

July 26, 2019

***EX PARTE NOTICE***

**VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commissions  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Modernizing the Form 477, WC Docket No. 11-10; Digital Opportunity Data Collection, WC Docket No. 19-195; Implementing Kari's Law and Section 506 of RAY BAUM'S Act, PS Docket No. 18-261; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications System, PS Docket No. 17-239; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules, GN Docket No. 11-117**

Dear Ms. Dortch:

On Thursday, July 25, 2019, Angie Kronenberg and the undersigned counsel of INCOMPAS met separately with Travis Litman of Commissioner Rosenworcel's office, Arielle Roth, Erin McGrath, and Chris McGillen of Commissioner O'Rielly's office, and Randy Clarke and Matthew Tettelbach of Commissioner Starks' office. In each of these discussions, we covered issues pending in the above-captioned proceedings as described below.

INCOMPAS is pleased that the Commission is moving forward in its effort to ensure that it has the data in hand to identify those areas that are lacking broadband service and must be included in the Commission's next steps to offer universal service support through the Rural Deployment Opportunity Fund. Through its proposed Order (once adopted), the Commission will require fixed broadband providers to submit polygons of their service areas based on technology type and speed offerings. INCOMPAS understands that the FCC intends for this new data collection methodology (as compared to the current Form 477) to improve upon the FCC's, the public's, and other stakeholders' understanding of (1) the geographic areas without broadband availability; and (2) the specific locations within those geographic areas without broadband availability.

We discussed the requirement for fixed broadband providers to submit polygons. We noted that the Commission states in its draft Order that "we require all fixed providers to submit broadband coverage polygons depicting the areas where they actually have broadband-capable

networks and provide broadband service to end-user locations.”<sup>1</sup> It then defines those providers as facilities-based in note 22, including competitive local exchange carriers offering internet access service to end-users at 200 kbps or higher. With respect to this requirement, INCOMPAS explained that “facilities-based” should be defined so that it includes only those providers relying upon their own facilities, not through the purchase or lease of last-mile facilities from others. INCOMPAS noted that should competitors submit polygons that reflect the areas they serve end-users based upon the purchase of last-mile service or facilities from other providers (such as through special access service or unbundled network elements), it will not provide the Commission any additional information necessary for its assessment of broadband availability. Moreover, it potentially overstates the availability of broadband and broadband-capable networks because a polygon based on non-facilities based retail service does not reliably indicate whether the underlying broadband facilities are available throughout the area depicted on the polygon. Thus, INCOMPAS requested that the Commission clarify in its Order that the fixed providers that are required to submit polygons be defined as facilities-based providers that offer the defined broadband service to end-user locations over their own last-mile facilities.<sup>2</sup>

We also discussed the continued importance of the data collected through the Form 477, the current uncertainty of the process length or timeline for implementation of the new polygon process, and the needed assessment of its adequacy before it replaces any part of the Form 477. As such, we expressed our opposition to indicating a date certain for sunseting any part of the Form 477 in the FNPRM as some have advocated.<sup>3</sup>

We explained the importance of the subscription data in the Form 477. It is useful for comparing with the availability data and testing its accuracy, for informing the Commission’s broadband policymaking, and providing insight into the nation’s efforts to improve broadband adoption. Finally, we discussed the need to improve the Form 477 instructions with respect to broadband network availability so that they are consistent with paragraph 13 in the draft Order. INCOMPAS believes that it will improve the availability information gathered on the Form 477 and help avoid unnecessary inconsistencies between the polygons and the Form 477 data.

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<sup>1</sup> See *Draft Digital Opportunity Data Collection Order and FNPRM*, ¶ 12.

<sup>2</sup> For clarity, INCOMPAS is not requesting an exemption for all competitors and fully expects that its members that offer a competitive broadband service to end-users over their own last-mile facilities will file polygons and will have the incentive to do so to ensure that the Commission’s USF efforts are appropriately targeted, efficient, and effective.

<sup>3</sup> See NCTA July 19, 2019 Ex Parte Letter, WC Docket Nos. 11-10 & 19-195, at 2.

On the implementation of Kari’s Law and Section 506 of RAY BAUM’S ACT, INCOMPAS conveyed that the Commission’s approach to dispatchable location information for non-fixed interconnected VoIP may be impracticable. The public draft of the *Report and Order* requires non-fixed VoIP providers to provide alternative location information for callers, as an alternative to automated dispatchable location information or manual updating of Registered Location information.<sup>4</sup> While our members appreciate the flexibility this approach provides, certain location information as required by the original definition—such as “approximate in-building location, including floor level”<sup>5</sup>—may be technically infeasible for services that can be used from any location where the user can access the internet. INCOMPAS proposed that the Commission allow non-fixed interconnected VoIP providers to use the “enhanced location information” standard that it has applied to other services that face similar hurdles in locating users, such as off-premises, non-fixed MLTS services. Specifically, INCOMPAS proposed additional language (attached hereto) that would allow non-fixed interconnected VoIP providers to use enhanced location information if alternative location information is impracticable.

INCOMPAS also suggested additional language (attached hereto) that would clarify the effective date for imposing new obligations on outbound-only interconnected calls to 911. The public draft extends the interconnected VoIP definition to new services not previously subject to 911 obligations and requires providers to comply with these obligations two years after the effective date of the rules.<sup>6</sup> However, our members have raised concerns that, as written, proposed rule 9.11(a) may immediately impose these requirements on one-way outbound 911 calls. The suggested language is intended to clarify the rules to reflect a two-year compliance deadline.

Additionally, with respect to the new dispatchable location requirements for 911-capable communications services, INCOMPAS urged the Commission to extend the compliance deadline for fixed services and give all providers two years to comply with these new obligations. INCOMPAS also recommended eliminating the sticker requirement, or limiting it to certain specified scenarios, as it is generally unnecessary in an environment in which callers will be contacting 911 via applications on devices that require user IDs and passwords.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

/s/ Christopher L. Shipley

Christopher L. Shipley  
Attorney & Policy Advisor

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<sup>4</sup> See *Draft Report and Order* at ¶ 181.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 182.

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cc: Travis Litman  
Arielle Roth  
Erin McGrath  
Chris McGillen  
Randy Clarke  
Matthew Tettelbach

## APPENDIX

INCOMPAS proposes the following edits (in red) to the Commission's *Draft Report and Order* implementing the requirements of Kari's Law and Section 506 of RAY BAUM'S Act:

### Subpart D – Interconnected Voice over Internet Protocol Services

#### § 9.11 E911 Services

(a) *Before [one year after the effective date of this rule] for fixed services and before [two years after the effective date of this rule] for non-fixed services.* Subsection (a) is not applicable to an interconnected VoIP service that fulfills only subsections (1)-(3) of the definition of interconnected VoIP in §9.3 and permits users generally to terminate calls to the public switched telephone network.

\* \* \* \* \*

(b) On or after [one year after the effective date of this rule] for fixed services, and on or after [two years after the effective date of this rule] for non-fixed services. Subsection (b) applies to all interconnected VoIP services as defined in § 9.3.

\* \* \* \* \*

(b)(4)(ii)(C): Provide Alternative Location Information as defined in §9.3, if technically feasible, or enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.