

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

In the Matter of)	
)	
Inquiry Concerning Deployment of Advanced)	GN Docket No. 19-285
Telecommunications Capability to All Americans)	
in a Reasonable and Timely Fashion)	

COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Fifteenth Broadband Deployment Report Notice of Inquiry* to initiate the next annual assessment of the availability of advanced telecommunications capability to all Americans in a reasonable and timely fashion, and to solicit comment and information to help guide the Commission’s analysis.¹

I. INTRODUCTION

INCOMPAS is the preeminent national industry association for competitive providers of Internet and communications networks, including wireline, wireless, and satellite providers in the broadband marketplace. We represent companies that provide 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. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes; transit and backbone providers that carry broadband and Internet traffic; and online video distributors that offer video programming and other services over BIAS to

¹*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fifteenth Broadband Deployment Report Notice of Inquiry, GN Docket No. 19-285, FCC 19-102 (rel. Oct. 23, 2019) (“*Fifteenth Broadband NOI*”).

consumers. Our members are providing and/or relying upon broadband capability, and the Commission's role in encouraging broadband deployment and protecting and promoting broadband competition is key to ensuring robust network deployment, and to guarantee residential and business customers will have choice for their broadband provider, as well as the services and applications they may choose to take over those broadband connections.

INCOMPAS members are dedicated to helping the Commission achieve its goal of closing the digital divide primarily through the deployment of the next generation of high-speed networks and services. Our members are eager to offer the competition that drives investment and innovation, deployment and faster speeds, affordability and better customer service. Consumers appreciate choice and are increasingly turning to competitive, online alternatives to traditional services, including streaming video, voice, and cloud services. These innovative offerings allow the association's members to compete, where possible, and ensure that consumers are able to engage in the digital economy and benefit from broadband availability and competition.

The Commission is mandated to annually measure the availability of advanced telecommunications services—which the Commission has long referred to as broadband.² When this capability is not being reasonably and timely made available, the FCC has a mandate to take immediate action to accelerate deployment by removing barriers to investment and promoting competition.³ In addition to Section 706, in the 1996 Act, Congress also required the

² 47 U.S.C. § 1302(b).

³ *Id.*

Commission to promote competition and consumer choice, and to protect consumers in the provision of communications services⁴

Significant investment in the networks have been made by incumbents and competitors alike in the two decades since the 1996 Act, and the services offered to consumers and businesses over those networks have dramatically evolved in that timeframe. Those Americans that enjoy access to broadband use the service at home via fixed networks and on the go via mobile networks. Every year, the American economy becomes more dependent on broadband than ever before, transforming education, government, health care and many sectors across the economy. The expectation is that the demand for broadband will continue to increase over time, especially as providers offer new high-speed networks and more consumers and businesses use connected devices and cloud services to conduct their business, entertain themselves, and manage their day-to-day lives.

With forward-thinking and competition-focused policies, consumers, small and mid-sized businesses, and large enterprise companies will benefit from faster networks and the services that flow over them. As the Commission considers its analysis of the current broadband market, its policies should reflect the progress that industry has made in realizing the next generation of networks. After years of planning, major carriers have begun deploying 5G-capable networks in earnest, marking a demarcation point and providing the perfect opportunity for the Commission to reconsider performance benchmarks that measured previous generations of network technology.⁵ The Commission has been doing very important work to enable more 5G wireless

⁴ See 47 U.S.C. § 151.

⁵ See Bevin Fletcher, *The lowdown on 5G in mid-2019: where it's at with AT&T, Sprint, Verizon and T-Mobile*, FIERCEWIRELESS (Jul 12, 2019, 11:00 AM),

deployment which relies, ultimately, on fiber networks. The race to 5G will depend on the ability of incumbents and competitors to build extensive fiber networks that will serve as the backhaul of the dense 5G small cell architecture. The Commission must carefully consider several key policy areas that are critical to achieving the goal of driving fiber and 5G wireless deployment. In this comment, we focus on three critical issues that will drive deployment and ensure that the Commission is accurately reflecting the status of broadband deployment in the country.

First, the FCC should adopt 1 Gbps as the fixed broadband benchmark for the nation. Gigabit connectivity is transforming communities and is the commercial product that is spurring deployment from incumbents and competitive broadband providers. Markets with gigabit connectivity not only have faster speeds, but also more affordable prices, as incumbents race to improve their networks and match the prices of competitive fiber providers that have entered the market with a broadband product that is attractive to consumers. The U.S. should be adopting benchmarks that reflect truly “advanced” telecommunications capability, not settling for baseline speeds that major BIAS providers have surpassed in their initial offerings to consumers. In turn, consumers are using much higher speeds today due to the growth in streaming and over-the-top services, as well as the number of users per subscription. With 5G well on the way, 1 Gbps no longer represents an aspirational performance benchmark, but rather a sensible standard that consumers are purchasing. Fiber networks are the backbone for 5G, and the U.S. should be leading the globe by setting 1 Gbps as the fixed broadband standard. It is time for the Commission to adopt a future proof definition of broadband for our nation.

<https://www.fiercewireless.com/5g/5g-deployments-where-it-s-at-at-t-sprint-verizon-and-t-mobile>.

Second, the Commission must continue to recognize the distinct differences between fixed and mobile broadband networks. With its inherent limitations, mobile is not yet a functional substitute for fixed service. American consumers and businesses rely on both fixed and mobile broadband networks, with each serving specific functions. Businesses and consumers alike continue to rely on dedicated fixed services for privacy and data protection as well as sensitive payment information. They continue to expect to have access to both types of networks, and full substitutability has not been achieved.

Third, INCOMPAS' members support the Commission's efforts to lower barriers to broadband deployment, and the changes adopted last year are beginning to make a difference. However, as the Commission's NOI recognizes too many Americans do not have access to fixed and/or mobile networks leading to the agencies efforts to close the digital divide. As the Commission itself has noted, barricades to new competitive deployment, especially at the local level, have been blocking competition for several decades.

However, the Commission has proposed a Notice of Proposed Rulemaking ("NPRM") that will remove wholesale access that our members use to bridge services to unserved and underserved areas.⁶ This costly detour will discourage fiber builds and hurt consumers who rely on small fiber providers for their broadband service. We urge the Commission to abandon this rulemaking that would slow competitors' broadband deployment, particularly as the country speeds towards a 5G future. Many fiber builders currently rely upon the services covered by the NPRM, it is the critical bridge to broadband that unites customers to competition. In many rural communities these connections are the only access many Americans have to broadband. If

⁶ See *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Notice of Proposed Rulemaking, FCC-CIRC1911-04 ("Unbundling and Resale NRPM").

adopted, the NPRM would harm the ability of small broadband providers to use unbundled network elements (“UNEs”) to deploy to areas not currently served, as well as to offer broadband choice in other areas. Cutting off the bridge to broadband is contrary to the spirit of Section 706 and the Commission’s efforts to close the digital divide.

II. GIVEN THE WIDESPREAD AVAILABILITY OF GIGABIT CONNECTIVITY, THE COMMISSION SHOULD UPDATE ITS FIXED BROADBAND PERFORMANCE BENCHMARK TO 1 GBPS.

Following a year in which incumbents and competitors alike made gigabit service available to the majority of U.S. consumers,⁷ the Commission should increase its performance benchmark for fixed broadband services to 1 Gbps. INCOMPAS’s members are bringing gigabit service to their customers,⁸ and over the last year, incumbents have responded by matching this investment in their networks in the areas they serve, including deploying their own fiber and/or upgrading their DOCSIS. In determining the appropriate performance measure for fixed broadband service, the Commission should consider speeds that reflect the current residential market for broadband. Entry-level service options by major BIAS providers are typically at least 50 Mbps (and usually 100 Mbps) up to 2 Gbps.⁹ Indeed, Ookla finds that the average U.S. internet download speed is now 129.65 Mbps (48.55 Mbps upload), which far exceeds the

⁷ See Joan E. Solsman, *5G? We’ll double it! Cable companies push ‘10G’ at CES*, CNET (Jan. 7, 2019, 10:58 AM), <https://www.cnet.com/news/cable-companies-push-10g-at-ces/> (indicating that broadband providers offer gigabit service to nearly 80 percent of U.S. homes).

⁸ See Comments of INCOMPAS, GN Docket No. 17-199 (filed Sep. 21, 2017) at 16-20.

⁹ See Catherine McNally, *Best High Speed Internet Providers: Compare the Fastest ISPs*, REVIEWS.ORG (Sep. 10, 2019), <https://www.reviews.org/internet-service/fastest-internet-providers/>.

Commission’s current 25 Mbps/3 Mbps benchmark.¹⁰ With 2 gigabit service now available to the U.S. market¹¹ and with plans being announced to bring even faster speeds to market,¹² the Commission should recognize that gigabit connectivity represents the advanced telecommunications capability that Congress envisioned when it passed Section 706.

Broadband demand is growing across the economy. Consumers are using it to work, do their homework, entertain themselves, shop, and stay connected to friends and family, among many other uses. Multiple family members are using broadband simultaneously at homes across America, and the number of connected devices is growing. It is not surprising that broadband download speeds are increasing. Businesses also are using broadband connections more than ever before. Cloud services are growing, and entire industries are changing as they too are relying more on broadband connectivity. It is impacting the healthcare industry, manufacturing, agriculture, and retail, among many others. Businesses large and small must be connected to compete. Consumer and business broadband demand is expected to continue to grow, and in turn, competitive providers are responding and deploying new capabilities.

¹⁰ Ookla SpeedTest, United States, October 2019, *available at* <https://www.speedtest.net/global-index/united-states#fixed>.

¹¹ In the *2019 Broadband Deployment Report*, the Commission rejected INCOMPAS’s argument to increase the fixed speed benchmark to 1 Gbps noting that section 706 “nowhere suggests that ‘advanced’ [telecommunications capability] necessarily means the highest quality service possible.” INCOMPAS posits that to remain a global internet leader, the Commission cannot retain a baseline benchmark for fixed service that is adequate for purposes of finding that broadband is being deployed in a timely and reasonable manner, but is by no means “advanced” given our current understanding of broadband services available to the typical consumer. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-144 (rel. May 29, 2019), at 6-7 (“2019 Broadband Deployment Report”).

¹² Solsman, *supra* note 7 (reporting that a coalition of international cable industry groups were conducting lab trials on a 10 Gbps broadband service that it hoped to introduce “in the coming years”).

The U.S. should be the global leader in fixed broadband and deployment of fiber—which is the backbone for 5G and winning the global race to the future. We need gigabit connectivity to win the global broadband race. It is time for the Commission to adopt a future proof definition of broadband for our nation. Accordingly, the FCC should set the fixed broadband speed definition at 1 Gbps.

III. THE COMMISSION SHOULD MAINTAIN ITS EVALUATIVE FRAMEWORK FOR FIXED AND MOBILE SERVICES AS THEY ARE NOT YET FUNCTIONAL SUBSTITUTES.

INCOMPAS supports the Commission’s proposal to maintain its current evaluative framework with respect to collecting and measuring the availability of both fixed and mobile broadband networks.¹³ These services continue to meet different consumer expectations and therefore should not yet be considered functional substitutes. American consumers and businesses expect to have both types of networks available to them, because the experience of using these services can be distinctly different. Mobile devices allow consumers to stay connected—we no longer need to be tethered to our homes and desks in order to check email, talk on the phone, or use apps that manage our business and social life. However, there is a distinct difference between the speeds and connectivity available to consumers of mobile service (with average speeds of 38.06 Mbps) and fixed (with average download 129.65 Mbps).¹⁴ Furthermore, Americans typically are paying more for their mobile broadband connection, so many users limit how much data they consumer to avoid going over data caps and paying more. Fixed services, on the other hand, provide faster connections, allowing consumers to stream and

¹³ See *Fifteenth Broadband NOI* at ¶ 9.

¹⁴ Ookla SpeedTest, United States, October 2019, *available at* <https://www.speedtest.net/global-index/united-states#fixed>.

consume long-form video in our homes and offices much easier. Most consumers do not have to worry about hitting a data cap for their residential services. Most Americans and businesses require access to a fixed broadband service because mobile is not a sufficient substitute. Even with 5G, there will still likely be applications and services that require a fixed connection—for instance, telehealth and gaming—that will require the Commission to continue to evaluate these services separately given the inherent limitations of mobile networks caused by interference and environmental factors.

Access to both fixed and mobile broadband are necessary to meet the needs of consumers; therefore, the Commission should continue to evaluate fixed and mobile broadband networks separately based on benchmarks that reflect advanced capability for these services.

IV. THE COMMISSION’S DEPLOYMENT AGENDA AND THE COMPETITION REQUIREMENTS OF THE 1996 TELECOM ACT PROMOTE BROADBAND AVAILABILITY AND COMPETITION.

INCOMPAS appreciates the Commission’s focus to lower the barriers to broadband deployment and believes the Commission’s recent actions to promote both wired and wireless broadband deployment are critical steps to encouraging and enabling more fiber builds that are crucial to fixed broadband deployment, broadband availability, and competition. The Commission’s adoption of a one-touch make-ready policy that allows fiber providers to attach their fiber to utility poles in a more efficient manner saves builders time and money and enables more fiber to be deployed. Furthermore, the Commission’s efforts to limit shot clocks and establish fee guidelines at the state and local level for small cells has accelerated broadband

providers' plans for 5G.¹⁵ INCOMPAS urges the Commission to expand these requirements to fiber that will provide the critical backhaul needed to accommodate 5G service in the future.¹⁶

INCOMPAS members have found that the Commission's work to establish expectations is helpful in educating communities and the association encourages the agency to do more in this area to ensure faster deployment and fiber builds. As recently discussed by Zayo, there are still significant issues that impede fiber deployment that are "slow[ing] the deployment of 5G and wireline broadband services."¹⁷ Accordingly, it urges the Commission to clarify that the *Declaratory Ruling* adopted last year setting fees and timelines for 5G small cell architecture be applied to fiber deployment. INCOMPAS agrees. Another recent example of issues that impede fiber deployment is the assessment of excessive fees by the State of New York on fiber optic utilities for use and occupancy of the state right-of-way.¹⁸ These fees have presented a dramatic and unexpected increase in the cost to deploy facilities in the state, and will consequently hamper broadband and 5G deployment, to the detriment of the state's consumers.

¹⁵ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (14) (rel. Sep. 27, 2018) ("*Declaratory Ruling*").

¹⁶ See also Letter of Craig J. Brown, Assistant General Counsel for CenturyLink, GN Docket No. 17-83 & WC Docket Nos. 17-84, 17-79, 19-126, 10-90, at 5 (filed Oct. 30, 2019) (asking the Commission to require municipal and cooperatives utilities entering the telecommunications market to offer just, reasonable, and nondiscriminatory access to poles as a condition of their participation in Commission auctions).

¹⁷ See Letter from Thomas Jones, Counsel to Zayo, WT Docket No. 17-79 & WC Docket No. 17-84, at 1 (filed Oct. 31, 2019).

¹⁸ See NYS Highway Law Sec. 10 (24-e) and NYS Transportation Corporations Law Sec. 7.

Additionally, INCOMPAS commends the Commission for taking meaningful action to enable more fixed broadband deployment and competition for consumers who live and work in multiple tenant environments (“MTEs”).¹⁹ The Commission’s proposal to address the practices that have denied competitive providers access to MTEs will ensure customers—whether they be millennials on a starter budget, a retired American on a fixed budget, or a small business on a start-up budget—are able to exercise their choice for broadband service and will help them reap the benefits of competition, including lower prices and higher speeds, while encouraging more broadband deployment.

Earlier this year, USTelecom withdrew a petition that would have allowed its members to forbear from certain unbundling and resale requirements of the Telecommunications Act of 1996.²⁰ In the proceeding, INCOMPAS was able to effectively demonstrate that small, competitive fiber builders use the Commission’s existing UNE and resale policy to build more and faster fixed broadband to residential consumers, small and medium-sized businesses, as well as schools, libraries, healthcare, public safety and other local and state government agencies.²¹ In fact, many competitive providers rely on these services—such as UNE dark fiber, DS0s,

¹⁹ See *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 19-65 (rel. July 12, 2019).

²⁰ See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018).

²¹ See *Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association*, WC Docket No. 18-141, at 37-55 (filed Aug. 6, 2018) (“Opposition”).

DS1s, and DS3s—to enter and compete in the broadband marketplace, including bringing broadband to areas without it for the first time.

In response to that petition, INCOMPAS submitted economic filings that demonstrated that competitors using UNEs (1) build more fiber than incumbents; (2) deliver faster broadband speeds than the incumbents; and (3) offer lower prices and better service to customers.²² Indeed, the current UNE policy serves as an investment ladder for new entrants and incents competitors and incumbents alike to build more broadband; and in markets where a smaller, competitive broadband provider has deployed new fiber, they offer gigabit speeds at a fraction of the cost, and incumbent providers are forced to respond with network upgrades and lower prices.²³

The Commission has now proposed a NPRM that will remove the very wholesale access that competitors use to provide customers with a bridge to broadband. If adopted as proposed, competitive fiber providers' ability to continue to build fiber will be significantly impacted—potentially leaving consumers with, at best a duopoly, but more likely with no broadband choice or only a monopoly. Companies that are required under the Act to provide unbundled or resale services, most notably AT&T, Verizon, CenturyLink, and Frontier, will be able to charge substantially higher rates for broadband services, allowing them to earn substantially more on their existing copper network through rate increases. If the NPRM goes to Order, it will mean fewer fiber builds (as incumbents will not have an economic incentive to deploy fiber), less

²² See Opposition, Attachment 2, Declaration of William P. Zarakas, at 3-4 & 9-11.

²³ See *id.*, Attachment 1, Declaration of David E.M. Sappington, at 14-17. Dr. Sappington also discusses how the UNE policy benefits consumers so that they are not limited to a monopoly or duopoly choice which both fail to produce the types of benefits that consumers enjoy in a competitive market. *Id.* 9-13. See also Comments of INCOMPAS, WC Docket No. 17-199, Exhibit A, David S. Evans, Economic Findings Concerning the State of Competition for Wired Broadband Provision to U.S. Households and Edge Providers, at 35-37 (filed Sept. 21, 2017).

competition, and consumers, small businesses, schools and libraries, and rural healthcare facilities will be subject to higher prices in the form of unlimited price hikes and loss of innovation. Service quality is also likely to degrade, as it does in all monopoly markets—if there is no competitive threat, there is less incentive for rapid repair or service innovation.

The Commission's NPRM represents a rare misstep in its efforts to bridge the digital divide as it is clearly detrimental to fixed broadband availability and competition. As with the earlier petition for forbearance, there is overwhelming opposition by a number of diverse stakeholders, including broadband providers, state and federal agencies, and consumer and public interest groups. INCOMPAS members are bringing the competition that the bipartisan 1996 Telecom Act envisioned. The tools the Act still offers are critical for fiber builds and 5G and allows the country to compete in the global marketplace. The FCC should abandon this proceeding so that fixed broadband availability and competition is preserved and promoted, and small, competitive providers can continue to deploy broadband to unserved areas.

IV. CONCLUSION

As the Commission determines whether broadband service is being deployed in a timely and reasonable manner, INCOMPAS urges the Commission to: (1) update the fixed broadband performance benchmark to 1 Gbps as this is truly representative of what constitutes “advanced” in today's broadband marketplace; (2) maintain the current evaluative framework in which fixed and mobile broadband networks are not recognized as functional substitutes; (3) take regulatory additional steps to promote increased broadband deployment and address barriers; and (4) abandon its NPRM which would remove the availability of UNEs at reasonable rates.

Respectfully submitted,

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