

January 5, 2023

The Honorable Ben Ray Luján
Chairman
Subcommittee on Communications, Media, and Broadband
498 Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Thune
Ranking Member
Subcommittee on Communications, Media, and Broadband
511 Dirksen Senate Office Building
Washington, D.C. 20510

**Re: Ensuring Solutions to Meet America’s Broadband Needs Hearing on
Tuesday, December 13, 2022**

Dear Chairman Luján and Ranking Member Thune:

INCOMPAS, the internet and competitive networks association, is submitting this letter in response to the Subcommittee on Communications, Media, and Broadband’s hearing on December 13, 2022, entitled “Ensuring Solutions to Meet America’s Broadband Needs.” INCOMPAS kindly requests that you include our letter response as part of the hearing record.

INCOMPAS is the leading trade association advocating for competition and innovation in the broadband marketplace, representing new network builders, internet innovators, and the world’s leading video streaming and cloud services. Our members help deliver better service to consumers, businesses, government agencies, and local communities seeking more choice, lower prices, and faster broadband speeds that attracts jobs and private investment.

Our members have been at the forefront of investing in and delivering high-speed, competitive broadband infrastructure throughout the U.S. and across the globe. INCOMPAS is unique among trade associations in that we represent the entire internet value chain.¹ Our members include competitive providers that are deploying, last mile, middle mile, and global internet infrastructure that deliver modern internet services to consumers and businesses of all sizes. We have small, local competitive broadband internet access service (BIAS) providers (also known as Internet Service Providers or ISPs) that are deploying fiber and fixed wireless infrastructure and competing against incumbent cable/telcos in the residential and business marketplaces. We also have fiber providers that are deploying middle mile, last mile, small cells,

¹ Our membership is available on our website at <https://www.incompas.org/memberlist.asp?contentid=2109>.

mobile 5G connectivity, and delivering wholesale service to other providers in the marketplace. We have business and enterprise providers that sell nationwide voice and data services, and we also have members providing streaming, gaming, social media and other online content, and offering OTT voice/text, data center and cloud computing services. Member companies are delivering multiple broadband technologies in the marketplace, including fiber, fixed wireless, mobile (5G), and satellite.

Our members' success is undeniable. In addition to building fiber to the some of the most rural corners of America, our members' achievements include providing business service to 75 percent of Fortune 500 companies, building the fastest speed network on record, and being awarded the number one ranking for customer service in America.

Network competition and streaming/online content competition go hand-in-hand. The rise in quality, creative, and affordable online content and cloud computing is the leading driver for broadband deployment. INCOMPAS members have made massive investments in streaming, cloud computing, video gaming, social media, and thousands of online applications and services for consumers and businesses that power the U.S. economy and help consumers.

To ensure everyone in the U.S. has modern network connectivity, a bipartisan Congress is making a significant, once-in-a-generation investment through the Infrastructure and Investment Jobs Act (IIJA) in broadband network, adoption, training, and other digital equity programs. INCOMPAS and its members support this investment, and we have been actively representing our members' interests in its implementation at NTIA and in the states. In 2021, INCOMPAS launched its BroadLand "Internet for All" campaign to support universal connectivity and the objectives of the IIJA. Fortuitously, the Biden Administration has adopted our tagline, "Internet for All," for the broadband investments made possible from the IIJA and earlier Congressional investments made during the COVID-19 pandemic. These investments are also in addition to the almost \$9 billion annual Universal Service Fund (USF) that the Federal Communications Commission (FCC) manages, which for several decades has helped communities and millions of low-income families, schools, libraries, hospitals, and small businesses connect to voice and broadband services across the nation.

During the hearing and in the written testimony, some of the witnesses described the massive effort and investment required to deploy broadband infrastructure and reported on the broadband investment made by industry. This investment—while significant—does not include the investment being made by streaming, online content, application and service providers. As such, INCOMPAS would like to offer further information to Congress about the local and global investments that are being made by the tech sector in infrastructure that is necessary to deliver today's modern internet.

In October, INCOMPAS released a report prepared by Analysys Mason that demonstrates the massive investment made by tech companies in network infrastructure across the globe in delivering online content, applications, and services.² Their investments in network

² Analysys Mason, *The Impact of Tech Companies' Network Investment on the Economics of Broadband ISPs* (Oct. 2022), available at

infrastructure enable hosting, transport, and delivery of internet traffic. Streaming and tech innovators invested \$883 billion in internet infrastructure from 2011 to 2021. Indeed, from 2018-2021, they increased their digital infrastructure investment over 50% by making an annual investment of more than \$120 billion. These investments are over and above their investments in content, applications, services, and research and development. As a result of these infrastructure investments, our tech members are bringing traffic closer to BIAS providers and end users which improves the quality of service for BIAS customers. Analysys Mason estimates that these investments save BIAS providers around the globe \$5.0–\$6.4 billion each year. It also found that while internet traffic volumes have grown significantly, costs for BIAS providers have remained stable over time—demonstrating that the growth of internet traffic has not led to increased costs for BIAS providers.

Be it for lower prices or better customer service, all consumers want more competition. Competition is also the law. Unfortunately, the witnesses representing incumbent BIAS providers continue to argue against competition by asserting that federal funding not be used to compete directly against their older, slower networks. Incumbent leaders continue to claim that the funding will lead to “overbuilding.” However, incumbent providers do not need to be concerned about this issue when it comes to the IJA as the legislation sets forth clear parameters for IJA funding: specifically, that the investment must be made in *new* or upgraded broadband networks in unserved and underserved areas. Moreover, incumbents have had decades to build their networks—and many have done so with direct support from the USF and other broadband programs—yet, even with all this time and funding, the incumbents have still not been able to reach every location with robust, scalable future-proof broadband capability, which Congress has recognized is absolutely necessary for the U.S. to compete globally.³ Indeed, incumbents remain eligible for IJA funding, and they have many advantages to obtain IJA funding given their scale and position in the marketplace.⁴

<https://www.incompas.org/Files/2022%20Tech%20Investment/FINAL%20Analysys%20Mason%20Report%20-%20Impact%20of%20tech%20companies'%20network%20investment%20on%20the%20economics%20of%20broadband%20ISPs.pdf>.

³ This is not surprising. Last year, INCOMPAS provided Congress a report on the efforts of other countries to invest in future proof broadband networks. See INCOMPAS, *The Race to Faster Broadband Speeds* (July 2021), available at [https://www.incompas.org/Files/filings/2021/FINAL%201%20Gigabit%20and%20Fiber%20Goals%20in%20Other%20Nations%204%20\(2\).pdf](https://www.incompas.org/Files/filings/2021/FINAL%201%20Gigabit%20and%20Fiber%20Goals%20in%20Other%20Nations%204%20(2).pdf).

⁴ The four largest BIAS providers represented by USTelecom and NCTA have almost 80% of the fixed BIAS market. See Leichtman Research Group, Inc. Press Release, *About 1,065,000 Added Broadband in 1Q 2022; Fixed Wireless Services Accounted for Half of the Net Adds in the Quarter* (May 18, 2022), available at <https://www.leichtmanresearch.com/about-1065000-added-broadband-in-1q-2022/>; see also INCOMPAS Comments, *Office of Economics and*

Continuing to fund monopoly networks that do not ensure that every customer has choice in the market is a failed policy that must be left in the past. As such, INCOMPAS urges Congress to ensure that all unserved and underserved locations in the U.S. be eligible for IJIA funding as intended so that every location in the U.S. is finally served by broadband, that open and competitive processes are used for distribution of the funds, that competitive providers have an opportunity to participate, and that those companies funded are required to provide reasonable wholesale access so that customers have choice for their broadband service which will drive more affordability, innovation, and investment that benefit customers.

We echo the hearing witnesses who also discussed the uneven, complex, time-consuming, unpredictable and expensive process that broadband infrastructure builders encounter in accessing poles, conduit, public, private, and railroad rights-of-way, federal lands, and multi-tenant environments (MTEs) to deploy their fiber, fixed wireless, small cell, and other technologies needed to deliver broadband capability to consumers, businesses, community anchor institutions, and the government sector.

It is important for Congress to understand that there is no national framework that affords broadband infrastructure builders a uniform or standardized process. Rather, it is a mix-and-match of federal, state, and local policies and regulations—requiring broadband infrastructure providers to navigate a complex, often time-consuming and costly process to deploy their networks. As such, INCOMPAS has been actively working to address the numerous barriers to fast and affordable deployment, and while some steps have been taken to address concerns we have raised, additional work must be done. INCOMPAS supports Congressional action to facilitate faster, more affordable infrastructure deployment, and we believe that Congress should revise Section 224 of the Communications Act to achieve these goals by ensuring all pole and conduit access is governed by the minimum standards the FCC has adopted. We also are advocating for the FCC to take action on a pending pole proceeding that, if resolved, will speed deployment in a more cost-effective manner for the poles the FCC regulates.⁵ This follows the FCC’s important Order implemented earlier this year on improving competitive providers’ access to MTEs, for which INCOMPAS has long advocated.⁶ This process took about five years, but our members are now able to obtain improved access in residential and commercial MTEs, which is critical to bringing better network connectivity and competitive choice to the 30% of Americans who live in MTEs and to the millions of businesses located in shopping centers and malls across the nation.

Analytics Seeks Comment on the State of Competition in the Communications Marketplace, GN Docket No. 22-203 (filed July 1, 2022), at 5-6.

⁵ See INCOMPAS Comments and Reply Comments in WC Docket No. 17-84.

⁶ See INCOMPAS Press Release, *INCOMPAS: Competition Comes to the Condo! FCC’s MTE Action a Win for Families and Broadband Deployment* (Feb. 15, 2022), available at <https://www.incompas.org/content.asp?admin=Y&contentid=692>.

In addition, INCOMPAS has encouraged state broadband offices to emphasize the importance for every city, town, and community to streamline their processes for faster broadband infrastructure deployment and to enable competitive builds by allowing for non-discriminatory, fast access at reasonable, cost-based rates, where charges apply. This is especially important for federal funding from IIJA, but the same holds true for private sector investment, which also will be used for these Internet for All investments.

INCOMPAS' member companies work directly with local communities to ensure that the infrastructure being deployed will meet their needs, but regularly face unreasonable, costly demands, and/or significant delays. As such, we are working to educate policymakers at every level of government on the importance of broadband infrastructure, and specifically how competitive deployment and availability best meet consumer and business demands by driving better, faster networks and more affordable and innovative service. It also benefits local, state, and federal government agencies who want competitive options for their communications services.

Finally, the hearing featured testimony calling for passage of the FAIR Contributions Act, which would require the FCC to study USF contribution reform for BIAS and edge providers. INCOMPAS believes that the FCC must move forward with USF contribution reform, and the association is concerned that suggestions that the FCC continue to study this issue will further delay much-needed reform that is required to preserve and sustain the USF. The potential for further delay of critical reform is exactly what Senators Klobuchar and Thune's legislation, the Reforming Broadband Connectivity Act, is intended to address. It would require the FCC to complete its long-delayed reform effort within a year. A number of Senators support this legislation, which further shows that there is significant concern that the FCC has failed to act on a long-standing reform proceeding for more than ten years. INCOMPAS believes that the FCC has the authority and responsibility under the current statute to complete its reform to ensure that the USF can continue to meet its mission.

The USF is critical for supporting broadband availability and connectivity; however, the FCC must act soon on reform, especially now that the quarterly factor has reached over 30% and has become an even more significant burden on customers. USF is funded based on telecom revenues, which have been declining as mobile and fixed broadband revenues have increased. While the FCC has modernized every USF program to support broadband-capable networks and BIAS availability, it has not modernized the contribution factor to include BIAS revenues. There is significant support for the FCC to reform the USF and add BIAS revenues to the contribution base now led by the USForward Coalition. Indeed, the USForward Coalition includes support from over 340 entities, and even USTelecom—which asserted in its written testimony that the FCC's authority should be vastly expanded to include edge providers—agrees that the FCC should, at a minimum, expand the base to include BIAS revenues.⁷ Historically services that are

⁷ USTelecom Comments, *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 (filed Feb. 2022), at 5, (“the Commission should move quickly to launch a proceeding to explore the bounds of its permissive authority to assess services that include *telecommunications* – including broadband internet access service (BIAS) . . .”

supported by USF subsidies are required to contribute to USF; thus, it is sound policy to expand the base to include BIAS revenues. Moreover, the factor would be less than 4% and would provide relief from the unreasonably high and burdensome contribution rate. Finally, financial support for USF would be more evenly distributed to all who benefit from the connectivity USF supports. No matter how BIAS customers use their broadband, they would be contributing to the USF that provides for its universal availability.

We thank you for the opportunity to offer our feedback on some of the issues that were raised in the hearing. We have received Senator Thune's letter of December 6 concerning broadband funding and regulatory structure and will be responding separately to that letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Angie Kronenberg".

Angie Kronenberg
President

cc: Members of Subcommittee