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

In the Matter of	)	
	)	
Inquiry Concerning Deployment of Advanced	)	GN Docket No. 22-270
Telecommunications Capability to All Americans	)	
in a Reasonable and Timely Fashion	)	

COMMENTS OF INCOMPAS

Angie Kronenberg
Lindsay Stern
Christopher L. Shipley
Andrew Mincheff
INCOMPAS
1100 G Street NW
Suite 800
Washington, D.C. 20005

December 1, 2023

TABLE OF CONTENTS

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

In the Matter of	)	
	)	
Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion	)	GN Docket No. 22-270

COMMENTS OF INCOMPAS

INCOMPAS, by the undersigned, respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") *Notice of Inquiry* ("*NOI*"), pursuant to section 706 of the Telecommunications Act of 1996, and the Commission's next annual assessment concerning the "availability of advanced telecommunications capability to all Americans."[1]

I. INTRODUCTION AND SUMMARY

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers, that offer 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 mobile and satellite entities offering BIAS and video services, as well as companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber

[1] *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Seventeenth Section 706 Report Notice of Inquiry, GN Docket No. 22-270 (rel. Nov. 1, 2023), ("*NOI*").

providers; transit and backbone providers that carry broadband and internet traffic; and online video distributors, which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

The availability of BIAS connectivity throughout the U.S. is critical for the nation's economic development and global competitive edge. As the leading trade association advocating for competition and innovation, INCOMPAS and its members are at the forefront of helping Americans get better, faster, more affordable internet service and online content. As such, INCOMPAS' members have an interest in making sure that the FCC's Section 706 inquiry accurately captures the availability of advanced telecommunications capability.

II. THE COMMISSION SHOULD UPDATE THE FIXED BROADBAND PERFORMANCE BENCHMARK OF 1 GBPS.

In the *NOI*, the FCC proposes increasing the fixed BIAS benchmark speed from 25/3 Mbps to 100/20 Mbps and to adopt a long-term goal of 1 Gbps/500 Mbps.[2] INCOMPAS supports the FCC adopting a higher fixed broadband performance benchmark. However, we also support the FCC adopting 1 Gig as the new download benchmark speed (rather than its long-term goal). Fundamental changes to the speeds being offered in the marketplace, combined with the new reliance that consumers have on broadband networks as a result of the global pandemic, show that now is the time for the Commission to adopt a higher fixed broadband performance benchmark. The U.S. should adopt a benchmark that reflects truly "advanced" telecommunications capability, not settling for a baseline speed of 100/20 Mbps that major BIAS providers and INCOMPAS' competitive BIAS members have already surpassed in their

[2] *NOI*, at para. 9.

offerings to consumers.[3] Indeed, consumers are using much higher fixed speeds today due to the growth in streaming and over-the-top services, as well as the number of users per household subscription. It is time for the Commission to adopt a future-proof definition of 1 Gbps download broadband internet for our nation.

Gigabit connectivity is transforming communities and 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 faster speeds and lower prices of competitive fiber providers that have entered the market. INCOMPAS has long advocated that the FCC should set a broadband standard that

[3] In fact, federal broadband funding programs, including the FCC's USF, U.S. Treasury's Capital Projects Fund, and NTIA's BEAD Program, have encouraged and prioritized higher, future-proof speeds, and many of the funded projects are being invested in fiber-to-the-premise builds that allow for more efficient speed increases over time. In fact, the FCC's RDOF will result in gigabit speeds to 85% of the geographic areas funded, and NTCA—The Rural Broadband Association reports from its annual survey that "[o]n average, more than three-quarters (79.3%) of serviceable locations are served by fiber to the home (FTTH) in 2022" and over 60% of their customers can receive 1 Gig service. *See, e.g.*, USAC Rural Digital Opportunity Fund, *available at* https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/; NTCA, *Broadband/Internet Availability Survey Report* (Dec. 2022), *available at* https://www.ntca.org/sites/default/files/documents/2022-12/2022%20Broadband%20Survey%20Report%20%28FINAL%2011-28-22%29.pdf; *NOI* at para. 14 ("[i]n recent years, the Commission has awarded high-cost universal service support almost exclusively to projects with broadband service at speeds of 100/20 Mbps *or faster*.") (emphasis added); *NOI*, at para. 15 ("numerous states and executive agencies have set broadband download speed targets of at least 100 Mbps. Many states have developed broadband deployment programs requiring funded projects to deliver speeds at *or exceeding this threshold benchmark*.") (emphasis added); U.S. Department of Treasury, *Coronavirus State & Local Fiscal Recovery Funds: 2022 Overview of the Final Rule* (Jan. 2022), at 39 ("Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections."), *available at* https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf; NTIA, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program*, at 42 ("NTIA has determined that 'Priority Broadband Projects' are those that use end-to-end fiber-optic architecture."), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf.

reflects what competitors are bringing to market. In 2017, INCOMPAS called for the FCC to set a standard for fixed broadband at 1 Gigabit download speed as competitors at that time were rolling these speeds out in their service areas, and incumbents were responding by increasing their speeds and dropping their prices.[4] INCOMPAS continues to urge the Commission to set goals that reflect current demand because the reality of today's market offerings show that customers already are moving beyond 100/20 Mbps and towards 1 Gig. Fixed BIAS providers are already offering much higher speeds than 100/20 Mbps. In fact, some INCOMPAS members are offering multigig internet plans up to 10 Gbps capabilities.[5] It is notable that higher speeds is a broader trend beyond INCOMPAS' members—as of December 2022, the mean download speed for all residential broadband subscriptions was 440 Mbps while the median residential download speed was 300 Mbps, and nearly 78% of all residential subscriptions had a download speed of at least 100 Mbps.[6] In support for increasing the benchmark speed, the *NOI* rightfully points to the fact that the nation's largest ISPs advertise 300 Mbps as the lowest internet tier on their websites, including Charter and Verizon.[7] But perhaps even more significant is that each one of the largest ISPs currently advertises a 1 Gig or multigig internet plan to its customers.[8]

---

[4] *See* INCOMPAS Comments, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199 (fil. Sept. 21, 2017), at 16-20.

[5] *See, e.g.*, Google Fiber (offering 1, 2, 5, and 8 Gig internet plans), *available at* https://fiber.google.com/internet/aa/; Sonic (offering speeds up to 10 Gigabits), *available at* http://www.sonic.com.

[6] *See NOI*, at para. 11.

[7] *See id.* at para. 16. *See also* AT&T Fiber, *available at* https://fiber.att.com/internet/moving/.

[8] *See, e.g.*, AT&T Fiber, *available at* https://fiber.att.com/internet/moving/; Comcast Xfinity, *available at* https://www.xfinity.com/learn/internet-service; Spectrum Internet, *available at*

Indeed, NCTA states that almost 90% of U.S. homes have 1 gigabit speeds available.[9] Moreover, a recent study shows that over half of America now has access to fiber, which supports gig capacity.[10] In fact, the average fiber access rate across all U.S. states has steadily increased—in December 2021, the average fiber access rate was approximately 45.9% of households, and by June 2023, it had increased to about 55.6% of households.[11] Since December 2021, approximately 5.6 million new households have subscribed to fiber.[12] The market is already overwhelmingly offering at least 1 Gig download speeds to customers and, as such, the nation's fixed benchmark speed should reflect that.

Furthermore, the Commission's most recent Broadband Deployment Report rejected arguments made in the record to increase the speed benchmark due to several reasons, one of which being that "the definition of advanced telecommunications capability in section 706 does not suggest that 'advanced' necessarily means the highest quality service possible."[13] We agree with the Commission's definition here; however, 1 Gig is not the highest quality service possible. As seen from the examples above, multi-gig is in fact the highest quality service

---

https://official.spectrum.com/. Verizon Fios, *available at* https://www.verizon.com/home/internet/fios-fastest-internet/.

[9] NCTA Industry Data, *available at* https://www.ncta.com/industry-data/90-of-us-homes-have-access-gigabit-internet-speeds.

[10] *See* BroadbandNow, *Over Half of America Now Has Access To Fiber* (Nov. 2023), *available at* https://broadbandnow.com/research/fiber-penetration-trends.

[11] *See id.*

[12] *See id.*

[13] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269 (rel. Jan. 19, 2021), at para. 13.

possible that is being offered to customers, and it is therefore reasonable for 1 Gig to qualify as "advanced telecommunications capability."

Moreover, with congressional support, tens of billions of dollars are being invested in new broadband infrastructure to bring more affordable, faster internet services to both unserved and underserved areas of the U.S., and the government is encouraging providers to deploy as much future-proof capability as possible, including fiber deployment as far as economically and technically feasible. This is a great step in the right direction for building our nation's future networks, and prioritizing networks that can offer future-proof capabilities means that more consumers will obtain 1 Gig and beyond capabilities in the near future. In 2021, INCOMPAS released a report on the fiber and gigabit speed goals set by other nations.[14] This report further demonstrates the need for the U.S. to set a 1 Gig goal now to maintain global competitiveness to compete in the future.[15]

It is time to for the U.S. to take steps toward achieving a future of connectivity, faster speeds, and affordable prices in the U.S. We have the ability and responsibility as Americans to go big and bold on broadband. INCOMPAS is looking to the Commission to do the same and establish a new broadband speed goal that enables all Americans to access high-speed internet no matter where they live or work. It is time to set that fixed BIAS speed to 1 Gig.

---

[14] *See* INCOMPAS/BroadLAND Report, *The Race to Faster Broadband Speeds: A Look at the Speed Goals of Other Nations Around the World, available at* https://www.incompas.org/Files/filings/2021/FINAL%201%20Gigabit%20and%20Fiber%20Goals%20in%20Other%20Nations%204%20(2).pdf.

[15] *See* INCOMPAS, *The Broadband Speed Race, available at* https://www.youtube.com/watch?v=JY-fSdcDYpM.

III. THE COMMISSION SHOULD USE BROADBAND DATA COLLECTION DATA TO ANALYZE CURRENT SUBSCRIPTION RATES AT THE HOUSEHOLD LEVEL TO MORE ACCURATELY ASSESS COMPETITION.

The FCC is proposing to make this inquiry the first time that the Commission will use the new Broadband Data Collection ("BDC") data to evaluate broadband deployment and availability.[16] INCOMPAS supports this proposal and has recommendations to make sure that using the BDC data will further the FCC's competition analysis and not compromise it.

INCOMPAS supports the Commission using BDC data as it is the most up-to-date and offers granular location information on broadband availability. However, to ensure that the data is accurate for purposes of the 706 and competition inquiry, the Commission should recreate the regression analysis it did in its 2022 Communications Marketplace Report where the Commission added in subscription data, which led to a much more accurate picture of the true state of competitive options in today's market by including subscription take rates.[17] In the Communications Marketplace Report, the FCC published a chart that showed the percentage of households living in census blocks with multiple provider options, including the subscription take rates of one percent and five percent.[18] This type of analysis is incredibly helpful in order to understand the state of available broadband options in the market as viewed by customers—by isolating whether a provider's offering has received the minimal take rates of one and five percent. The Commission should do a similar regression analysis for its 706 report's competition analysis by using BDC data to show the number of individual households that have access to various numbers of providers combined with subscription rates for these households. The

[16] *See NOI*, at para. 42.

[17] *See Communications Marketplace Report*, 2022 Communications Marketplace Report (rel. Dec. 30, 2022), at 50 (Fig. II.A.33).

[18] *See id.*

Commission can continue to do its analysis based on a census block and county level in order to more easily compare with prior reports, but in addition the Commission should also do its analysis based on the individual household now that it has access to more granular information from the BDC data. Moreover, there is a real concern that the states that are doing their own broadband maps for BEAD and engaged in the challenge process will not have their maps and challenge processes completed by the time the FCC publishes its 706 inquiry. However, by adding subscribership information to the BDC data, it may help address the potential for those conflicts, and it also will lessen the concern that the BDC data overstates the competitive options available to customers.

While INCOMPAS supports the FCC using the new BDC data for its 706 inquiry, we ask the Commission to publish a draft 706 Report before an Open Meeting—rather than voting it on circulation—in order for the public to be able to see the methodology that the Commission uses in its analysis. Since it is the first time that the Commission will use BDC data for analyzing competitive options, allowing the public to understand and respond to the analysis before the final report is voted on and released by the agency will be critical to ensuring more accurate findings.

IV. THE FCC SHOULD CONTINUE TO VIEW FIXED AND MOBILE BIAS SERVICES AS SEPARATE, COMPLEMENTARY, NON-SUBSTITUTABLE SERVICES.

INCOMPAS supports the Commission continuing to treat fixed and mobile services as separate, complementary services rather than as substitutes.[19] These services continue to meet

[19] *See NOI*, at para. 37; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269 (rel. Jan. 19, 2021), at para. 10 ("we find, consistent with the Commission's findings in past reports, that fixed and mobile services are not full substitutes.").

different consumer expectations, and most consumers prefer to have both fixed and mobile services. 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. For example, there is a difference between the speeds and connectivity available to consumers of fixed service (with average download speeds of 215.72 Mbps) and mobile service (with average download speeds of 103.69 Mbps).[20] Therefore, they should not be considered functional substitutes.

Consumers are using fixed BIAS at home and mobile BIAS on the go. Fixed wireline (especially fiber) typically delivers faster, more robust BIAS connections. When we are at home or the office, our terrestrial fixed connections are faster, allowing consumers to stream and consume long-form video and content much more easily and reliably—and most of us do not have to worry about hitting a data cap for these fixed residential services. On the other hand, mobile connections provide the convenience of access, but typically at slower speeds and higher prices. When we are on the go, we use our mobile device to stay connected. We check email for work, talk on the phone, and use apps to manage our business and social lives. Sometimes our mobile connection is strong, and sometimes it is not. However, Americans typically pay more for their mobile broadband connection and have low data caps as compared to terrestrial fixed service. As such, many users limit how much data they consume when Wi-Fi is not available in order to avoid going over data caps and paying more.

Notably, Americans subscribe to both mobile and home BIAS subscriptions, which shows that they are complementary rather than substitutable services. Pew has found that smartphone ownership has increased among American adults from 81% to 85% since 2019 and

[20] Ookla Speedtest Global Index, *United States Median Country Speeds October 2023*, *available at* https://www.speedtest.net/global-index/united-states#mobile.

that home broadband subscriptions have increased from 73% to 77%.[21] Further, Leichtman Research Group found that 90% of U.S. households purchase home broadband[22] and that 3.5 million homes added broadband subscriptions from top providers in 2022.[23] Simultaneously, only 15% of U.S. adults are "smartphone-only internet users," meaning that they do not have a traditional high-speed internet connection at home.[24]

Even with 5G, there will still likely be applications and services that require a fixed connection, such as telehealth, that will require the Commission to continue to evaluate these services separately given the inherent limitations of mobile networks that can be caused by interference. Access to both fixed and mobile broadband is 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.

V. REMOVING BARRIERS TO DEPLOYMENT WILL HELP UNIVERSAL SERVICE GOALS FOR BROADBAND.

The *NOI* seeks comment on the Commission's universal service goal of broadband deployment.[25] INCOMPAS members continually experience significant barriers to deployment,

---

[21] Pew Research Center, *Mobile Technology and Home Broadband 2021* (June 3, 2021), *available at* https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.

[22] Leichtman Research Group, Press Release, *90% of U.S. Households Get an Internet Service at Home*, (Dec. 22, 2022), *available at* https://leichtmanresearch.com/90-of-u-s-households-get-an-internet-service-at-home/.

[23] Leichtman Research Group, *About 3,500,000 Added Broadband From Top Providers In 2022* (March 2, 2023), *available at* https://leichtmanresearch.com/about-3500000-added-broadband-from-top-providers-in-2022/.

[24] *See* Pew Research Center, *Mobile Technology and Home Broadband 2021*.

[25] *See NOI*, at para. 41.

including unreasonable delays and costs associated with access to poles, conduits, local permitting processes, and access to multiple tenant environments ("MTEs"). Though INCOMPAS members are focused on building middle and last mile broadband infrastructure, these added barriers to deployment and denials from utilities slow down the process and prevent these providers from offering their customers faster, more affordable options because utilities simply do not want a broadband competitor to access their poles and create greater competition in the marketplace. Regardless of their business plans—whether fiber transport, fixed wireless, or mobile wireless—INCOMPAS members rely on the seamless and speedy deployment of fiber networks for their success. It is expensive and time-consuming for competitive providers to build out fiber, and yet when they do, they face significant barriers to deployment. Such barriers and delays are particularly problematic for providers building with borrowed capital, which creates added pressure to deliver networks and revenues on a predictable, timely basis.

With new infrastructure funding being allocated to state and local governments, it is necessary to have guidelines in place that enable faster processing that will allow the deployment of broadband infrastructure more quickly, including wireless equipment such as small cells, as well as fiber that is used by both fixed and mobile providers to connect their networks. To help increase competitive choice and more broadband connectivity and availability, INCOMPAS urges the Commission to take additional action to remove barriers and streamline processes for fixed and mobile providers. It is critical that competitive providers deploying fiber facilities and wireless infrastructure that carry telecommunications and broadband services have access and rights to poles as well as MTEs on a non-discriminatory basis.

(a) Increasing Access To Pole Attachments Will Spur Deployment of Advanced Telecommunications Services.

INCOMPAS members face issues from pole owners concerning attachments that are required in order to deliver competitive broadband services. From outright prohibitions to attach to excessive fees charged—there are myriad pole issues that INCOMPAS members cannot always work around and that deter competitive deployment. Our members work with their local and state officials and other invested stakeholders to deploy their competitive network infrastructure which leads to better, faster, and more affordable broadband being available in wholesale and retail broadband markets. It is important for the Commission to recognize that pole attachment and replacement issues remain prevalent in urban and suburban America and are impeding competitive providers' deployment of their services, which are sorely needed given the lack of alternative broadband options available in most markets throughout the U.S.

INCOMPAS' fiber providers are struggling to deploy their future-proof networks quickly and affordably because they too often are unable to attain timely access to investor-owned utility poles at reasonable costs.[26] Large utilities that own poles—some of which compete with INCOMPAS members' service offerings—foist the high cost of replacing poles onto competitive attachers by refusing to bear financial responsibility for poles that are failing or have pre-existing conditions and by requiring new attachers to pay for taller or upgraded poles that are not necessary to accommodate the new attachment. These additional barriers to deployment delay

[26] *See, e.g.*, INCOMPAS Ex Parte Letter, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (fil. Dec. 1, 2022), *available at* https://www.fcc.gov/ecfs/document/1201771809073/1; *see* Angie Kronenberg, *Poles and Railroads: Breaking Down Barriers to Broadband Deployment*, Medium (Mar. 1, 2023), *available at* https://medium.com/@akronenberg/poles-and-railroads-breaking-down-barriers-tobroadband-deployment-d5eafda2c1ac; *see* Panel at the 2023 INCOMPAS Policy Summit, *Investing in the Networks and Reducing Deployment Barriers to Secure Our Digital Future* (Mar. 7, 2023), *available at* https://www.youtube.com/watch?v=lrceMM_xSvA.

the make-ready process, increase costs, and often prevent providers from reaching underserved and unserved communities and offering customers faster, more affordable options. Addressing these challenges through targeted reforms to the FCC's pole attachment and replacement rules—especially on the cusp of a once-in-a-generation federal investment of tens of billions of dollars—is critical to ensuring that we can finally bring the power of high-speed broadband and competition to everyone.

INCOMPAS continues to encourage the Commission to adopt a more comprehensive set of rules that close the gaps on the "inconsistent practices" of utilities, which have resulted in new attachers bearing the primary burden of pole replacement costs even when utilities directly benefit from such replacement. Furthermore, the FCC should require utilities to share information with potential attachers concerning the condition and replacement status of their poles. Finally, the Commission should streamline the dispute process to expedite resolution and ensure rapid deployment of broadband facilities in both unserved and underserved communities.

(b) Encouraging Greater Access to Residential and Commercial MTEs Will Spur Deployment of Advanced Telecommunications Services.

The Commission should continue to scrutinize the impact of competition on broadband availability with respect to competitive and smaller providers' ability to gain access to residential and commercial MTEs. INCOMPAS and other stakeholders, like WISPA, have argued that the Commission must continue to address provisions and practices that have erected market entry barriers in MTEs that prohibit competition.[27] The Commission's interest in exploring access to MTEs is critical as "millions of people across the nation living and working in MTEs face obstacles to obtaining the benefits of competitive choice of fixed broadband, voice, and video

[27] WISPA—Broadband Without Boundaries Comments, GN Docket No. 22-69, 25 (fil. Feb. 21, 2023).

services."[28] Despite the Commission's efforts to improve competitive broadband access to MTEs, including a 2022 *Order* that prohibited exclusive and graduated revenue sharing and required disclosure of exclusive marketing arrangements to residents, competitive and smaller providers have historically struggled to gain entry to MTEs to meet the needs of these consumers due in part to exclusive commercial arrangements between service providers and buildings owners.

As INCOMPAS has noted in the MTE proceeding, competitive providers enter the market to fill a need in the market, and in unserved and underserved communities in particular, for faster and more affordable telecommunications services. The provision of competitive and innovative broadband services is critical to creating more digital equity and connectivity, and INCOMPAS members are engaged across the country in meeting the needs of communities without reliable or affordable broadband service. INCOMPAS members regularly serve public housing where they can gain access to the building; have made free service[29] and digital literacy training available in low-income housing;[30] and almost three-quarters of our members who offer

[28] *See Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Report and Order and Declaratory Ruling, FCC 22-12, at para. 1 (2022).

[29] *See, e.g.*, Letter of Stephen Bradley, Director of Consumer Sales & Marketing, Sonic Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-142 (fil. Nov. 22, 2020), at 3 (reporting on the additional MTEs designated as low-income housing that Sonic has been able to serve by expanding its footprint in San Francisco and Oakland); Notice of Ex Parte from Virginia Lam Abrams, SVP, Gov. Affairs & Strategic Advancement, Starry, to Marlene H, Dortch, Secretary, FCC, GN Docket No. 17-142, MB Docket No. 17-91 (fil. Oct. 30, 2020), at 2 (describing Starry's commitment to providing free Starry Connect service to residents of public housing in the City of Los Angeles).

[30] *See* INCOMPAS Reply Comments, GN Docket 17-42 (fil. Aug. 22, 2017), at 12. An INCOMPAS member recently attempted to serve a public housing property with a heavily discounted high-speed broadband product as part of a community impact program. The property was party to a revenue share arrangement coupled with marketing exclusivity. While the housing authority eventually allowed our member to provide its discounted internet service to the

residential service are participating in the Affordable Connectivity Program to assist low-income consumers.

While INCOMPAS is encouraged by the steps the Commission has taken to improve competitive broadband access in MTEs, the record contains evidence of additional practices that discourage competitive entry in residential and commercial MTEs that will require further examination in the future. Even though the Commission has enacted disclosure requirements for exclusive marketing arrangements, this practice makes it impossible for competitors to promote or advertise their service. Furthermore, INCOMPAS has proposed that the Commission examine unreasonable door fees (prevalent in commercial MTEs) and inside wiring disputes in commercial MTEs while reaffirming the benefits of neutral host operations for MTE rooftops.

Additionally, anti-competitive exclusive rooftop access and state and local laws that do not foster technology-neutral deployment are remaining issues that the Commission should address to encourage competitive deployment of broadband to MTEs. Despite assertions to the contrary in this proceeding, mandatory access laws such as the ordinance adopted in San Francisco, have had a positive impact on competitive providers' ability to reach new customers. As noted by INCOMPAS-member Sonic, "[t]his ordinance has proven to be essential for competitive access and has allowed Sonic to make inroads with building owners and property management companies that it might not have been able to otherwise."[31] As such, INCOMPAS urges the Commission to reject calls to close the MTE proceeding and end support for mandatory

residents, the member was unable to engage in any on-site internet education, STEM awareness, or digital literacy training due to the property's marketing exclusivity.

[31] See INCOMPAS Reply Comments, GN Docket No. 17-142, 17 (fil. Nov. 19, 2023) (Declaration of Dane Jasper, Sonic Telecom, LLC).

access laws.

VI. 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 download performance benchmark to 1 Gbps as this is truly representative of what constitutes "advanced" in today's fixed broadband marketplace; (2) use the BDC data to analyze current subscription rates at the household level to accurately analyze competition; (3) maintain the current evaluative framework in which fixed and mobile broadband networks are recognized as separate, complementary services—not as functional substitutes; and (4) take additional regulatory steps in current agency proceedings to promote increased broadband deployment and address barriers to entry.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Lindsay Stern
Christopher L. Shipley
Andrew Mincheff
INCOMPAS
1100 G Street NW
Suite 800
Washington, D.C. 20005

December 1, 2023