

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

In the Matter of	)	
	)	
The State of Competition in the	)	GN Docket No. 24-119
Communications Marketplace	)	

**REPLY COMMENTS OF**  
**THE FREE STATE FOUNDATION<sup>1</sup>**

**I. Introduction and Summary**

These reply comments are submitted in response to the Commission’s Notice seeking comments for the agency’s biennial report that assesses the state of competition in the communications marketplace. The Free State Foundation’s initial comments focused on data from 2022 and 2023 that support the conclusion that the broadband and video services markets are effectively competitive. These reply comments respond to criticisms of the broadband marketplace raised by commenters like INCOMPAS and EchoStar that fail to account for the dynamism of the market and the prevalence of intermodal competition that gives choices to consumers. Aside from misunderstanding the competitiveness of the marketplace, comments like those of EchoStar, which seek to air company-specific grievances, concern specific matters and are misplaced in this generic proceeding.

Indeed, for its *2024 Communications Marketplace Competition Report*, the Commission should evaluate competition with a broader “broadband market” definition that considers fiber, cable, mobile, fixed wireless access (FWA), and satellite platforms. Also, these reply comments

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<sup>1</sup> These reply comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Senior Fellow and Director of Policy Studies. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

emphasize that the Commission should promote competition by increasing the supply of spectrum for commercial wireless services, and by clarifying agency rules to clear away obstacles to wireline infrastructure siting in public rights-of-way, such as local government delays and high fees for processing permit applications.

## **II. The Broadband Market Is Effectively Competitive**

The Free State Foundation's initial comments in this proceeding presented considerable evidence demonstrating that the broadband market is effectively competitive.<sup>2</sup> For example, fiber deployments reportedly grew 12% last year, and at least 51.5% of primary U.S. homes now have fiber access. Additionally, as of January 2024, cable broadband service offerings with 100/20 Mbps capabilities were available to 87% of the U.S. population. Furthermore, fixed wireless access (FWA) service is a strong competitor against other fixed services, particularly in rural areas, with subscribership increasing every quarter in 2022 and 2023. And competing fixed satellite broadband providers SpaceX and HughesNet offer services with advertised download speeds of up to 100 Mbps to most Americans. Moreover, consumers can choose among the three nationwide 5G providers. Consumers throughout the U.S. also have 5G choices from cable hybrid mobile virtual network operators (MVNOs), many consumers have access to MVNO and aspiring national facilities-based provider EchoStar/DISH Network, and some consumers also have access to smaller local wireless providers.

These ongoing network deployment and innovative technological capability upgrades have been backed by annual capital investment totaling more than \$100 million by the wireline and wireless industries, giving rise to a competitive climate that has provided a check against

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<sup>2</sup> For citations to data points, *see* Comments of the Free State Foundation, GN Docket 24-119, at: <https://freestatefoundation.org/wp-content/uploads/2024/06/FSF-Comments-%E2%80%93-The-State-of-Competition-in-the-Communications-Marketplace-060624.pdf>.

constant inflationary pressures that have caused price spikes in many other sectors of the U.S. economy, such as electricity, gas, groceries, and housing.

#### **A. The Fixed Services Segment of the Market Is Effectively Competitive**

Commenter INCOMPAS seems to imply that the broadband market is not competitive, stating that “most consumers only have two choices for their home BIAS provider—their incumbent cable or telco provider.”<sup>3</sup> However, market share estimates of the nation’s top cable and “telco” broadband providers do not capture the dynamic conditions of today’s broadband market. The market is not static. Over the past several years, broadband providers have deployed next-generation networks, including gigabit fiber and 5G networks, thereby upgrading significantly their capacity, speeds, and reliability, as well as enhancing their service capabilities<sup>4</sup> to supply changing consumer demands and habits. These mass improvements in service functionalities and availability reflect a market that is effectively competitive.

A myopic focus on cable and telco providers results in an incomplete and misleading picture of the competitive choices available to most consumers because it excludes satellite broadband services as well as fixed wireless access (FWA). As analysts have observed, satellite and FWA are the fastest-growing segments of the broadband market.<sup>5</sup> FWA increasingly is available, and providers reportedly have the capacity to serve 16 million subscribers.<sup>6</sup> We agree with comments by the Wireless Industry Association (WIA) that FWA is a home broadband

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<sup>3</sup> Comments of INCOMPAS, GN Docket 24-119, at 4.

<sup>4</sup> See, e.g., Comments of Mobile Satellite Services Association (MSSA), GN Docket 24-119, at 1-6 (describing the emerging direct-to-device (D2D) market).

<sup>5</sup> See, e.g., Masha Abarinova, “Fixed wireless continues to climb US broadband charts – Parks,” *Fierce Network* (June 13, 2024), at: <https://www.fierce-network.com/broadband/fixed-wireless-continues-its-climb-among-us-homes-parks>.

<sup>6</sup> See Linda Hardesty, “Big U.S. wireless operators have capacity for 16 million FWA subscribers,” *Fierce Network* (June 25, 2024), at: <https://www.fierce-network.com/broadband/big-us-wireless-operators-have-capacity-16-million-fwa-subscribers>.

solution for many.<sup>7</sup> Meanwhile, SpaceX and HughesNet offer nearly ubiquitous access with offerings that feature advertised download speeds of up to 100 Mbps.<sup>8</sup>

Competitive options are further increased by mobile wireless offerings. Although mobile services may not be equivalent to fixed services in all capabilities and all respects, wireless and wireline are substitutable for many consumers. There is actual competition with fixed services from the segment of the public – comprising 15% of adults, according to one survey<sup>9</sup> – that relies only on mobile wireless subscriptions for their broadband usage, or on cellular connections in combination with access to Wi-Fi hotspots. There also is potential competition to fixed services from consumers who have the ability and potential incentive to migrate to mobile-only access to broadband if their existing fixed service or available fixed options become too costly or do not provide sufficient perceived value for maintaining fixed service. Accordingly, it would be a mistake – as INCOMPAS suggests<sup>10</sup> – for the Commission to continue to treat fixed and mobile broadband offerings only as complements and to deny their cross-platform competitive effects.

Indeed, the dynamism that characterizes the broadband market and the existence of cross-platform competition services should prompt the Commission to cease its piecemeal evaluation of broadband marketplace competition based on “siloes” service definitions. For its *2024 Communications Marketplace Competition Report*, the Commission should evaluate competition with a proper broader “broadband market” definition that considers fiber, cable, mobile, FWA, and satellite platforms. A broader market definition would be better suited to market realities and be a better guide to FCC policy.

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<sup>7</sup> See Comments of the Wireless Infrastructure Association (WIA), GN Docket 24-119, at 4.

<sup>8</sup> See Michael Kan, “SpaceX: Starlink Now Has 1.3 Million Customers in the US,” *PCMag* (December 13, 2023), at: <https://www.pcmag.com/news/spacex-starlink-now-has-13-million-customers-in-the-us>.

<sup>9</sup> See Pew Research Center, “Mobile Fact Sheet” (January 31, 2024) (stating that “[t]oday, 15% of U.S. adults are ‘smartphone-only’ internet users – meaning they own a smartphone, but do not have home broadband service”), at: <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

<sup>10</sup> See Comments of INCOMPAS, GN Docket 24-119, at 6-8.

## **B. The Mobile Services Segment of the Broadband Market Is Effectively Competitive**

Importantly, there also is effective competition among the mobile wireless segment of the broadband market. As explained in FSF’s initial comments in this proceeding, in 2022 and 2023 wireless was supercharged by 5G.<sup>11</sup> The three nationwide 5G providers significantly upgraded and expanded their footprints. Consumers also have 5G choices from cable hybrid MVNOs. The large footprints of cable broadband providers Charter Communications and Comcast’s Xfinity also support competitive MVNO services to consumers in those regions. In some areas, consumers also have access to a regional or local mobile wireless provider such as C Spire and aspiring national provider EchoStar/DISH Network.

Commenter EchoStar implies that the wireless broadband services market is not competitive, criticizing the market position, spectrum holdings, and certain alleged merger-related actions by its market rival T-Mobile.<sup>12</sup> At the surface level, it is peculiar that commenter EchoStar now objects to the future disposition of 800 MHz licenses that it previously declined to acquire under the terms of the T-Mobile/Sprint merger.<sup>13</sup> In any event, alleged merger-related matters are best addressed, if at all, in proceedings specific to the parties and not in this generic proceeding. The Commission’s *2024 Communications Marketplace Competition Report* should focus on the competitive marketplace’s benefit to consumers, not the welfare of specific market competitors.

These comments take no position on commenter EchoStar’s proposal to change the agency’s screen to a 25% threshold for all spectrum and to also impose a 25% lower-band spectrum sub-screen.<sup>14</sup> But certain observations about the screen are in order. First, the spectrum

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<sup>11</sup> See Comments of the Free State Foundation, GN Docket 24-119, *supra*.

<sup>12</sup> See Comments of EchoStar, GN Docket 24-119, at 3-8.

<sup>13</sup> See Comments of EchoStar, GN Docket 24-119, at 8.

<sup>14</sup> See Comments of EchoStar, GN Docket 24-119, at 11.

screen is only an analytical tool, not a “hard cap” on spectrum holdings. Even if the Commission finds the screen is triggered in a specific area by a specific merger or transaction, a factual marketplace analysis must validate any apparent competitive concerns, and only then ought the agency apply targeted conditions to address such concerns. Second, the Commission should not allow the screen to be manipulated to insulate certain providers’ market share from their competitive rivals as EchoStar seems to suggest. Third, contrary to the implication in EchoStar’s comments, any changes to the screen should be made on a prospective basis only after careful study in a generic proceeding and not *ad hoc* during proceedings involving spectrum license transfers.

### **III. The Commission Should Take Steps to Boost Broadband Competition**

Rather than use regulatory interventions to single out one provider or another’s ability to compete, the focus of this proceeding should be on ways to promote competition by increasing the amount of available spectrum for commercial wireless use and removing regulatory obstacles to physical infrastructure deployment.

#### **A. More Spectrum Availability Will Reduce Regulatory Barriers to Infrastructure Deployment and Boost Broadband Competition**

Spectrum is perhaps the most important input for entry and competition in the mobile wireless market.<sup>15</sup> The Commission should pursue all options to repurpose as much spectrum from all bands as reasonably possible for commercial use.

At the beginning of 2024, Free State Foundation scholars concluded that our nation faces a crisis when it comes to future spectrum availability.<sup>16</sup> Wireless data traffic continues to grow

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<sup>15</sup> See Comments of the Competitive Carriers Association (CCA), at 15.

<sup>16</sup> See Comments of the Free State Foundation, NTIA, Implementation of the National Spectrum Strategy, Docket No. 230308-0068 (January 2, 2024), at 7, available at: <https://freestatefoundation.org/wp-content/uploads/2024/01/FSF-Comments-Implementation-of-the-National-Spectrum-Strategy-010224.pdf>.

sharply, and demand likely will outstrip spectrum supply in the coming years. By one estimate, the U.S. will need at least 400 MHz of additional mid-band spectrum to supply projected demand in 5 years and nearly 1,500 MHz in 10 years.<sup>17</sup> However, there is no spectrum in the pipeline for near-future license auctions and the Commission’s spectrum license auction authority has lapsed. Although the NTIA adopted a National Spectrum Strategy Implementation Plan on March 12 of this year<sup>18</sup> and the agency has announced near-term study plans for the Lower 3 GHz and 7/8 GHz bands,<sup>19</sup> it appears that the Plan will not lead to any megahertz of spectrum being repurposed for commercial use in 2024 or 2025.

The Commission should urge the NTIA to implement its plan as rapidly as possible and actually repurpose spectrum for commercial use. To the extent Congress passes legislation to reinstitute the Commission’s authority and authorizes specific bands to be auctioned for commercial licensed use, the Commission should act with dispatch to carry out such directives. The Commission should work to advance every conceivably viable idea for repurposing and auctioning spectrum that realistically may be suitable for commercial uses – particularly for exclusively licensed use. An “Incentive Auction 2.0” following a prospective sunset for ATSC 1.0 TV broadcasting is one such idea.<sup>20</sup> We agree with comments by the Competitive Carriers Association (CCA) that licensed mid-band spectrum is key to U.S. competitiveness and innovation in wireless services.<sup>21</sup> But it bears emphasis that increasing the supply of spectrum for

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<sup>17</sup> CTIA, “The State of 5G: Evaluating Progress and Charting the Path Forward” (July 13, 2023), at: <https://docs.ctiastat.com/wp-content/uploads/State-of-5G-Report.pdf>.

<sup>18</sup> NTIA, “National Spectrum Strategy Implementation Plan”(March 12, 2024), at:

<https://www.ntia.gov/sites/default/files/publications/national-spectrum-strategy-implementation-plan.pdf>.

<sup>19</sup> See Alan Davidson, “Implementing the National Spectrum Strategy: Remarks of Alan Davidson,” CTIA 5G Summit (May 6, 2024), at: <https://www.ntia.gov/spechtestimony/2024/implementing-national-spectrum-strategy>.

<sup>20</sup> See, e.g., Rob Pegoraro, “Could 5G carriers ink a spectrum deal with TV broadcasters?” Light Reading (June 28, 2024) (reporting discussion by Commissioner Brendan Carr about “Incentive Auction 2.0”), at: <https://www.lightreading.com/video-broadcast/could-5g-carriers-ink-a-spectrum-deal-with-tv-broadcasters->.

<sup>21</sup> See Comments of CCA, at 15.

commercial use on a shared or unlicensed basis also ought to be considered an important objective as circumstances warrant.

**B. Removing Regulatory Obstacles to Infrastructure Siting in Rights-of-Ways Will Accelerate Deployment and Boost Broadband Competition**

Furthermore, we agree with the comments of INCOMPAS that the Commission should exercise its statutory authority to require that requests for access to rights-of-way for laying wireline infrastructure be acted on promptly and that permit fees for wireline infrastructure be cost-based.<sup>22</sup> Many providers report delays by local governments in gaining access to public rights-of-way wireline infrastructure deployment.<sup>23</sup> Section 253(a) states that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>24</sup> Excessive delays in decisionmaking on permit applications as well as high fees that bear no relation to the costs of reviewing and processing such applications effectively prohibit the deployment of infrastructure that is essential to providing wireless service.

By offering clarifying interpretations of Section 253(c) that mandate shot clocks for permit application requests in public rights-of-way and requiring cost-based fees for accessing rights-of-way, the Commission can effectively preserve resources for deploying additional infrastructure. This will allow consumers to access upgraded broadband service on a faster basis.

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<sup>22</sup> See Comments of INCOMPAS, at 22-23.

<sup>23</sup> See, e.g., Comments of ACA Connects, at 15.

<sup>24</sup> 47 U.S.C. §253(a).



#### **IV. Conclusion**

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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