delays on antenna placement they have faced in deploying their fixed wireless infrastructure. For example, Starry identifies a number of reasons that it faces long delays for local approval of their antennae,³ and specifically states that it would be able to “pass more than 1 million additional households with a gigabit-capable signal this year alone” should hub and relay antennae be protected under the OTARD rules.⁴ Google Fiber also discusses that its affiliate, Webpass, is vulnerable to undue delays and impediments to deployment from local

³ Comments of Starry, Inc., WT Docket No. 19-71 (filed June 3, 2019), at 5.

⁴ *Id.*

laws and Homeowner Association rules, impairing deployment.⁵ INCOMPAS members have reported to the association that the number of localities adopting ordinances that apply to *all* wireless facilities obtaining local approval is increasing. As such, the FCC’s clarification that the OTARD protections cover hub and relay antennae would help ensure that fixed wireless internet service providers can continue to build without local impediments or facing additional and potentially unreasonable costs from local jurisdictions.

Certainly, delays can be frustrating for any new customer that seeks to adopt fixed wireless broadband, but especially for those who are stuck in the digital divide, awaiting the delivery of broadband infrastructure and service. Moreover, where fixed wireless providers are building without any government subsidies to unserved areas, these builds potentially are relieving the necessity of using USF high-cost dollars to do so, in addition to meeting pent-up consumer demand. And certainly where fixed wireless providers have won support through the Commission’s CAF-II Auction, it is essential that they be able to deploy in a timely manner to fulfill their build-out obligations and meet the demands of consumers to gain digital access.

Second, as INCOMPAS has previously discussed in Commission proceedings, the Commission should enable competitive broadband infrastructure by lowering barriers to deployment.⁶ The broadband marketplace needs more competition. Most consumers only have one high-speed option at home, while very few have more than two options. Competition drives innovation and investment, better customer service, and typically lower pricing, benefitting all consumers—even those who may not choose to take the new competitive service. Commenters

⁵ Comments of Google Fiber Inc., WT Docket No. 19-71 (filed June 3, 2019), at 3 (“Comments of Google Fiber”).

⁶ *See, e.g.*, Comments of INCOMPAS, WC Docket No. 18-231 (filed Aug. 17, 2018), at 6-7.

have described how the fixed wireless network technology and the delivery of service has changed, requiring more hub and relay antennae to deliver high-speed broadband, since the Commission last addressed the OTARD protections.⁷ Where the hub and relay antennae otherwise would have gained the OTARD protections based on size, but not their function in the network, it is appropriate to now cover them given the change in technology and the need for more hub and relay antennae for fixed wireless broadband service to be deployed.

Third, INCOMPAS believes that WISPA's observation that consumers must have broadband to access OVD programming which competes with other programming received over OTARD-protected antennae is correct,⁸ and that failure to take into account the need for hub and relay antennae for broadband via fixed wireless networks potentially and unnecessarily limits the availability of broadband and the competitive OVD options that flow over broadband. Services like Netflix and Amazon Prime Video have led a revolution in the way that consumers experience and access content and are part of the reason why traditional linear services have experienced declining subscribership over the last few years. Streaming services are now as much a part of the entertainment landscape as broadcast networks and cable channels, with more companies like Disney and Apple poised to enter the streaming market in the coming months.⁹ But consumers need BIAS to take advantage of these competitive OVD options. It is appropriate

⁷ See, e.g., Comments of the Wireless Internet Service Providers Association ("WISPA"), WT Docket No. 19-71 (filed June 3, 2019), at 7-8 ("Comments of WISPA").

⁸ *Id.* at 2-3.

⁹ See Brooks Barnes and John Koblin, *Disney Plus Streaming Service Is Unveiled to Hollywood Fanfare*, N.Y. Times (Apr. 11, 2019), <https://www.nytimes.com/2019/04/11/business/media/disney-plus-streaming.html>; see also *TV – Apple*, APPLE, <https://www.apple.com/tv/>.

for the Commission to consider the benefits for more competition in the video marketplace, and that other business models, such as DBS, are currently benefitting from the OTARD protections.

Finally, as Google Fiber discusses, “[t]o ensure that fixed wireless providers can take advantage of an expanded OTARD rule to accelerate deployment, the Commission should clarify that the ‘antenna user[s]’ protected under the rule include fixed wireless providers using space on private property to place their antennas, and not just property owners or residents.”¹⁰ Where a provider has the right to “the exclusive use or control”¹¹ due to “ownership or leasehold interest in the property,”¹² they should be protected by the OTARD rules.

III. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to adopt its proposal to extend the scope of the OTARD protections to hub and relay fixed wireless antennae.

Respectfully submitted,

INCOMPAS

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¹⁰ Comments of Google Fiber, at 3-4.

¹¹ 47 C.F.R. § 1.4000(a)(1).

¹² *Id.*