



**Computer & Communications
Industry Association**
Open Markets. Open Systems. Open Networks.



March 29, 2024

Ms. Marlene H. Dortch
Secretary Federal Communications Commission
45 L St. NE
Washington, DC 20554

Re: Safeguarding and Securing the Open Internet, WC Docket No. 23-320

Dear Ms. Dortch:

On March 27, 2024, Angie Kronenberg, President of INCOMPAS, spoke via phone to Justin Faulb of the Office of Commissioner Starks; and separately, on March 29, 2024, Angie Kronenberg, Lindsay Stern, Attorney and Policy Manager at INCOMPAS, and Stephanie Joyce, Senior Vice President and Chief of Staff of the Computer & Communications Industry Association (“CCIA”), met via video conference with Adam Copeland, Jodie May, Chris Laughlin, and Mason Shefa of the Wireline Competition Bureau and Garnet Hanly of the Wireless Telecommunications Bureau to discuss the above-mentioned proceeding. The presentations during these meetings were consistent with INCOMPAS’ and CCIA’s joint letter on non-BIAS data services filed in this proceeding.¹

How the Commission addresses non-BIAS data services in the Order is one of the most critical issues in this proceeding. As currently proposed—without expanded guidance and clarity—the rule could create a large loophole that undercuts the FCC’s otherwise strong open internet rules. We discussed the importance of the FCC supporting innovation while also ensuring strong guardrails that protect consumers.

We know from the record and from the current marketplace that some broadband internet access service (“BIAS”) providers seek to monetize networks in new ways through the use of non-BIAS services and network slicing.² We support ensuring BIAS providers can use technologies such as

¹ CCIA and INCOMPAS, Joint Ex Parte Letter, *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320 (fil. March 14, 2024) (“CCIA/INCOMPAS Ex Parte Letter”).

² In fact, according to a GSMA forecast, network slicing will bring \$300 billion to operators by 2025, by enabling them to separate “lucrative and critical business traffic from general Internet traffic.” See Nokia, *Network slicing explained*, available at <https://www.nokia.com/about-us/newsroom/articles/network-slicing-explained/>.

network slicing to innovate in new ways, support efficiencies, and create innovative offerings for their customers. However, to facilitate this type of innovation for the digital ecosystem while protecting the open internet for consumers, it is important and reasonable for the Commission to provide expanded guidance, consistent with the 2015 rules, to ensure the creation of new non-BIAS services in the future does not undercut consumers' ability to access innovative services on the open internet.

Such guidance would not create a “mother-may-I” approach as some stakeholders represent. Instead, the Commission can provide expanded guidance on the guardrails that it would consider when assessing any future non-BIAS services compared to innovative offers that may be offered as part of BIAS consistent with the open internet rules.

If adequate guardrails are not set forth in the Order, BIAS providers could have a strong incentive to avoid net neutrality regulations in favor of non-BIAS data services. This could result in a fragmented internet, provided in different tiers and packages of ‘programming,’ which could force consumers to subscribe to add-ons at additional cost in order to access particular services going forward. Moreover, it is important that the FCC’s forthcoming rules be expressly technology-neutral to avoid creating an uneven playing field that could give Mobile Network Operators (“MNOs”) a competitive advantage over other BIAS technologies.³ By providing clear, well-defined guidance—consistent with the rules adopted in 2015—the FCC can provide MNOs the regulatory certainty they need to use network slicing in a way that protects the core principles of an open internet that promotes innovation, competition, and further consumer benefits.

INCOMPAS and CCIA support the additional guidance that has been proposed by a range of public interest groups and industry stakeholders, which would enable the FCC to make clear what it means when it says that non-BIAS services cannot be used to evade the open internet rules by setting out factors that the Commission will use as a guide when assessing the creation of new non-BIAS services in the future.⁴ This clarity provides the critical balance between promoting innovation in new and emerging technologies without harming competition and user choice. As all these parties have explained, the FCC should adopt strong, clearly stated

³ INCOMPAS and CCIA agree with NCTA that the FCC should not create “special allowances or more flexible regulatory treatment for, particular technologies, such as ‘network slicing’ employed on 5G wireless networks,” or issue “any blanket determination that network slicing will be treated as a non-BIAS data service or that network slicing within a BIAS offering constitutes reasonable network management.” *See* NCTA Ex Parte Letter (fil. March 21, 2024).

⁴ *See* CCIA/INCOMPAS Ex Parte Letter; *see also* Written Ex Parte of Open Technology Institute at New America, Public Knowledge, Professor Barbara van Schewick and Professor Scott Jordan (fil. March 11, 2024), at 4-9.

guardrails and proceed on a case-by-case basis if a complaint is brought to the Commission, most likely from a consumer.

It is critical that the FCC give additional guidance in the Order in order to promote innovation while ensuring the consumer protections that come from an open internet.

Respectfully submitted,

/s/ Lindsay Stern

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/s/ Stephanie A. Joyce

Stephanie A. Joyce
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cc: Justin Faulb
Adam Copeland
Jodie May
Chris Laughlin
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Garnet Hanly