

December 4, 2017

**VIA ECFS**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Notice of Ex Parte Presentation, *Restoring Internet Freedom*, WC Docket No. 17-108**

Dear Ms. Dortch,

On November 30, 2017, the undersigned and Chip Pickering, INCOMPAS CEO, met with Nicholas Degani, Senior Counselor to Chairman Pai, concerning the above-referenced proceeding. In that meeting, we emphasized that the Chairman's draft Order is a significant departure from almost two decades of bipartisan agreement that the Commission is the expert agency to ensure that the internet remains open in the U.S.; that Americans still have little or no choice for broadband internet access service ("BIAS") providers, and BIAS providers must abide by open internet principles; and that the FCC should enforce net neutrality. We also provided Mr. Degani a copy of the November 29 and November 20 ex parte letters INCOMPAS submitted in the docket.

We discussed with Mr. Degani that consumers are using a BIAS service to reach the websites, applications, and services they desire over the Internet, and they expect and want access to the whole Internet. Indeed, more consumers and businesses are relying on the open internet than ever before. Since the *2015 Open Internet Order*, we have seen an explosion in streaming services that provide more choices at lower prices. We also have seen businesses, large and small, migrating to low-cost cloud services in record numbers. Indeed, start-ups are able to reach consumers online and offer competitive options at very low cost as a result of the Commission's current open internet policy.

However, the Chairman's draft Order, if adopted, will impede the FCC's ability to ensure that consumers will continue to have such access, and as INCOMPAS has submitted in its filings the record shows that most consumers only have one choice for high-speed residential broadband, that mobile broadband is an inadequate substitute, and that even where there is a second choice, consumers rarely switch providers due to high switching costs. As the DOJ has described in its complaint against the AT&T/DirecTV/Time Warner merger, the Commission should consider the oligopoly that large MVPDs that also are BIAS providers have to slow the development of online video competition. Reliance on ex post antitrust enforcement of BIAS behavior will be inadequate to protect consumers' access to an open internet.

The Chairman's draft order and recent statements, moreover, reflect a troubling lack of understanding of how consumers today view and use BIAS service, as opposed to the content and applications offered by the universe of edge providers. In part because there is so little competition and choice among BIAS providers, and in part because BIAS providers (by definition) hold themselves out as providers of transmission to and from the entire Internet, consumers rely on other entities—not their BIAS provider—to filter the content they want from among the nearly infinite options available online. Consumers use BIAS to access services like Amazon, Facebook, Netflix, Twitter, Vimeo, and YouTube, which in turn perform the content-aggregation and content-screening functions that make the Internet usable. The days of bundled access and “walled garden” content, which were fresh in the Commission's mind when it classified cable modem service as an information service in 2002, are long gone. Rhetoric attempting to equate curation by Internet apps with discrimination by BIAS providers therefore misses its target. It is concerning that the Chairman does not understand that consumers expect online content and application providers to generate and present selections of desirable content, but expect their BIAS provider to provide nondiscriminatory access to all lawful and non-harmful online content and applications. Consumers have been very clear in the Commission's record on this point.

Given the above and based on all the facts and arguments INCOMPAS has made in this record, and the entirety of the proceeding that demonstrates that consumers expect the FCC to protect and promote an open internet, we urged the Chairman to delay the vote and reconsider his approach.

Respectfully submitted,

*/s/Angie Kronenberg*

Angie Kronenberg  
Chief Advocate & General Counsel

cc: Nicholas Degani  
David Grossman  
Claude Aiken  
Amy Bender  
Jamie Susskind  
Travis Litman