

December 6, 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 December 4, 2017, I met with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly, and on December 5, 2017, I met with Commissioner Carr and Jamie Susskind, Chief of Staff and Legal Advisor to Commissioner Carr, concerning the above-referenced proceeding. In those meetings, I 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.<sup>1</sup>

Consumers expect and want access to the whole Internet, and 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. Specifically referencing INCOMPAS’ November 20 ex parte, I emphasized that since the *2015 Open Internet Order* interconnection has improved, ensuring that consumers’ favorite content is no longer blocked by large BIAS providers. The FCC is the expert agency for the nation’s networks and has the expertise and experience on these issues.

However, the Chairman’s draft Order, if adopted, will impede the FCC’s ability to ensure that consumers will continue to have access to an open internet. As INCOMPAS has submitted

---

<sup>1</sup> I also provided a copy of the November 29 and November 20 ex parte letters INCOMPAS submitted in the docket to Ms. Bender and Ms. Susskind. In addition, I gave Ms. Susskind a copy of INCOMPAS’ comments, reply comments, and motion in the docket as INCOMPAS had not had a previous opportunity to meet with her on our positions, and I also provided a copy of our ex parte letter filed December 4.

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. In its merger reviews, the FCC has found that large BIAS providers have the means and motive to impede online competition, including through interconnection, and the FCC should consider that evidence in this proceeding. Similarly, as described in the DOJ's recent complaint against the AT&T/DirecTV/Time Warner merger, the Commission should consider that large MVPDs that also are BIAS providers have the incentive and capability to slow the development of online video competition. Reliance on ex post antitrust enforcement of BIAS behavior at the FTC will be inadequate to protect consumers' access to an open internet.

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, the Order should not be adopted.

Respectfully submitted,

*/s/Angie Kronenberg*

Angie Kronenberg  
Chief Advocate & General Counsel

cc: Commissioner Carr  
Amy Bender  
Jamie Susskind