

January 6, 2023

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

**Re: Letter Received on December 6, 2022 Seeking Input on the Current
Broadband Regulatory Structure**

Dear Ranking Member Thune:

INCOMPAS—the internet and competitive networks association—appreciates the opportunity to provide you with our perspective on how the federal government can best ensure that federal dollars for broadband services are implemented properly, the current broadband regulatory structure, and INCOMPAS’ priorities as these issues are vital to INCOMPAS and our member companies. Attached you will find responses to the questions from your letter sent to us on December 6, 2022.

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 broadband companies are building networks of the future, including fiber, fixed wireless, mobile, and satellite networks that connect residences, businesses, and community anchor institutions. Our online content companies are delivering streaming, cloud, social media, and other online content, services, and goods to meet consumer and business needs across the globe. 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.

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. And their 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% of Fortune 500 companies, building the fastest speed network on record, and being awarded the number one ranking for customer service in America.

Be it for lower prices or better customer service, all consumers want more competition. Competition is also the law. 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. As such, INCOMPAS is active in promoting the growth of next-generation networks and online content service through pro-competition policies. Competition in broadband network funding programs is especially important in order to drive down costs for taxpayers and enable the delivery of robust and scalable network capacity.

We appreciate your attention to the details of the implementation of the Infrastructure Investment and Jobs Act (IIJA), including the BEAD program, and your concerns that the funding be used efficiently and effectively. INCOMPAS supports the IIJA and agrees that this once-in-a-generation investment to deploy broadband infrastructure across the nation must be done wisely and efficiently. As such, INCOMPAS believes that such investment should be made in robust, reliable, and scalable networks that can offer greater connectivity today and higher speeds in the future. Such an approach will best meet consumer, business, community anchor institution, and government agency needs over time—without the government having to invest additional funds in the future in broadband network capacity.

We believe that the best way to ensure affordable, robust connectivity is to enable and promote competition. Continuing to fund monopoly networks that do not enable customer choice is a failed market policy that we must leave in the past. As such, INCOMPAS has advocated that the process for IIJA's Internet for All funding be open to competitors and that policymakers require funded entities to enable competition and choice for customers through wholesale access policies. We urge Congress to ensure that all unserved and underserved locations in the U.S. be eligible for IIJA funding as intended so that every location in the U.S. is finally served by robust broadband.

INCOMPAS has been actively working to address the numerous barriers to fast and affordable deployment and supports congressional action to facilitate faster, more affordable infrastructure deployment. INCOMPAS' member companies work directly with local communities to ensure that the infrastructure being deployed will meet their needs, yet in some situations our members face unreasonable, costly demands, and/or significant delays. There is no national framework that affords broadband infrastructure builders a uniform or standardized process, and as a result broadband providers often must navigate a complex, time-consuming, and costly process to deploy their networks. INCOMPAS has also been urging state broadband offices to emphasize the importance of streamlining state and local processes for faster broadband infrastructure deployment and that the costs for deployment are minimized.


In our attached responses you will find our other priorities including increasing access for competitive broadband providers to reach residential and business customers in Multiple Tenant Environment (MTEs) as well as urging the FCC to move forward with USF contribution reform in order to stabilize this country's most critical connectivity programs and decrease the burden on telecom customers.

Additionally, policymakers must continue to find ways to open new spectrum resources and, where possible, enable spectrum sharing so that industry can bring paradigm-shifting services like 5G, fixed wireless, and fixed satellite service to market. INCOMPAS supports efforts to

increase competition for broadband through the broader use of mid-band and millimeter wave spectrum and urges Congress to empower the FCC to leverage the nation's spectrum resources for more licensed and unlicensed broadband use cases. To this end, the FCC can take immediate action in the 12.2-12.7 GHz proceeding to modernize its rules to permit mobile 5G and finalize a technology-neutral, licensed sharing framework in the 37.0-37.6 GHz band that would make the band available for commercial use.

We thank you again for your attention to these important issues. Please let us know if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Chip Pickering". The signature is written in a cursive style with a large, sweeping "P" at the end.

Chip Pickering
CEO

A handwritten signature in black ink that reads "Angie Kronenberg". The signature is written in a cursive style with a large, sweeping "K" at the end.

Angie Kronenberg
President

Infrastructure Investment and Jobs Act-specific Issues:

1. **As part of the IIA, Congress established a technology-neutral approach for the BEAD program. Do you believe NTIA followed Congress' intent in establishing a technology- neutral approach? If not, should Congress consider amending the IIA statute to make it more explicit that all technologies are allowed to participate? If so, how?**

INCOMPAS supports the IIA which offers a once-in-a-generation opportunity to deploy broadband infrastructure to unserved and underserved areas in the nation. As such, INCOMPAS believes this federal funding should be invested in robust, reliable and scalable networks that can offer greater connectivity today and higher speeds in the future. This forward-focused approach is best suited for meeting consumer, business, community anchor institution, and government agency needs over time—without the government having to invest additional funds in broadband network capacity. Fiber networks should be preferred because it offers these characteristics and is less expensive to operate over time. Moreover, fiber connectivity supports every technology in the broadband ecosystem—including fixed wireless, small cell, cable, mobile (5G and 6G), and satellite. In those situations where it is not practicable to connect end users to fiber because of excessive deployment costs, NTIA's flexible approach allows communities to use their discretion and choose a different technology that can meet the IIA's requirements for high-speed broadband services. As such, the association does not believe that modification to the IIA is necessary at this time.

2. **In the BEAD Notice of Funding Opportunity (NOFO), there are detailed reporting requirements on subgrantees who do not use a unionized workforce or a project labor agreement. As a practical matter, do you think this favors certain providers over others? Does Congress or NTIA need to take further action to remove this requirement?**

While the NOFO requires additional reporting for non-unionized labor, states cannot and should not exclude companies that do not have or use unionized labor. INCOMPAS members—competitive providers that are generally smaller than incumbents—typically hire locally and do not have unionized workers. As a result, our members indicate that these additional reporting obligations will add costs to their network builds. However, while our members will need to take into account these reporting requirements as they consider participation in the BEAD program, INCOMPAS does not believe that these reporting requirements alone would be the tipping point for a member's decision not to participate.

3. **The BEAD NOFO promotes government-owned networks. Do you believe government- owned networks are an effective entity to deploy broadband networks? If yes, please explain.**

The NOFO specifically prohibits states from excluding private companies, public entities, or public-private partnerships from participating in the BEAD program. INCOMPAS members

embrace these models and often work with local governments through public-private partnerships to deploy broadband networks. Entities that seek to participate in BEAD should be primarily judged on their ability to complete the proposed projects and meet network connectivity requirements. With that in mind, INCOMPAS supports fully reviewing all subrecipients to ensure that they have the technical and financial expertise needed, and the experience and proven track record to operate networks and deliver on the broadband grant project proposals. Failure to deliver on proposed outcomes in other prior federal funding programs should be a relevant factor for determining a candidate's ability to meet the requirements of the BEAD program.

4. **One of the provisions of the IIJA requires products and materials used for broadband projects to be produced in the United States. Given the current supply chain issues, should Congress consider modifying this obligation or otherwise clarify this provision?**

INCOMPAS' members believe it may be very difficult, if not impossible, to meet the "Buy American" requirements in IIJA without significantly increasing the cost of projects and reducing the number of eligible locations that could be built. As such, INCOMPAS suggests Congress modify this obligation. Moreover, we have asserted that NTIA should waive this requirement. NTIA and other agencies have previously granted waivers for a similar requirement in the 2009 American Recovery and Reinvestment Act, and this precedent should be followed in granting waivers as "a necessary precondition to effective and efficient investment in broadband" and to ensure that Congress' goals in the IIJA to connect as many unserved/underserved locations as possible are achieved.

5. **The Broadband Buildout Accountability Act, S. 3671, would remove the Freedom of Information Act exemption in the BEAD program. Should Congress enact this legislative proposal? If not, why?**

INCOMPAS has not taken a position on this legislation, but supports proposals that would require greater transparency in the administration of the BEAD program.

6. **Are there other technical issues in the BEAD program that Congress should address before NTIA announces funding allocations by June 30, 2023?**

INCOMPAS appreciates your office's attention to the details of the implementation of the BEAD program, including concerns that the funding be used efficiently and effectively, and not duplicate projects already being funded by other federal programs. To achieve this result, INCOMPAS would welcome additional work by Congress to improve the precision of the availability data offered by the FCC in its broadband maps. Additionally, INCOMPAS offered a suggestion to the FCC this year in our comments on the Future of USF proceeding (Docket No. 21-476) and in a follow up ex parte letter to the Office of Commissioner Brendan Carr as described further in the paragraph below.

INCOMPAS supports the FCC creating a layer on the new FCC broadband maps that shows which geographic areas/locations are receiving broadband funding for network deployment to unserved and underserved locations. This tool could further assist policymakers in identifying those locations that may still need funding for deployment. To the extent that the FCC obtains this information from the agencies that are administering the funds, the Commission may not need to go through a rulemaking process to implement this proposal. Such an addition would better reflect those areas that are being built with broadband funding that has already been allocated through the various programs funding network deployment. INCOMPAS believes this step potentially would lend further insight into areas that lack adequate network deployment and address the Senator's concerns that the various funding programs for deployment are coordinated to ensure they are not duplicative.

General Broadband Issues:

- 1. As noted above, there are over 130 programs supporting broadband access across 15 agencies.**
 - a. To date, which of these programs do you believe has had the most success in delivering broadband services to truly unserved areas?**

INCOMPAS advocates for competition in broadband network funding programs because it drives down costs for taxpayers and enables delivery of robust and scalable network capacity. Historically, programs that fund broadband networks have favored incumbents. However, the FCC has modified its High-Cost program, at least in part, to permit competitors to obtain funding for network deployment—for example, CAF II and RDOF have allowed competitive participation and used a reverse auction process. RDOF specifically focused on unserved areas. The RDOF's design, however, did not produce even results for unserved customers across the nation, and many providers that could have delivered robust, scalable networks to unserved areas through that program were stymied, and the satellite provider that was allowed to participate has now been disqualified.

The E-rate program has also been very successful in delivering network capacity and broadband service to schools and libraries. The E-rate program embraced competition, and these providers have helped drive down the costs of delivering broadband network and services, including fiber. Moreover, INCOMPAS members have been able to deliver fiber connectivity in the surrounding communities of E-rate funded schools and libraries affording communities the opportunity to connect to fiber for the first time.

In the Future of USF proceeding, INCOMPAS provided its perspective to the FCC on how to ensure that its limited USF funding—especially in the High-Cost program—is used most efficiently and effectively. Given that the bulk of congressional funding from the IJA and other federal and state programs have the purpose of funding broadband deployment, the FCC has an opportunity to scrutinize its USF program—especially the High-Cost program—in order to ensure that this finite funding is being spent wisely and where it is truly needed.

As such, INCOMPAS recommended that the agency obtain a better understanding of the economics of broadband networks serving rural America so that the USF does not continue to fund incumbents that can operate their networks without subsidies. The FCC can do so by initiating a first-of-its-kind analysis of providers and areas receiving High-Cost funding to determine whether funding is still needed by these providers. We also urged the FCC to only allocate new funding where a subsidy is needed so that USF dollars are being spent wisely and in areas that do not get served by the BEAD program, the Capital Projects Fund, or other programs.

INCOMPAS has also emphasized that the FCC should no longer assume providers will need additional Op-Ex or Cap-Ex funding now that billions of dollars have been made available through congressional funding and should instead require a demonstration of need for funding from the High-Cost program. As part of its analysis, the FCC should also look into whether other entities are operating in the same area without High-Cost funding—as this would suggest funding is not needed to operate in that area. Similarly, INCOMPAS encouraged the FCC to pause any new funding for the Alternative Connect America Cost Model (A-CAM) in light of all the new congressional funding until it can assess whether additional funding will be needed for deployment. Carriers that are seeking another round of A-CAM funding should look first to the BEAD and Capital Projects Fund programs given the tens of billions of dollars Congress made available for unserved/underserved locations and given that the USF contribution factor is so high (currently 32.6 percent for the first quarter of 2023). Additional outlays from the USF should be minimized so as not to burden the customers who are paying into the Fund.¹

b. Should Congress consider eliminating any of these programs? If so, which ones?

INCOMPAS has not taken a position on eliminating any of the broadband programs, but would like to emphasize our support for the E-rate, Rural Healthcare (RHC), and Affordable Connectivity Program (ACP). INCOMPAS members participating in these programs are delivering services to schools, libraries, rural healthcare facilities, and low-income customers, and these programs have been critical to connecting these communities to affordable broadband.

c. Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?

INCOMPAS believes that merging programs may prove very difficult when they are administered by different agencies with varying program rules and missions. To the extent that Congress and the Administration can assess and determine that certain programs have

¹ See, e.g., INCOMPAS Comments, at 7-11 (filed Feb. 17, 2022), *available at* <https://www.fcc.gov/ecfs/document/1021789341563/1>; INCOMPAS Reply Comments at 2-6 (filed March 17, 2022), *available at* <https://www.fcc.gov/ecfs/document/103170825528025/1>; INCOMPAS Ex Parte Letter to Office of Commissioner Carr (filed July 25, 2022), *available at* <https://www.fcc.gov/ecfs/document/10725016563927/1>.

met their goals and are no longer needed, a plan to wind them down should be carefully crafted.

Regarding USF, the four existing USF programs and new funding programs—namely the Emergency Connectivity Fund (ECF) and the ACP— have overlapping yet distinct goals and criteria. As such, it would be prudent for the FCC to analyze whether any of the existing programs need any adjustments due to the introduction of new congressional capital investment programs. INCOMPAS has advocated that the FCC assess whether any changes are needed to E-rate while still maintaining the benefits of the ECF to students and library patrons who cannot afford broadband service or devices. For example, the FCC could consider whether it should combine ECF’s off-campus funding provisions with the E-rate program prior to the time that the ECF is scheduled to deplete its funding. The Commission should similarly assess whether the ACP requires changes to the Lifeline program. Given the substantial and increasing demand for these products and services, it will be important for the FCC to provide its guidance to Congress on how it will assess the need for modifying the E-rate, RHC, and Lifeline programs well in advance of the conclusion of the ECF and ACP funding source in order to ensure that the universal service goals continue to be met.

2. What specific reforms and constraints should Congress consider to ensure federal funds are not being awarded where providers are receiving other federal or state broadband funding support?

Please see our response to question 6 above.

3. Should Congress take additional action in response to concerns that broadband funding may be used to overbuild existing service? If so, what reforms and constraints should be implemented?

Incumbents have had decades to build their networks and many have done so with direct support from the Universal Service Fund and other broadband programs. Despite this head start in time and funding, the incumbents have still not been able to reach every location with robust, scalable, future-proof broadband capability, and as a result, millions of Americans have been left on the wrong side of the digital divide. In the IJJA, a bipartisan Congress recognized that universal broadband internet access for our nation is absolutely necessary for the U.S. to compete globally.² Indeed, incumbents remain eligible for IJJA funding, and they have many advantages to obtain this funding given their position in the marketplace.³

² 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).

³ 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*

INCOMPAS has advocated that the process for IIA's Internet for All funding be open to competitors and that policymakers require funded entities to enable competition and choice through wholesale access policies, which leads to more affordable and innovative services to customers. Continuing to fund monopoly networks that do not ensure that every customer has choice in the market is a failed policy that we must leave in the past. As such, INCOMPAS urges Congress to ensure that all unserved and underserved locations in the U.S. be eligible for IIA funding as intended so that every location in the U.S. is finally served by robust broadband and that funding recipients provide reasonable wholesale access so that customers have choice.

4. Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of rate regulation of broadband services, whether or not such requirements are explicitly denominated "rate regulation?" If so, what reforms and constraints should be implemented?

INCOMPAS understands that policymakers who are funding network deployments want to ensure that broadband internet access service (BIAS) rates are affordable on networks that have been paid for by U.S. taxpayers. The best way to ensure such affordability is to ensure that the broadband funding programs enable and promote competition. Specifically, INCOMPAS recommends that Congress take the following additional action to enable competition: (1) ensure that the process for IIA's Internet for All funding is open to competitors, and (2) require funding recipients to enable competition by offering wholesale access service to their networks to other providers at reasonable rates. Continuing to fund monopoly networks that do not ensure that every customer has choice in the market is a failed policy that we must be left in the past.

In Section 254 of the Communications Act, Congress requires that rates should "be available at just, reasonable, and affordable rates." The FCC has implemented this requirement in the USF program where providers that obtain High-Cost funding must offer their voice and BIAS services in rural areas at rates that are reasonably comparable to those offered in urban areas. Each year the FCC conducts a survey of the fixed voice and BIAS service rates offered to consumers in urban areas. The FCC uses the survey data to determine the reasonable comparability benchmarks for fixed voice and BIAS rates for universal service purposes. The FCC releases an annual Public Notice based on this survey that sets for the benchmarks for voice and BIAS services. Providers are required to offer service at rates that are at or below the relevant reasonable comparability benchmarks. *See* FCC Public Notice, DA 22-1338 (rel. Dec. 16, 2022). Given the billions of tax-payer dollars that Congress is investing, a similar requirement is appropriate.

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 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. Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of "net neutrality" mandates upon broadband services, whether or not such mandates are explicitly denominated "net neutrality?" If so, what reforms and constraints should be implemented?**

INCOMPAS members support net neutrality and a number of them market to customers based on their net neutrality commitment. As such, we have not heard any concerns from our members about the potential of a net neutrality mandate.

- 6. How effective have the Memoranda of Understanding between (1) the FCC, USDA, and NTIA, and (2) the FCC, USDA, NTIA, and Treasury been with respect to broadband coordination efforts? Are there additional reforms federal agencies should implement to better coordinate on broadband deployment efforts?**

Unfortunately, INCOMPAS does not have the necessary insight into these coordination efforts to answer the first question. It would be helpful if the agencies would publicly disclose their coordination efforts. Please see our response to question 6 above for our response to the second question.

- 7. Should Congress take steps to increase the transparency of agencies when allocating and disbursing broadband funds? If so, what steps should Congress take?**

Increased transparency—including sharing grant information among the federal agencies—will help ensure that Congress, the FCC, and the other federal agencies know exactly where federal funding is going and be in the position to better assess where funding is still needed. As INCOMPAS suggested above in response to question 6, the FCC can streamline the various broadband funding programs by creating a layer on the new FCC broadband maps that show which areas have received broadband funding, including from FCC and non-FCC federal and state programs. This tool could help the FCC determine if any adjustment would then be necessary to the High-Cost program by requiring broadband providers to confirm if and where they have received federal funding to deploy broadband. As such, Congress should direct the agencies that are funding broadband network deployment to supply the FCC with the necessary information for it to track the geographic areas/locations as a layer on its maps.

- 8. What, if any, permitting regulations at the federal level are impeding broadband deployment?**

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.⁴ We also are advocating at the FCC for the agency to take action on a pending pole attachment proceeding that if resolved will help provide more certainty and speed deployment in a more cost-effective manner for the poles the FCC regulates.⁵ This follows the FCC's important Order implemented in 2022 on improving competitive providers' access to MTEs.⁶ This process took about five years—starting with a proceeding initiated by former FCC Chairman Ajit Pai—but our members are now able to obtain improved MTE access, 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.

In addition, INCOMPAS is advocating that state broadband offices 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 IJIA, 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, yet in some situations our member companies 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 service. It also benefits local, state, and federal government agencies who want competitive options for their communications services.

Congressional action to help ensure that permitting and access fees are publicly disclosed, competitively and technology neutral, nondiscriminatory, and based on actual, objectively reasonable costs for accessing public and private rights-of-way (ROW), including municipal

⁴ INCOMPAS supports states continuing to have the right to regulate access to further improve upon the FCC's minimum standards.

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>.

and co-op poles and conduit, would aid future broadband deployments.

9. Does the FCC presently possess sufficient authority to preempt state and local requirements that may unreasonably impede the deployment of broadband networks? If not, what steps should Congress consider to address the unreasonable impediments?

While INCOMPAS believes the FCC possesses sufficient authority to preempt state and local requirements that unreasonably impede the deployment of telecommunications services pursuant to Section 253 of the Communications Act, providers that are deploying broadband infrastructure may not be able to avail themselves of that protection when they encounter unreasonable impediments from state or local governments. First, the statute is limited to telecommunications services and neither BIAS nor VoIP service is currently defined as such. Accordingly, broadband infrastructure may only be covered by this protection *if* there is a telecommunications service that is offered.

Second, companies are reluctant to file petitions with the FCC because they are costly, time consuming, and unpredictable. It is fairly common for members to tell us that they cannot avail themselves of the FCC's protections for these reasons. Some members have opted not to deploy in certain locations due to unreasonable fees or other conditions that make the builds too costly. Congressional action that empowers the FCC to resolve these disputes in 60 days or less would be a welcome development and would speed deployment of federally-funded broadband projects.

INCOMPAS also supports legislative efforts that specifically address permitting issues at the state and local level. Streamlined processes will enable more efficient and effective deployment of broadband infrastructure. For example, the FCC previously set reasonable timeframes for small cells, and some localities follow those timeframes for both small cells and fiber permitting. Unfortunately, some municipalities have elected not to apply the FCC's small cell provisions to wireline infrastructure. INCOMPAS supports Congressional action that codifies these reasonable timeframes and clarifies that they should be applied to both wireless *and* wired infrastructure. In terms of fees, some localities charge unreasonable and/or discriminatory fees for competitors. It is imperative that where fees are charged, they be publicly disclosed, reasonable, competitively and technology neutral, and non-discriminatory. Such fees also must be based on actual and direct costs for localities' management of the public rights-of-way.

10. What specific steps can Congress take to reduce costs to broadband providers when deploying new networks?

As discussed immediately above, INCOMPAS supports legislative efforts that specifically address the barriers broadband infrastructure providers face in delivering wired and wireless options to communities. To help reduce costs and achieve more competitive builds and affordable broadband, INCOMPAS supports the STREAMLINE Small Cell Deployment Act

introduced by your office, the Broadband Grant Tax Treatment Act introduced by Senators Warner and Moran, the BROADBAND Leadership Act introduced by Rep. Morgan Griffith (R-VA), the Wireless Leadership Act introduced by Rep. Bob Latta (R-OH), and the Broadband Incentives for Communities Act introduced by Rep. Lizzie Fletcher (D-TX).

11. Would updating pole attachment regulations spur more rural broadband deployment? If so, what actions should be taken?

As we discussed above in response to question 8, we believe that Congress should revise Section 224 of the Communications Act so that all pole and conduit access is governed by the minimum standards the FCC has adopted. INCOMPAS members face disparate pole access, depending on who owns and regulates access to the pole. Moreover, disputes over pole attachments continue to represent a significant barrier to efficient and economical broadband deployment for competitive providers. Competitive providers' deployments are routinely stymied by pole owners' unreasonable pole attachment and replacement practices, including denials and excessive delays for pole access and the imposition of unsubstantiated costs for pole replacements.

To speed deployment of next generation broadband networks in rural areas, the FCC must update its pole attachment regulations and create a more transparent, just, and reasonable process for the fair allocation of pole replacement costs between pole owners and new attachers. Congressional support for the FCC's updates would be helpful.

First, Congress should direct the FCC to modify its rules to include a presumption that pole owners receive a direct benefit when a pole replacement is required to accommodate a new attachment. Furthermore, the Commission should adopt a revised cost allocation methodology that takes into consideration this benefit and more equitably assigns costs based on the incremental costs caused by each party. Specifically, INCOMPAS supports an allocation formula where the attacher who causes the replacement pays for the stranded investment, a share of the incremental cost of upgrade (if any), and the cost incurred on time value of money minus the incremental betterment and cost savings that accrues to the pole owner from early replacement.

Second, Congress can expedite the resolution of pole replacement disputes by requiring increased information sharing between attachers and pole owners. One of the primary causes of pole replacement disputes for attachers is the lack of transparency into the safety standards, cost structure, and data that utilities keep on the retirement and replacement of their poles. Rather than tying this information specifically to the make-ready process, INCOMPAS recommends that Congress require utilities to make these materials—such as the age of the pole, plans for the pole, work order history, and other information used to determine the pole status—available to prospective attachers upon request.

Third, Congress should require the FCC to move all pole access disputes related to a current deployment project to the agency's Accelerated Docket and ensure that a complaint is

resolved within 60 days.

12. How are federal broadband programs addressing cybersecurity challenges? Should Congress consider reforms to improve cybersecurity?

As prospective subgrantees for federal broadband funding, INCOMPAS members are satisfied that the federal requirements proposed in the BEAD NOFO are sufficient to protect the nation's network from cyber-attacks. In addition, INCOMPAS recommends that assistance in identifying and mitigating cyber threats be provided to participating entities by the Cybersecurity and Infrastructure Security Agency (CISA), the lead federal agency tasked with preserving the nation's cyber security. CISA maintains assistance programs for infrastructure and energy providers, and a similar program for the nation's broadband providers would be very useful. INCOMPAS also recommends that Congress act now to provide additional funding for threat mitigation that is required but may be beyond the capabilities of smaller providers.

Furthermore, the country's education system is increasingly experiencing a significant amount of cyber-attacks. These attacks vary in nature and include phishing, malware, and ransomware. It is critical that school and libraries have the resources they need to obtain the services necessary to combat these attacks. The FCC has opened a proceeding to explore how E-rate can be used to support cybersecurity solutions for schools. While the E-rate program remains an essential part of enabling broadband connectivity for schools, it does present an opportunity to support cybersecurity solutions in a tailored manner. Given the complexity of cybersecurity risks, the most effective and efficient approach—especially for schools and libraries who might lack extensive IT departments—would be to enable support for cybersecurity as a service. In the past, the FCC affirmed the importance of addressing the cybersecurity needs of schools and libraries when it allowed E-rate funding to be used for firewalls. The Commission's rulemaking now presents an opportunity to update this policy to address modern day realities and fund robust cybersecurity solutions. As the FCC conducts its rulemaking, Congress should also pursue opportunities to fund these solutions as it will likely take an all-of-the-above approach to appropriately secure our schools.

13. Are there other broadband policy issues that Congress should consider reforming during the 118th Congress?

The FCC must complete USF contribution reform by expanding the contribution base to include BIAS revenues. 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, and INCOMPAS believes that Congress should communicate to the agency that reform is necessary, should happen expeditiously, and that the FCC should expand the base to include BIAS revenues.

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 percent and has become an even more significant burden on customers. The 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, and the FCC has the legal authority to do so. Indeed, the USForward Coalition includes support from over 340 entities, and even USTelecom—which asserted in its written testimony to the Subcommittee last month 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 Moreover, historically, services that are supported by USF subsidies are required to contribute to USF, and by taking such action the factor would be less than 4% and support would be more evenly distributed to all who benefit from the connectivity USF supports no matter how they may use their broadband service. USF reform now will relieve customers from the unreasonably high and burdensome contribution rate.

INCOMPAS recently met with your office to discuss our position on USF contribution reform and noted our opposition to assessing tech companies and the flawed assumptions and analysis behind this effort. We refer you to the leave-behind we provided which more fully describes our positions. In that document, among other things, we describe the findings from an [Analysys Mason Report](#), which was recently published on behalf of INCOMPAS, that shows how tech companies are investing billions of dollars every year in internet infrastructure—reducing network strain and costs for BIAS providers—to deliver modern internet connectivity.⁸

The paper challenges the myth that investment in “the network” is occurring just by BIAS providers. It is not. In today’s economy, BIAS networks deliver faster speeds and more creative content thanks to the global internet infrastructure, local content delivery points, and large ongoing investments in the overall internet network that tech invests in. These network investments by tech and streaming innovators not only deliver a high-quality experience for the consumer, but also save BIAS providers billions in efficiency gains. From deploying data centers to laying submarine fiber cables across the oceans, this infrastructure spans the globe to provide the underpinnings of our modern internet, resulting in high quality experiences for internet end users—both consumers and businesses. This results in lower costs overall and better quality end user experience, which is what consumers want in their BIAS.

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) . . .”)

⁸ See David Abecassis, Michael Kende, Shahan Osman, Ryan Spence, Natalie Choi, *The Impact of Tech Companies’ Network Investment on the Economics of Broadband ISPs* (October 2022), available at <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>.

Customers purchase BIAS to obtain the online content, applications, and services of their choice, and tech and streaming innovators are investing to deliver that internet traffic closer to BIAS providers, and often within the BIAS providers' networks.

The Analysys Mason report finds the following:

- Tech companies spent \$883 billion on global internet infrastructure from 2011-2021. This is in addition to their investments in innovative content/applications for end users.
- From 2018-2021, tech companies invested more than \$120 billion annually—increasing their digital infrastructure investment by over 50%.
- These investments bring traffic closer to end users, improve the quality of service, and save BIAS providers \$5–\$6.4 billion annually.
- While traffic volumes have grown significantly, costs for BIAS providers have remained stable over time.

Some parties assert that certain streamers or online content providers should pay into USF based on consumers' bandwidth usage. The research by Analysys Mason, however, found that there is not a direct correlation between the usage of the network and the cost of the network and demonstrated that network costs have remained stable in the presence of rising traffic volumes. Furthermore, the report found that imposing such usage fees could disrupt incentives, investment, and competition, resulting in unintended negative consequences for the internet ecosystem.