

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

In the Matter of)
)
The State of Competition in the)
Communications Marketplace) GN Docket No. 26-78

**REPLY COMMENTS OF
THE FREE STATE FOUNDATION**

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I. Introduction and Summary

The Free State Foundation ("FSF") hereby submits these reply comments in response to the Office of Economics and Analytics' biennial request for public input on the state of competition in the communications marketplace.¹ In our initial comments, we (1) documented the overwhelming depth and breadth of consumer choice in both broadband Internet access and video programming; (2) explained that regulations rendered counterproductive (at best) by marketplace developments constitute the primary drag on competitive forces; and (3) urged the Commission, in line with its Build America Agenda and "DELETE, DELETE, DELETE" initiative, to use every tool in its toolkit to further deregulate increasingly converged offerings.

Specifically, we argued in our initial comments that the Commission should acknowledge that consumers regard the full range of broadband distribution technologies – fiber, cable, fixed and mobile 5G, low-Earth orbit satellite, unlicensed spectrum, and so

* These comments express the views of Randolph J. May, President of the Free State Foundation, and Andrew Long, Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

¹ See generally Public Notice, *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, GN Docket No. 26-78, DA 26-333 (released April 6, 2026), available at <https://docs.fcc.gov/public/attachments/DA-26-333A1.pdf>.

on – as effective substitutes vying aggressively for subscribers on the basis of a number of differentiating factors, including price, upload and download speeds, latency, and the unique technical characteristics of each platform.

Accordingly, we argued that, particularly for the purposes of the next competition report, the Commission likewise should treat all these offerings as effective substitutes – any arbitrary speed benchmarks established specifically to determine federal subsidy eligibility notwithstanding.

In addition, we explained that an endless stream of video programming (pun intended) competes for eyeballs in an environment where no bottlenecks exist. In response, the Commission should (1) deregulate legacy video distributors, not extend those regulations to alternatives streamed over the Internet; and (2) initiate a notice of inquiry designed to determine whether, and if so to what extent, the decades-old retransmission consent regime remains an appropriate mechanism to fund broadcast television station's claimed localism efforts. Finally, we made the case that the entire "navigation devices" fool's errand – not merely the reporting requirement teed up in the Public Notice – is long past due for retirement (in the form of the sunset provision set forth in Section 629(e)).

In this reply, we document the ample evidence submitted by commenters that aligns with our arguments. We also rebut the untenable claims by INCOMPAS regarding the state of broadband competition.

II. The Record Evidence Strongly Supports FSF's Position Regarding Broadband Competition

Apart from one notable outlier, addressed in the following section, interested parties offered compelling evidence that there is robust competition taking place for

broadband subscribers. In addition, they generally agreed that, from the highly consequential consumer perspective, fixed and mobile broadband options increasingly serve as effective substitutes. In terms of proposals to accelerate these positive trends, they concurred that the Commission should grab every lever within reach to encourage further private investment and accelerate still more deployment.

Competition. NCTA – The Internet & Television Association (NCTA), pointing to the \$26 billion invested by cable operators just in 2025,² described how "[t]he value that cable broadband service delivers to consumers has never been higher."³ NCTA also cited Commission data demonstrating that the percentage of households served by three or more fixed terrestrial providers offering "broadband" speeds (100 Megabits per second (Mbps) downstream and 20 Mbps upstream (100/20 Mbps)) more than doubled between 2022 (32 percent) and 2025 (76 percent).⁴ Including fixed wireless access (FWA), low-Earth orbit (LEO) satellite, and the growing mobile-only segment of households, NCTA notes that the percentage of households with access to five or more "broadband" options exceeds 75 percent.⁵

CTIA – The Wireless Association® (CTIA) argued that "[t]he wireless industry is more competitive now than at any point in its history, with wireless, cable, and satellite providers competing in the mobile and home broadband services markets."⁶ It also

² Comments of NCTA – The Internet & Television Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/105212518424645/1>, at 6-7 (*NCTA Comments*).

³ *Id.* at 8.

⁴ *Id.* at 9.

⁵ *Id.* at 11.

⁶ Comments of CTIA – The Wireless Association®, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/105222486629217/1>, at 2 (*CTIA Comments*).

detailed the inroads made by FWA, noting that "[o]ver the past three years, 5G-powered FWA has accounted for approximately 99% of all fixed broadband additions."⁷

USTelecom – The Broadband Association (USTelecom) touted the "extraordinary" levels of private investment by broadband providers in network infrastructure – \$2.2 trillion since 1996, including \$89.6 billion in 2024 alone.⁸ – and attributed a decade-plus "affordability" trend to "competitive pressure [that] is delivering meaningful benefits across the market, including for more price-sensitive households."⁹

Substitutability. The Information Technology and Innovation Foundation (ITIF) offered strong support for FSF's takes on both the arbitrary nature of the 100/20 Mbps technical definition of "broadband" and the extent to which fixed and wireless broadband providers compete. Regarding the former, it argued that "[t]he right metric for broadband availability is whether consumers can subscribe to a service that meets their needs."¹⁰ Regarding the latter, it declared that "[d]istinctions between wireline and wireless home broadband or between terrestrial and LEO satellite broadband are now arbitrary."¹¹ Not surprisingly, we wholeheartedly agree.

⁷ *Id.* at 23.

⁸ See Comments of USTelecom – The Broadband Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/1052134079892/1>, at 3 (*USTelecom Comments*).

⁹ *Id.* See also *id.* at 2 ("[B]etween 2014 and 2025, overall consumer prices increased 36.0%, while prices for the most popular broadband services declined 63.9% in real terms and 43.6% in nominal terms.").

¹⁰ Comments of the Information Technology and Innovation Foundation, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/10521246007134/1>, at 2. See also *id.* (cautioning that "the Commission should not become enamored with rising throughput numbers that have no relation to consumer experience.") (*ITIF Comments*).

¹¹ *Id.* at 3. See also *id.* ("When the Commission applies a consumer-experience lens to the broadband marketplace, it will find that fiber, coax cable, fixed-wireless access (FWA), and low-Earth orbit (LEO) satellites are all capable of providing broadband service that meets consumers' needs for upload, download, and latency.").

CTIA, for its part, acknowledged that "[b]arriers once separating siloed industries are dissolving" and emphasized both the extent to which FWA is vying for home broadband customers and the significance of competitive pressures exerted by cable wireless offerings.¹²

And while NCTA indicated that "[t]he Commission should continue to evaluate mobile and fixed broadband both as separate markets and on a combined basis," it also urged the agency to "make clear, however, that in a different context – such as when it is deciding specific policy questions – it might be more appropriate to deem fixed and mobile broadband as substitutes."¹³

Proposed Actions. Commenters generally agree that the FCC, consistent with Chairman Carr's Build America Agenda and the "DELETE, DELETE, DELETE" initiative, should promote the deployment of additional broadband infrastructure by employing every tool at its disposal to eliminate administrative delays and encourage further private investment. Some examples:

- NTCA – The Rural Broadband Association drew attention to "[l]engthy permitting delays and substantial rights of way fees unrelated to the locality's actual costs [that] add significant, unnecessary costs to deployment at best and drive small providers out of the market at worst."¹⁴
- The Fiber Broadband Association urged "the Commission and other policymakers to consider how they can support and facilitate continued fiber network growth."¹⁵

¹² See *CTIA Comments* at i, 17. See also *NCTA Comments* at 14 ("Cable has emerged as a fast-growing competitor in the mobile wireless industry; combined, cable is the fourth-largest mobile provider in the U.S., with more than 21 million lines across Charter, Comcast, and Altice/Optimum.") (citation omitted).

¹³ *NCTA Comments* at 12. See also *id.* at 11 ("There is no question that convergence of services and technologies, and the resulting competition across platforms, has been accelerating in recent years.").

¹⁴ Comments of NTCA – The Rural Broadband Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/1052168753278/1>, at 2 (*NTCA Comments*).

¹⁵ Comments of the Fiber Broadband Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/1052152571597/1>, at 2.

- The Wireless Infrastructure Association, among other things, "encourage[d] the Commission to continue examining permitting practices and to highlight their impact on competition."¹⁶
- USTelecom argued that the agency should act "expeditiously ... on wireline permitting reform under Section 253 of the Communications Act [and] "further accelerate the TDM-to-IP transition by establishing a light-touch framework for IP-voice interconnection."¹⁷
- CTIA argued that "ensuring that wireless providers have access to a reliable pipeline of full-power, exclusive-use spectrum is essential to sustaining competition and meeting rapidly growing demand – particularly as AI-driven applications place new capacity and performance requirements on mobile networks."¹⁸ It also advocated for "further infrastructure reforms across permitting, siting, and pole access."¹⁹
- Similarly, NCTA urged additional regulatory reforms regarding pole attachments and permitting issues.²⁰ In addition, it argued that "it is critical that the Commission continue to support and expand access to unlicensed spectrum."²¹

III. INCOMPAS Went to Great Lengths in an Unsuccessful Attempt to Discount That Record Evidence

In an abrupt departure from the consensus regarding competition summarized above, INCOMPAS states that it "documented in its 2024 Communications Marketplace comments that the fixed broadband marketplace remains highly concentrated across much of the country, and the most recent FCC data show that this basic market structure has not materially changed."²² This desire to remain comfortably ensconced in 2024, we contend, reveals much.

¹⁶ Comments of the Wireless Infrastructure Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/10521156602285/1>, at 7.

¹⁷ *USTelecom Comments* at 2.

¹⁸ *CTIA Comments* at 70.

¹⁹ *Id.* at 73.

²⁰ *NCTA Comments* at 12-14.

²¹ *Id.* at 20.

²² Comments of INCOMPAS, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/10521295757551/1>, at 4 (*INCOMPAS Comments*).

At the outset, it bears noting that, in a subsequent section of its comments, INCOMPAS (1) takes the position that "broadband resale and open-access models *are critical to competition*" (emphasis added)²³ and (2) "continues to urge the Commission to move forward with the inquiry it proposed in 2024 to examine the terms and conditions on which wholesale broadband services are offered, and to consider whether targeted, enforceable safeguards are warranted to address practices that may inhibit competition."²⁴

As such, it appears that INCOMPAS has strong incentives to advocate for a counterfactual finding that facilities-based broadband is insufficiently competitive, particularly in a world where the regulatory classification of broadband as a Title I "information service" at long last has been settled. Absent the possibility of a Title II "telecommunications service" finger on the scale, any aspirations for regulatory arbitrage must depend upon a wrongful determination that a marketplace failure in fact exists.

But whatever its motives, the position on broadband competition staked out by INCOMPAS simply does not stand up to scrutiny. Strategically framing its arguments as "build[ing] on [its] comments to the 2024 Communications Marketplace Report . . . , which remain substantively valid,"²⁵ INCOMPAS clearly would prefer that the Commission ignore the significant marketplace developments that have transpired in the two years since. Unfortunately for INCOMPAS, those marketplace developments did occur – and, even prior to 2024, the broadband marketplace was, by and large, effectively competitive. And its strained attempt to simultaneously concede and dismiss the

²³ *Id.* at 11. *See also id.* at 12 ("Providers that control last-mile facilities may, in concentrated markets, face economic incentives that limit the availability of wholesale access on terms conducive to sustainable competition.").

²⁴ *Id.* at 11.

²⁵ *Id.* at 1.

substantial growth of FWA falls flat. (Similarly unavailing is its refusal to mention even once the explosive upward trajectory of Starlink's subscriber numbers.²⁶)

INCOMPAS's argument – that "[t]he fixed broadband marketplace remains highly concentrated, with most consumers still limited to one or two choices, particularly at higher speed tiers" – largely hinges upon its claim that "[f]ixed and mobile broadband services remain separate, complementary, and non-substitutable."²⁷ This claim, in turn, demands that the reader ignore the widespread consumer adoption of "mobile" offerings, which include FWA and LEO satellite. Elsewhere in its filing, however, INCOMPAS concedes that FWA "has become a meaningful and rapidly growing component of the fixed broadband marketplace" and that FWA providers "have added millions of subscribers and are increasingly competing for household broadband customers."²⁸

In other words, the position of INCOMPAS seems to be that FWA both is and is not "mobile," both is and is not "fixed" – but, in any case, should not be counted as a competitive home Internet option despite its incredibly high rate of adoption by consumers. (Again, the same is true for Starlink.) With that as background, the assertion that "the Commission should evaluate FWA's role with analytical precision" reveals itself to be an apparent attempt to have one's cake and eat it, too.²⁹ It must not be allowed to succeed.

²⁶ As we noted in our initial comments, "Starlink roughly doubled its U.S. subscriber base in 2025 to approximately 2.7 million, thereby becoming one of the ten largest ISPs in the country." Comments of the Free State Foundation, *In the Matter of the State of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://freestatefoundation.org/wp-content/uploads/2026/05/FCC-Comments---The-State-of-Competition-in-the-Communications-Marketplace-052126.pdf>, at 4 (*FSF Comments*).

²⁷ *INCOMPAS Comments* at 3.

²⁸ *Id.* at 9.

²⁹ INCOMPAS contends that "FWA connections are engineered to serve fixed locations and support household-level usage, resulting in higher data consumption and distinct network dimensioning requirements compared to mobile services" and therefore the rise of FWA does not alter the fundamental

IV. Commenters Widely Support the Indisputable Conclusion That Competition Abounds in the Video Programming Marketplace

Public input regarding the current state of video programming competition leaves little to debate. By all accounts, the marketplace is enormous, expanding, and evolving at breakneck speed. Indeed, the only impediments to the efficient operation of competitive forces identified are outdated statutes and regulations carried over from an era long gone.

NCTA, which provided a comprehensive description of the lay of the land circa 2026,³⁰ succinctly summarized this regulatory reality: "legacy video services remain subject to an antiquated regulatory regime premised on a lack of competition. The solution to unequal regulation among competitors is deregulation."³¹

ITIF made a similar point, arguing that, "[r]ather than imposing on streaming services the outdated regulatory frameworks that bind multichannel video programming distributors (MVPDs), the Commission should deregulate MVPDs to create a level playing field for fair market transactions."³²

The Motion Picture Association likewise "urge[d] the FCC to refrain from intervening in the video marketplace in light of increasing innovation, intermodal competition, and viewer choice," highlighting the fact that "the FCC and Congress have both observed that the agency lacks authority to regulate online video services."³³

distinction between fixed and mobile broadband services, nor does it convert them into full substitutes." *Id.* at 10. These assertions do not change the reality that 5G FWA and 5G mobile occupy the same spectrum bands and deliver comparable speeds. *See FSF Comments* at 5 ("T-Mobile, for example, reports typical 5G mobile speeds ranging from 144 to 561 Mbps (download) and 6 to 34 Mbps (upload) and typical 5G FWA speeds ranging from 170 to 498 Mbps (download) and 12 to 55 Mbps (upload).") (citation omitted).

³⁰ *See generally NCTA Comments* at 24-29.

³¹ *Id.* at 24.

³² *ITIF Comments* at 5.

³³ Comments of the Motion Picture Association, Inc., *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/105210381104729/1>, at 1, 5 (citations omitted).

ACA Connects – America's Communications Association (ACA Connects) noted the increasing challenges faced by smaller operators, an increasing number of which are choosing to exit the video distribution marketplace altogether.³⁴ It also stated that "[t]he retransmission consent marketplace, in particular, remains broken.... [R]etransmission consent fees continue to skyrocket, with no end in sight."³⁵ Consistent with our proposal for a notice of inquiry focusing on the retransmission consent regime, ACA Connects praised the Commission for its recent inquiries "focused on the relationship between national programmers and local broadcast affiliates and on the sports broadcast marketplace" but asserted that "any reforms in these areas will deliver lasting relief to consumers without accompanying reforms to retransmission consent."³⁶

The National Association of Broadcasters likewise pointed out that, in an era where streaming services owned by Big Tech steadily amass massive subscriber bases,³⁷ the Commission should take action to address asymmetric regulations.³⁸ But its comments myopically focused on the asymmetry between local television stations and Big Tech, without mention of the impact that one-sided relief would have on the relationship between broadcasters and traditional multichannel video programming

³⁴ See Comments of ACA Connects – America's Communications Association, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/10521465027253/1>, at 11-12. See also *NCTA Comments* at 26 (noting that "several providers have ceased offering MVPD service to new subscribers or have shut down their MVPD service entirely, opting instead to resell streaming services to their broadband subscribers") (citation omitted).

³⁵ *Id.* at 13.

³⁶ *Id.* at 15.

³⁷ See generally Comments of the National Association of Broadcasters, *In the Matter of Competition in the Communications Marketplace*, GN Docket No. 26-78 (filed May 21, 2026), available at <https://www.fcc.gov/ecfs/document/105211242529164/1>, at 13-19.

³⁸ See, e.g., *id.* at 32 (pointing out that "broadcasters face regulatory obstacles to innovation that do not confront their competitors").

distributors (MVPDs), a shortcoming we highlighted in comments regarding the national television multiple ownership rule in 2025:

Legacy regulations, however, don't just hamstring competition between facilities-based distributors and Big Tech platforms with global footprints: Alphabet/Google/YouTube, Amazon, Apple, Meta, Netflix, Disney/Hulu, Paramount, and so on. They also impact the relative bargaining power between broadcasters and MVPDs in retransmission consent negotiations. If not paired with a long-overdue update to the Communications Act and the FCC's implementing rules, action to raise or eliminate the national television ownership cap likely would further skew retransmission consent negotiations. Big picture, therefore, any regulatory relief granted to broadcasters from the national television ownership cap must be paired with corresponding deregulatory measures for MVPDs.³⁹

Lastly, we point out that NCTA agreed that the Commission should go further than simply eliminating reporting requirements regarding set-top boxes ("navigation devices") and trigger the sunset provision in Section 629(e) of the Communications Act.⁴⁰ "given the robust competitiveness of the video distribution and device markets, the Commission should sunset the navigation device rules under the test laid out in Section 629 ... the costs of those rules outweigh the benefits, and they unjustifiably impede innovation and investment without corresponding public benefits."⁴¹ That has been the position of FSF scholars for far more than a decade.⁴²

³⁹ Comments of the Free State Foundation, *In the Matter of Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318 (filed August 4, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/08/FSF-Comments-FCC-National-Television-Ownership-Cap-Proceeding-080425.pdf>, at 4-5.

⁴⁰ See 47 U.S.C. § 549(e) ("The regulations adopted under this section shall cease to apply when the Commission determines that (1) the market for the multichannel video programming distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.").

⁴¹ *NCTA Comments* at 31.

⁴² See, e.g., Andrew Long, "Xumo Streaming Devices Compel the Sunset of Set-Top Box Rules," *FSF Blog* (July 12, 2024), available at <https://freestatefoundation.blogspot.com/2024/07/xumo-streaming-devices-compel-sunset-of.html> (pointing out that Xumo devices, available for retail purchase, "singlehandedly" satisfy the marketplace prerequisites for sunset pursuant to Section 629(e) – and "[a]ll that is left is for the Commission to acknowledge – 'determine,' per the language of the statute – that which undeniably is true"); Andrew Long, "Closing the Lid on 'Unlock the Box' Should End Video Device Regulation," *Perspectives*

V. Conclusion

The initial round of filings in this proceeding confirms the points that the Free State Foundation made in its comments.

With respect to broadband, it is factually undeniable to all, except perhaps those with a vested interest in a determination that the broadband marketplace *is not* competitive, that the marketplace *is* competitive. Consumers choose from the many available substitutes based upon price and their unique needs regarding upstream and downstream speeds, latency, and so on – not on the identity of the underlying technology (whether fiber, hybrid fiber-coaxial, mobile or fixed 5G, low-Earth orbit satellite, licensed or unlicensed fixed wireless, or other) or that technology's ability to satisfy arbitrary performance benchmarks.

With respect to video programming, the conclusion that competition abounds is perhaps even more widely embraced. This is hardly surprising given the unbounded nature of Internet-delivered consumer choice.

In terms of what else the Commission might do to further its goals – that is, to promote greater broadband deployment and private investment and to unleash the full power of video-based competition for the betterment of consumers – commenters overwhelmingly agree with the guiding principles set forth in our initial comments: "to

from *FSF Scholars*, Vol. 15, No. 50 (September 25, 2020), available at <https://freestatefoundation.org/wp-content/uploads/2020/09/Closing-the-Lid-on-Unlock-the-Box-Should-End-Video-Device-Regulation-092520.pdf>, at 11 ("The FCC now should embrace the inevitable consequences of its findings and invoke the sunset provision."); Seth L. Cooper, "The FCC's Continuing, Costly Video Navigation Device Regulation," *Perspectives from FSF Scholars*, Vol. 5, No. 25 (October 21, 2010), available at https://freestatefoundation.org/wp-content/uploads/2019/08/The_FCC_s_Continuing_Costly_Video_Navigation_Device_Regulation_102010.pdf, at 3 (arguing that "the Commission still refuses to take seriously Section 629's unique sunset provision, according to which the FCC shall cease to apply regulations when it finds the MVPD and navigation device markets are fully competitive").

achieve its goals, this next competition report need only identify additional opportunities to tear down rusty silos, repeal expired rules, and employ the various tools in the Commission's toolbox to achieve further deregulation – the "DELETE, DELETE, DELETE" proceeding; rulemakings; forbearance; waivers; sunset provisions; and so on."⁴³

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⁴³ *FSF Comments* at 2.