

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

In the Matter of )  
)  
Build America: Eliminating Barriers to ) WC Docket No. 25-253  
Wireline Deployments )

**REPLY COMMENTS OF AMERICA’S COMMUNICATIONS ASSOCIATION  
ON THE NOTICE OF INQUIRY**



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ACA CONNECTS – SINCE 1993

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**I. INTRODUCTION AND SUMMARY**

America’s Communications Association (ACA Connects)<sup>1</sup> hereby submits reply comments on the Federal Communications Commission’s (Commission’s) *Build America: Eliminating Barriers to Wireline Deployment* Notice of Inquiry.<sup>2</sup> Initial responses to the NOI underscore the importance of this proceeding. Commenters highlight a multitude of State and local legal requirements—including, but not only, permitting and right-of-way access barriers—that are inhibiting or poised to inhibit the deployment of wireline telecommunications networks and services. This regulatory excess runs contrary to the Communications Act (Act) and threatens the Commission’s

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<sup>1</sup> ACA Connects represents approximately 500 smaller telecommunications, video, and broadband providers passing approximately 30 million households across the 50 states and U.S. territories, including six million homes in rural areas.

<sup>2</sup> *Build America: Eliminating Barriers to Wireline Deployment*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (Sept. 30, 2025) (NOI).

efforts through its Build Agenda to “unleash high-speed infrastructure builds.” State and local requirements that burden wireline facilities deployments also undermine technology neutrality and create risks of competitive imbalance in the marketplace.

The time has come to adopt a Federal regulatory framework that protects wireline telecommunications deployments from requirements that violate Section 253 of the Act. As recommended by ACA Connects and others, the Commission should move quickly to develop such a framework that extends and applies the reasoning of the *Small Cell Order* and *Moratoria Order*<sup>3</sup> to wireline deployments and that includes, among other elements: shot clocks, presumptive fee limits, restrictions on unreasonable deployment conditions, measures to address rate regulation and other extraneous requirements, and robust and workable enforcement mechanisms.

The Commission should pay no heed to the misguided and ill-founded objections from parties seeking to defend an unacceptable status quo. Reliance on Section 253 to address State and local barriers to wireline telecommunications deployment is faithful to the statutory text, supported by precedent, and sound policy. We therefore urge the Commission to move forward expeditiously.

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<sup>3</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*Moratoria Order*), *aff'd City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020) (*City of Portland*); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (*Small Cell Order*), *aff'd in pertinent part, City of Portland*, 969 F.3d 1020 (9th Cir. 2020).

## II. THE COMMISSION SHOULD LAUNCH A NOTICE OF PROPOSED RULEMAKING TO ADDRESS BARRIERS THAT STATE AND LOCAL GOVERNMENTS ARE ERECTING TO THE PROVISION OF WIRELINE TELECOMMUNICATIONS SERVICES IN VIOLATION OF SECTION 253

As the record demonstrates, wireline deployment projects too often run headlong into a State or local government requirement that materially inhibits the provision of wireline telecommunications services. Industry stakeholders submitted detailed evidence of wide-ranging requirements from jurisdictions across the country that apparently violate Section 253, including:

- Failure to process applications to access the public right-of-way or public infrastructure (collectively, the “PROW”) in a timely fashion – or at all.<sup>4</sup>

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<sup>4</sup> See e.g., Comments of US Telecom – The Broadband Association, WC Docket No. 25-253 at 6 (Nov. 18, 2025) (“In one Central Florida city, broadband construction has been delayed for as long as 18 months because of onerous permitting requirements, including demands that a professional engineer on staff sign every drawing despite Florida exempting employees of entities regulated by the FCC from certification requirements for this type of work.”) (USTelecom Comments); *id.* at 8 (“Members also report that some cities and towns in Missouri, Alabama, Louisiana, Florida, and North Carolina will engage in gating their permit applications with unreasonable limitations on the number of applications filed, pending, or granted.”); Comments of Crown Castle Fiber LLC, WC Docket No. 25-253 at 12-13 (Nov. 18, 2025) (“Crown Castle...faces significant delays in obtaining permits in the City of Los Angeles, where the average time to receive a permit from the Department of Transportation for installation of underground fiber facilities in the City’s rights-of-way is nine months.”) (Crown Castle Comments); Comments of NCTA – The Internet & Television Association, WC Docket No. 25-253 at 7 (Nov. 18, 2025) (“In another state, a locality imposed permitting limits and moratoria on work performed by a provider’s contractor based on arbitrary enforcement of vague or unspecified requirements, while permitting the same contractor to perform work without restrictions on behalf of the locality’s affiliated competitive broadband provider.”) (NCTA Comments); Comments of Midwest Energy Cooperative, WC Docket No. 25-253 at 4 (Nov. 14, 2025) (“MEC began working with Monroe County agencies in February 2025 to secure approval of its permit applications. As of the date of this filing, MEC has not yet received all the required permits necessary to complete the first 68 miles of its fiber construction projects in Monroe County.”) (MEC Comments); Comments of INCOMPAS, WC Docket No. 25-253 at Annex A (Nov. 18, 2025) (“A Chicago, IL suburb has recently refused to issue any permits until a franchise agreement is signed but has not provided a template, has engaged a new law firm, and has been largely unresponsive and

- Fees that are not objectively determined, bear no relation to cost, are not fair and reasonable, or are discriminatory;<sup>5</sup>

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uncooperative resulting in a customer threatening to cancel contract due to the delay.”) (INCOMPAS Comments); Comments of T-Mobile USA, Inc., WC Docket No. 25-252 at 7 (Nov. 18, 2025) (“Two communities in Ohio where one fiber partner tried to deploy outright refused to accept any permit applications. Another fiber partner faced a ‘tourist season’ moratorium in a community in Arizona, while another community in Michigan refuses to accept applications for six months of the year.”) (T-Mobile Comments).

<sup>5</sup> See e.g., Crown Castle Comments at 21 (“King County, Washington has sought to impose a franchise upon Crown Castle that requires payment of 10% of Crown Castle’s annual gross revenues.”); USTelecom Comments at 9 (“In multiple Louisiana cities, fiber providers refusing to pay fees based on a percentage of their gross revenue are assessed a permit application fee of \$5.00 per linear foot for each project.”); *id.* at 10 (“The City of Phoenix recently adopted an ordinance applying only to fiber that requires a licensee to pay, in addition to cost-based fees outlined in the ordinance, an annual fee of \$6.00 per residence passed or a percentage of revenue (6% for wholesale and 3% for retail), whichever is greater.”); INCOMPAS Comments at Annex B (“Service providers sometimes have to pay multiple fees to access the public rights-of-way for a particular project when there are overlapping jurisdictional agencies; for example, a provider had to install a network that traversed a state highway in California and thus had to pay permitting fees to both the local jurisdiction and to the California DOT for a single right-of-way.”); T-Mobile Comments at 10 (“Another increasingly common practice is for localities to impose expensive engineering fees, including requiring Professional Engineer stamps on all submitted plans, which in some cases can increase the costs of a project by up to 30 percent.”); *id.* at 11 (“Localities will impose a variety of excessive and onerous bonding, letter of credit, and cash deposit requirements before build-out can take place, sometimes requiring more than one of these for the same project. Bonds can be for 100 percent or more of the total project cost—one community in Ohio requires a bond for 150 percent of the total cost.”); NCTA Comments at 9 (“in one jurisdiction, the costs to complete an overlash of fiber on an existing strand along 500 feet of city ROW are: (1) Sidewalk closure: \$0.45/ft/day x 500 linear feet = \$ 225; (2) Parking lane closure: \$3.50/ft/day x 500 linear feet = \$1,750; (3) occupancy permit = \$394. The total cost for three days is \$6,319. By comparison, previous permits were \$195 each and allowed five days of work.”); Comments of CableSouth Media III, LLC, WC Docket No. 25-253 at 10 (Nov. 17, 2025) (“Chapter 35.5-8(a)(2) of the Jefferson Parish Code establishes per foot fees for local providers ranging from \$2.60/foot to \$5.20/foot, up to a total of \$20,000 in annual fees. The same provision provides that these per foot fees are payable until such time as they are exceeded by 5% of gross revenues, at which time the Parish extracts 5% of the company’s gross revenues annually.”) (CableSouth Comments).

- In-kind requirements, including mandates unrelated to the wireline deployment or that exceed industry norms, that raise the cost of access even further above cost;<sup>6</sup> and
- Other requirements, including broadband rate regulation, that stymie builds and the offering of innovative services.<sup>7</sup>

All of these barriers undermine Congress’s direction in Section 253 to facilitate entry.

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<sup>6</sup> See *e.g.*, USTelecom Comments at 11 (“One village in Illinois, for instance, includes in its License Agreement a requirement to provide a 50% discount on fiber services to the village for any locations the village wishes to connect.”); Crown Castle Comments at 22 (“In the City of Seattle, depth and restoration requirements, specifically a requirement to replace the entire roadway concreted substructure beyond the area immediately impacted by construction activity, create significant costs, with restoration costs running from \$550 to \$3,400 per foot of fiber installed.”); *id.* at 25 (“In just the past few weeks, Crown Castle was asked to give exclusive use of six strands of fiber to the City of Piscataway, New Jersey—including the right to use any future overlashed fiber installed at a later date—as a condition of obtaining a permit for constructing fiber facilities to serve a single site.”); INCOMPAS Comments at Annex B (“The City of Upland, CA demanded that provider re-pave the entire side of the street where provider intended to install its network, despite the installation only requiring micro-trenching in a single lane, which would have added \$3 million in project costs to a \$1 million budget project, forcing provider to abandon the project.”); T-Mobile Comments at 9 (“A community in Colorado also prohibits certain types of construction like shallow or micro trenching, forcing deployers to engage in more onerous and expensive construction methods. And a locality in Illinois where one fiber partner has deployed requires the use of third-party conduits and vaults, which entails extensive coordination with other entities, including competitors, that are not always incentivized to be cooperative.”); *id.* at 12 (“[S]everal cities in Alabama require the provision of dark fiber without any recurring charges to city-owned facilities.”); NCTA Comments at 11 (“In another locality... the project was delayed several months because the township demanded that the operator pay nearly \$2 million in what amounted to curb-to-curb street repaving or substantially similar restoration costs. In the context of an approximately \$7 million project, the additional \$2 million made the project financially infeasible.”).

<sup>7</sup> See *e.g.*, Crown Castle Comments at 26 (“More than once, Crown Castle has faced local governments who have denied Crown Castle access to the right-of-way unless Crown Castle used the local government’s conduit system.”); NCTA Comments at 23 (“State laws that regulate broadband rates or impose other onerous burdens similarly reduce the capital available for network expansion and upgrades.”). See *also*, NCTA Comments at 22 regarding use of AI to enhance network capabilities and potential regulation (“Nationwide broadband providers deploy network-integrated AI tools uniformly across their networks that span many state and local jurisdictions. A patchwork of conflicting state and local rules and obligations has the potential to impose significant administrative, legal, and engineering costs that could have the effect of diverting capital away from network deployment activity.”).

ACA Connects appreciates that many State and local government stakeholders have sought to streamline their processes and improve consultation and coordination with providers.<sup>8</sup> We also recognize that wireline builds can be delayed for various reasons beyond the direct control of the government, including workforce shortages, supply chain disruptions, or competitive concerns.<sup>9</sup> As a representative of smaller providers, we also sympathize with resource constraints in local governments. Yet, these factors cannot excuse State and local policies that materially inhibit deployments, either by design or in effect. Moreover, barriers posed by State and local requirements can exacerbate other problems, for instance by creating uncertainties in deployment timelines that make it difficult to sync resources and suppliers. Of course, we recognize

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<sup>8</sup> See *e.g.*, Village of Schaumburg Comments, WC Docket No. 25, 253 at 1 (Nov. 17, 2025) (“Through its engineering consultant (Civiltech) and staff, the Village has implemented a comprehensive system for reviewing and approving telecommunications permits, including small cell installations.”) (Schaumburg Comments); Comments from the City of San Jose, WC Docket No. 25-253 at 1 (Nov. 17, 2025) (“The City of San José has already implemented streamlined permitting processes and developed strong public–private partnerships to facilitate broadband deployment.”) (San Jose Comments); Comments of the City of Arlington, Texas, WC Docket No. 25-253 at 2 (Nov. 18, 2025) (“Arlington has implemented a robust online permitting system with many automated and user-friendly features that allow for ease in submitting and processing applications for which Arlington has received significant positive feedback from applicants, especially telecommunications providers.”) (Arlington Comments).

<sup>9</sup> See *e.g.*, Rural County Representatives of California *et al.*, WC Docket No. 25-253 at 1 (Nov. 17, 2025) (“the primary barriers in rural regions are economic—e.g. low population density, long distances, limited return on investment—not local regulation.”) (Rural County Representatives Comments); Comments of the National Association of Towns and Townships, WC Docket No. 25-253 at 4 (Nov. 17, 2025) (“NATaT’s experience demonstrates that delays are typically driven by provider-side issues, seasonal realities, or safety-related engineering reviews, not local obstruction.”) (National Association of Towns and Townships Comments); Schaumburg Comments at 2 (“In many cases, projects must be redesigned mid-construction because consultants failed to identify existing utilities or site conflicts during design. Contractors with limited experience installing poles and equipment can also extend construction timeframes.”).

that telecommunications network providers receiving expeditious, cost-based access to the PROW would benefit from that policy,<sup>10</sup> but that is the very outcome Congress mandated in adopting Section 253. This approach is also sound public policy, as it enables consumers to benefit from increased investment and competition and from the offering of innovative services.<sup>11</sup>

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<sup>10</sup> See *e.g.*, Arlington Comments at 4-5 (“It would also elevate and advantage one category of right-of-way user over all other users and undermine Arlington’s ability to manage the right-of-way in a manner that safely accommodates all users. Simply put, the Commission proposes to extend special treatment to the wireline industry that is unfair and inconsistent with the treatment of other utilities and entities using the public rights-of-way”); City of Dallas, Texas Comments, WC Docket No. 25-253 at 2 (Nov. 17, 2025) (“The City therefore urges the Commission not to extend special treatment to the wireline industry that is inconsistent with the treatment of other utilities and entities using public rights-of-way.”) (Dallas Comments).

<sup>11</sup> The Local Government Associations allege that providers are engaging in “permit-hoarding and bad-faith action...to crowd out competition.” See Comments of the United States Conference of Mayors et al., WC Docket No. 25-253 at 8 (Nov. 17, 2025) (Local Government Associations Comments). ACA Connects has no knowledge that its Members are engaging in such action and has seen no proof that such actions are occurring, much less are widespread. In any event, local governments can address this concern by facilitating the award of permits. Moreover, in the context of pole attachments, as we recently stated in comments filed in WC Docket No. 17-84, once providers gain access to poles, they have an incentive to deploy rapidly to use their workforce efficiently and begin to generate revenues. See Reply Comments of America’s Communications Association on the Fourth Further Notice of Proposed Rulemaking, WC Docket No. 17-84 at 5 (Nov. 18, 2025) (“attachers have strong commercial incentives to deploy facilities and initiate service as quickly as possible once make-ready is complete. Delays, when they occur, are generally caused by external factors outside of the attachers’ control. These extrinsic factors include necessary state and local jurisdictional permitting, weather, natural conditions, supply chain issues, workforce availability, and sequencing issues stemming from applications being completed out of the preferred order.”).

### III. CONGRESS HAS PROVIDED THE COMMISSION WITH CLEAR DIRECTION AND SUFFICIENT AUTHORITY TO ADDRESS STATE AND LOCAL GOVERNMENTS REQUIREMENTS THAT VIOLATE SECTION 253(A) AND ARE NOT SAVED BY SECTIONS 253(B) AND (C)

State and local government commenters argue on various grounds that the Commission lacks authority under Section 253 to address the issues raised in the NOI.<sup>12</sup> As discussed below, these arguments do not withstand scrutiny.

First, the League of Oregon Cities (“LOC”) suggests that a preemption framework of the sort contemplated in the NOI would impermissibly rely on Section 253(c) as a source of regulatory authority.<sup>13</sup> This objection misconstrues how the statute operates. The core question in any Section 253 analysis is whether a State or local requirement violates the broad restrictions set forth in Section 253(a) and is not saved by the narrow, defined authority set forth in Section 253(b) or (c). The Commission’s authority under the statute to conduct such analysis is well-settled and its interpretations have been consistent dating back to when the statute was enacted nearly three decades ago. For example, in the 1996 *ClassicTel Order*, after finding that denials by localities of a new

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<sup>12</sup> See Comments of the League of Oregon Cities, WC Docket No. 25-253, at 1 (Nov. 18, 2025) (“[a] significant issue in this docket is the Commission’s lack of clear authority to take further action given the language of Section 253(d) ... and the legislative history withholding from the Commission authority with respect to Section 253(c).”) (LOC Comments); Comments of the League of Minnesota Cities *et al.*, WC Docket No. 25-253, at 4-10 (Nov. 18, 2025) (“[t]he broad manner in which the Commission asserts it may preempt local governments ... in the NOI far exceed the Commission’s express statutory authority or any supporting ancillary authority.”); National Association of Towns and Townships Comments, at 9 (suggesting that Section 253(d) “does not authorize the FCC to impose broad, nationwide preemption or generalized regulatory frameworks absent record evidence of unlawful local conduct.”); Comments of the People of the State of California and the California Public Utilities Commission, WC Docket No. 25-253, at 8-9 (Nov. 18, 2025).

<sup>13</sup> See LOC Comments at 1.

entrant's franchise applications apparently would be prohibited under Section 253(a), the Commission then necessarily had to analyze whether the denials might be nevertheless permissible under Section 253(b) or (c) before it could reach a determination on preemption.<sup>14</sup> Other Commission orders issued the wake of the 1996

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<sup>14</sup> *Classic Tel., Inc.*, 11 FCC Rcd. 13082 (1996). At that time, the Commission explained that in order for an action by a locality to “trigger” Section 253(c), it must “reflect an exercise of public rights-of-way management authority or the imposition of compensation requirements for the use of such rights-of-way” and that the legislative history of Section 253(c) “sheds light on permissible management functions.” *Id.*, 11 FCC Rcd. at 13103 (noting that “[d]uring the Senate floor debate on section 253(c), Senator Feinstein offered examples of the types of restrictions that Congress intended to permit under section 253(c), including State and local legal requirements that: (1) ‘regulate the time or location of excavation to preserve effective traffic flow, prevent hazardous road conditions, or minimize notice impacts;’ (2) ‘require a company to place its facilities underground, rather than overhead, consistent with the requirements imposed on other utility companies;’ (3) ‘require a company to pay fees to recover an appropriate share of the increased street repair and paving costs that result from repeated excavation;’ (4) ‘enforce local zoning regulations;’ and (5) ‘require a company to indemnify the City against any claims of injury arising from the company's excavation.’”) (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from the Office of City Attorney, City and County of San Francisco)). *See also Classic Tel., Inc.*, 12 FCC Rcd. 15619, 15634 (1997) (“If a potential entrant is unable to secure the necessary regulatory approvals within a reasonable time, it may abandon its efforts to enter a particular market based solely on the inaction of the relevant government authority. ... we also note that regulatory delays may threaten the viability of financing arrangements for new entry or transactions for the purchase of existing facilities. Such results would seriously undermine the development of local competition, and run counter to Congress' procompetitive goals in the 1996 Act. More specifically, in certain circumstances a failure by a local government to process a franchise application in due course may ‘have the effect of prohibiting’ the ability of the applicant to provide telecommunications service, in contravention of section 253.”).

Act also established important precedent for the appropriate reading of Section 253, including paragraph (c).<sup>15</sup>

The second objection commenters raise is that Section 253 authorizes the Commission only to adjudicate specific complaints, not to issue rules or guidance of general applicability. Once again, the objection is incorrect based on the plain language of the statute and belied by precedent. In the *Moratoria Order*, the Commission correctly observed that “[n]othing in section 253 purports to limit the exercise of [the Commission’s] general interpretive authority. ... Congress’ inclusion of [the] express mechanism [in Section 253(d)] to consider whether specific state and local requirements are preempted, does not limit [the Commission’s] ability, pursuant to sections 303, 201(b), and other sections of the Act, to define and provide an authoritative interpretation as to what constitutes a violation of section 253(a) and what qualifies for

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<sup>15</sup> See, e.g., *California Payphone Ass'n Petition for Preemption of Ordinance No. 576 Ns of the City of Huntington Park, California Pursuant to Section 253(d) of the Commc'ns Act of 1934*, 12 FCC Rcd. 14191 (1997) (establishing that for purposes of determining whether an ordinance “has the effect of prohibiting” the ability of any entity to provide telecommunications service, the Commission would “consider whether [it] materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment”); *TCI Cablevision of Oakland Cnty., Inc.*, 12 FCC Rcd. 21396, 21441-42 (1997) (commenting that interconnection mandates and “most favored nation” provisions in a particular ordinance “will be difficult to justify under section 253(c) on the grounds that they are within the scope of permissible local rights-of-way management authority or other traditional municipal concerns such as police, fire, building code enforcement or other public safety concerns” and explaining that “attempts to impose a redundant ‘third tier’ of regulation at the local level will be met with close scrutiny by the Commission.”).

the section 253(b) or (c) exceptions.”<sup>16</sup> The *Moratoria Order* and the *Small Cell Order*, both of which were upheld by the Ninth Circuit, did not involve decisions by the Commission to preempt any State or local requirement; rather, the Commission issued guidance for States, localities, and service providers based on its longstanding interpretation of the statute.<sup>17</sup> Thus, the Commission has a solid legal foundation to take a similar approach in this proceeding and adopt guidance regarding State and local requirements imposed on wireline network providers that prohibit or have the effect of prohibiting the provision of telecommunications services in violation of Section 253.

Third, the LOC attempts to dissuade the Commission from taking further action in this proceeding due to “the current legal landscape.”<sup>18</sup> In particular, the LOC argues that “post-*Chevron*, there will be no deference to the Commission’s own view of its authority” and that “[c]ourts will look anew at whether the Commission can assert general interpretive authority to declare state and local rights-of-way regulations and

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<sup>16</sup> *Moratoria Order*, para. 163; see also *id.*, para. 165 (“whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in section 253 prevents us from declaring that a category of state or local laws is inconsistent with section 253(a) because it prohibits or has the effect of prohibiting service.”). The Commission further affirmed in the *Small Cell Order* that the preemption authority established under Section 253(d) is “one non-exclusive mechanism by which a party can obtain a determination from the Commission of whether a specific state or local requirement is preempted under Section 253(a)—namely, by filing a petition with the Commission.” *Small Cell Order*, para. 52.

<sup>17</sup> See *Moratoria Order*, para. 164 (the Commission was “interpreting the scope of the substantive prohibition set forth in section 253(a)”); *Small Cell Order*, para. 53 (concluding that “the substantive standards for fees that Congress sought to insulate from preemption in Section 253(c) [are] an appropriate ceiling for state and local fees that apply to the deployment of Small Wireless Facilities in public ROWs”).

<sup>18</sup> LOC Comments at 6.

compensation requirements violate Section 253(a) and fall outside the scope of Section 253(c).<sup>19</sup> It further suggests that after the Supreme Court’s decision in *McLaughlin Chiropractic Associates v. McKesson Corp.*, “the Commission’s ruling would not bind district courts in future enforcement proceedings.”<sup>20</sup> However, nothing in the *Loper Bright* or *McLaughlin* decisions should discourage the Commission from adopting rules and policies based on the best interpretation of the statute. Indeed, as the LOC acknowledges, “deference is not dead,”<sup>21</sup> and the Supreme Court was clear in *McLaughlin* that courts “must determine the meaning of the law under ordinary principles of statutory interpretation, affording appropriate respect to the agency’s interpretation.”<sup>22</sup> Given Congress’s clear intent that the overarching objective of Section 253 is to remove barriers to entry<sup>23</sup>—and the Commission’s contemporaneous and consistent interpretations of the statute—ACA Connects submits that the Commission

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<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 155 (2025); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024) (explaining that under the APA, “courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. . . . And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.”).

<sup>23</sup> “[S]ection [253] goes to the very heart of this bill because removal of barriers to entry is what we are trying to accomplish.” 141 Cong. Rec. S8175 (daily ed. June 12, 1995) (statement of Sen. Pressler).

can and should adopt guidance on the best reading of Section 253 consistent with how it has interpreted the statute for nearly thirty years.<sup>24</sup>

#### **IV. THE COMMISSION SHOULD PROVIDE GUIDANCE INDICATING WHICH STATE AND LOCAL GOVERNMENT REQUIREMENTS IMPOSED ON WIRELINE TELECOMMUNICATIONS PROVIDERS PRESUMPTIVELY VIOLATE SECTION 253**

Commenters representing service providers that have encountered State and local regulatory barriers in deploying wireline telecommunications networks largely agree on the basic framework the Commission should adopt under Section 253 to address these problems. In light of this record, we urge the Commission to move forward with adoption of a framework that includes the components discussed below.

##### **1. Reaffirm Section 253 applies to commingled services and facilities capable of providing telecommunications services**

As a threshold matter, the Commission should reaffirm that Section 253 applies to facilities where telecommunications services are commingled with other services,<sup>25</sup> as well as to “infrastructure that may be used to provide telecommunications services.”<sup>26</sup>

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<sup>24</sup> As USTelecom observed, “[n]othing in Section 253 limits the Commission’s ability to define, through declaratory ruling or rulemaking, the types of practices that have the effect of prohibiting the provision of communications service.” USTelecom Comments at 19. See also INCOMPAS Comments at 3-4 (“while the Ninth Circuit in *City of Portland* relied in part on *Chevron* deference in sustaining the FCC’s interpretation, the same outcome can be reached today under the statute’s plain meaning even after the Supreme Court’s decision in *Loper Bright* eliminating *Chevron* deference.”).

<sup>25</sup> *Moratoria Order* at 7790, para. 167. See also, NCTA Comments at 3 (“Applying section 253 to mixed-use infrastructure aligns with the longstanding general principle that a statutory provision that applies to facilities because they carry a particular service does not cease to apply if those same facilities also carry other services.”).

<sup>26</sup> NOI, n. 21. See also, Crown Castle Comments at 26 (“The Commission has recognized— and preempted—fees and requirements that disrupt deployment of

As NCTA notes, this judgment reflects “the reality that any given span of modern communications infrastructure may carry a rich and dynamic mix of different types of services that is almost certain to evolve over time,” and thus Section 253 should apply “to any infrastructure that is *capable* of carrying telecommunications services.”<sup>27</sup>

## 2. Establish presumptive time limits in processing permits

In the *Small Cell Order*, the Commission established “shot clocks” to ensure State and local approvals comply with Section 253, as well as Section 332(c)(7).<sup>28</sup> It found that a locality presumptively violates Section 253(a) when it fails to act “within a reasonable period of time” and that shot clocks were consistent with Section 253(c)’s limited right-of-way management carve out. We explained in our comments that

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advanced services in other contexts where there are ‘comingled’ services, and should take action here to ensure state or local governments cannot delay or condition approvals of deployment of telecommunications facilities based upon whether the provider is—or is not—providing other non-telecommunications services over those same facilities.”).

<sup>27</sup> NCTA Comments at 4. NCTA asserts its interpretation comports with the statute, which applies to State or local requirements that inhibit “*the ability...to provide...telecommunications service.*” See also INCOMPAS Comments at 19 (“What matters under Section 253 is the impact of a state or local requirement on the ability to provide telecom services over the infrastructure, not the exact identity or classification of the entity deploying it. In sum, whenever dark fiber is leased or used to carry another carrier’s communications, it is functionally part of the provision of a telecommunications service, and state or local regulations that ‘materially inhibit’ the deployment of such fiber fall within Section 253(a)’s preemptive scope.”); Comments of CONNECT AI, WC Docket No. 25-253 at 24 (Nov. 18, 2025) (“under the best reading of Section 253, the Commission’s authority includes fiber networks that connect to data centers that have the capability to be used to provide telecommunications services while also providing non-telecommunications services such as private connections to data centers. The Commission is thus on firm legal footing to conclude that Section 253 preempts unfair and unreasonable state and local regulations and other requirements that have the effect of prohibiting the deployment of fiber networks necessary for the development of the U.S. AI industry.”) (CONNECT AI Comments).

<sup>28</sup> *Small Cell Order*, paras. 13, 105. (no more than 60 days for collocation on an existing structure and 90 days for attachment to a new structure).

unreasonably long review timelines can have the same inhibitory effect on the provision of service for any technology and that the Commission should adopt shot clocks for the deployment of wireline services.<sup>29</sup> Shot clocks will not only drive actions by a single agency but facilitate coordinated review by multiple agencies in the same jurisdiction or across jurisdictions.<sup>30</sup>

Other industry stakeholders agreed with this general approach and proposed a variety of time frames for shot clocks, from one to several months.<sup>31</sup> We favor setting

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<sup>29</sup> ACA Connects Comments at 18-22. *See also* Comments of NTCA – The Rural Broadband Association, WC Docket No. 25-253 at 9-10 (Nov. 18, 2025) (“More specifically, when authorization delays render planned projects unsustainable because the overall cost has increased by a material percentage due to the passage of time, this is an effective loss of capital that could have otherwise been used to connect consumers elsewhere. Abandoning a project after the engineering and design has taken place, necessary physical assets have been procured (fiber, etc) and agreements with contractors have been signed is an inarguable waste of capital. Moreover, even delays of several months that do not result in project abandonment can have a negative impact on deployment costs.”) (NTCA Comments).

<sup>30</sup> *See* CONNECT AI Comments at 12 (“When projects cross multiple jurisdictions, many jurisdictions take that as an opportunity to extend timelines by requiring review by other jurisdictions prior to performing their own review.”). *See also* Local Governments Associations Comments at 2, which counters that wireline deployments are complex and “must be carefully managed in coordination with all other users of this finite public resource.” But, even though coordination may be “complex,” that does not give agencies a pass on the law and does not mean they cannot streamline their processes. And, while “disruptions” can – and in fact will – occur, they can be “baked into” the time frame, there can be limited tolling, or the Commission can view them as out of the ordinary and sufficient reason to rebut an assert that the locality is violating the law.

<sup>31</sup> *See e.g.*, USTelecom Comments at 15 (“no more than 60 days should be presumed reasonable for standard broadband construction permits, and no more than 90 days for complex or multi-jurisdictional projects, and those timelines should begin at the first mandatory procedural step the applicant must take, whether a pre-application procedure or filing of the application.”); INCOMPAS Comments 6 (“INCOMPAS recommends that the Commission require that all applications and documentation related to a wireline deployment project be reviewed and approved or denied within 30 days of submission”); NCTA Comments at 8 (“One potential option might be to mirror the framework set forth in the BROADBAND Leadership Act, which would amend section 253 to impose

presumptive timelines for review of initial wireline deployments and ongoing permits that are comparable to those that apply to wireless facility siting applications to promote competitive parity among providers using each type of technology.

While local government commenters generally oppose any shot clock for wireline deployments,<sup>32</sup> some suggest the Commission could mitigate their concerns by building in “flexibility” to relax the shot clock in various circumstances.<sup>33</sup> We are concerned that layering on exceptions or qualifications as these commenters suggest would undermine the value of shot clocks by leaving them open ended and subject to dispute. The better course, as we recommend, is to make the timelines presumptive and subject to rebuttal. To that end, we agree with the approach proposed by Crown Castle that the “shot clock

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a 150- day time limit for state or local review of requests to deploy new infrastructure, or 90 days for requests to deploy on structures that already support communications facilities.”); NTCA Comments at 11 (“applications once submitted should be processed within a maximum of 90 days”); CONNECT AI Comments at 25 (“The Commission can facilitate the deployment of fiber networks nationwide by (1) imposing a 60-day shot clock to act on permit and ROW access applications...with a failure to meet the shot clock resulting in the permit being deemed granted.”).

<sup>32</sup> See *e.g.*, Dallas Comments at 2 (“The City does not support establishing a federal shot clock for local approvals.”); Comments of the Pennsylvania State Association of Township Supervisors, WC Docket No. 25-253 at 2 (Nov. 17, 2025) (“National deadlines would undermine due diligence, create unsafe conditions, accelerate infrastructure degradation, and expose township taxpayers to liability.”).

<sup>33</sup> See *e.g.*, National Association of Towns and Townships at 12 (“If the Commission nevertheless adopts shot clocks, NATaT urges it to allow local flexibility, require completeness before shot clocks start, permit pauses for applicant errors, and prohibit “‘deemed granted’ remedies.”); Rural County Representatives at 2 (“If the Commission considers establishing ‘shot clocks’ for wireline permits, which we strongly oppose, it should 1) allow tolling when applications are incomplete or interagency coordination is required; 2) exclude complex, multi-location projects from any ‘deemed granted’ remedy; and 3) preserve clear standards consistent with Section 253 (b) to, among other things, protect public safety and welfare.”).

should begin immediately upon submission of a written request for access,” especially because States and localities have developed significant experience over the past decades in overseeing wireline deployments.<sup>34</sup> That said, the Commission should permit providers and government agencies to enter into tolling agreements voluntarily.

**3. Establish presumptive limits on fees to ensure they are based on costs that are objectively determined and are non-discriminatory**

In our comments, we called upon the Commission to affirm that wireline deployments are subject to the same cost-based fee framework set forth in the *Small Cell Order*.<sup>35</sup> Other industry stakeholders agreed.<sup>36</sup> As Crown Castle commented,

the Commission’s ruling on the interpretation of Section 253 in the *2018 Broadband Deployment Order* was not limited by—or for that matter dependent upon—any particular type of technology. Indeed, as the Commission itself made clear, its interpretation of Section 253 was based upon “the text and structure of Section 253.”<sup>37</sup>

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<sup>34</sup> Crown Castle Comments at 15 (“If the local government requires an agreement, then it should have one already in place from every other telecommunications provider, including the ILEC. And those agreements are public documents that should be publicly available. If the local government does not have an agreement with existing providers, it cannot lawfully require one of the new entrant.”).

<sup>35</sup> ACA Connects Comments at 22.

<sup>36</sup> See e.g., NTCA Comments at 4 (“The Commission’s reasoning that state and local fees associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service in violation of Section 253(a) applies in equal measure to wireline providers’ access to public RoWs.”); USTelecom Comments at 16 (“The Commission’s *2018 Small Cell Order* provides clear precedent for such action. In that decision, the Commission held that localities may not impose fees exceeding a reasonable approximation of reasonable costs. Extending that principle to wireline permitting would promote parity among technologies and prevent jurisdictions from applying revenue-generation-based permitting fee models toward broadband service providers.”); INCOMPAS Comments at 11 (“The Commission should reaffirm, with respect to access to rights-of-way for wireline facilities, that application fees and recurring fees that are not based on reasonable cost recovery are not ‘fair and reasonable’ under Section 253(c) and therefore violate Section 253(a).”).

<sup>37</sup> Crown Castle Comments at 16.

To adapt the *Small Cell Order* framework to the wireline context, we propose that the Commission create a safe harbor for franchise and permitting fees above which the fee presumptively violates Section 253(a).<sup>38</sup> These safe harbor fees should be calculated to reflect the cost to process applications and manage the PROW, and should be adopted with the understanding that the fees imposed must be non-discriminatory, must account for all in-kind contributions in calculating total fees, and must not increase based on the type and amount of services provided over the same network facilities. In addition, pursuant to Section 253(c), fees would need to be publicly disclosed.<sup>39</sup>

Finally, we recognize that States and localities charge a variety of types of fees and fee amounts, which complicates any effort to devise generally applicable rules or presumptions around fees.<sup>40</sup> However, the Commission should not let “the perfect be

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<sup>38</sup> ACA Connects Comments at 22-26.

<sup>39</sup> We believe there is merit to NTCA’s definition of cost-based fees. See NTCA Comments at 7 (“To implement this finding, the Commission should define ‘cost-based’ fees as: • Costs incurred to review and issue public RoW access permits; • Costs incurred to supervise providers’ installation of facilities within state or locally controlled RoWs, including for the purposes of traffic control; • Costs incurred to ensure any state or locally controlled RoWs and nearby property damaged specifically by wireline infrastructure installation are properly restored to the state quo ante; and • Not including a locality’s general right-of-way costs (for road repair/maintenance, or trash removal) because the locality incurs those costs even in the absence of wireline facilities installation.”).

<sup>40</sup> We note that some States share our concern about excessive fees and have adopted limitations on PROW fees. See, e.g., INCOMPAS Comments at 15-16 (observing, for example, that “Georgia has established fixed permit and rent fees for fiber installations along state highway rights-of-way, administered by the Georgia DOT” and “under Florida law, localities that charge communications providers a permit fee for rights-of-way work must base the fee on the direct cost of permitting, cannot include any additional general overhead or property rental value, and in any event may not exceed \$100 per permit.”). Further as the City of Arlington, Texas commented, “rental fees paid by telecommunications providers

the enemy of the good.” While line-drawing is always a difficult exercise, it is one of the Commission’s core functions as a regulator and, in this instance, it is necessary to give effect to the statute. Just as it did with small cells, the Commission should gather evidence of fee types and amounts charged for wireline deployments that meet the cost-based standard, and, from there, establish presumptive fee limits that parties could then rebut. As part of this exercise, the Commission should identify categories of fees that conclusively violate the statute – *e.g.*, revenue or value-based fees, and confirm that in-kind contributions<sup>41</sup> are considered fees for purposes of calculating the presumptive limits.<sup>42</sup> This general approach is sound as a matter of law and policy, and well within the expertise and competence of the agency.

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for use of Arlington’s public right-of-way are set by Texas state law with the Public Utility Commission of Texas as the state franchise authority.” Arlington Comments at 3. Tex. Loc. Gov’t Code Ch. 283.055. The Texas Public Utilities Commission establishes maximum rates on a per-access line basis for cities. Cities may choose to lower rates or update them.

<sup>41</sup> In-kind contributions are conditions, requirements, or concessions that are imposed on deployments that are not directly attributable to the project and are not consistent with industry norms. The NOI (para. 50) expresses concern that in-kind contributions can inflate the cost of deployment “in a manner that is prohibitive within the meaning of section 253(a).” NTCA also remarks that “these arrangements are inconsistent with Sections 253(b) and (c)” because they do not “advance universal service” “or represent “fair and reasonable compensation.” NTCA Comments at 8.

<sup>42</sup> See INCOMPAS Comments at 16 (“We submit that any such in-kind compensation must be counted toward the total rights-of-way fee burden.”). In the alternative, as Crown Castle remarks, “the Commission should make clear that demanding in-kind compensation as a condition of granting authority to install telecommunications facilities in public rights-of-way violates Section 253.” Crown Castle Comments at 25.

**4. To distinguish from in-kind contributions, require that any conditions or requirements on builds be directly attributable to the project and consistent with industry norms**

Commenters widely agree with the general principle that States and localities may require wireline providers to bear costs directly attributable to their deployment projects, including costs of locating other utilities, rerouting traffic, street restoration, and similar activities. However, as ACA Connects and others explain, there are at least two ways a State or locality could exceed this authority. First, a State or locality could assess costs not directly attributable to the build, such as repair of sidewalks not physically damaged by the construction project. Second, it could enforce construction standards that are demonstrably excessive or run contrary to industry norms.<sup>43</sup> The Commission should affirm that, in either scenario, a State or locality presumptively violates Section 253(a) and cannot raise its general right-of-way management authority under Section 253(c) as a defense.<sup>44</sup>

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<sup>43</sup> See Crown Castle Comments at 21 (“there are circumstances where extensive requirements concerning construction activity or excessive street restoration requirements either impose excessive costs directly upon telecommunications providers (through excessive fee rates), or at least drive up construction costs unnecessarily.”); INCOMPAS Comments at 17 (“Excessive fees often grab the spotlight, but non-monetary conditions imposed by some jurisdictions can be equally prohibitive.”).

<sup>44</sup> See *Id.* at 18 (“INCOMPAS urges the Commission to explicitly prohibit permit conditions and requirements that are not related to the actual installation of the facilities or not reasonably necessary to restore the affected portion of the right-of-way to its pre-construction condition. Put simply, if an imposed condition does not address a site-specific, project-specific concern arising from the deployment, it should be deemed unreasonable under Section 253.”).

## **5. Prohibit regulation of rates for broadband services provided over telecommunications networks**

In our comments, we demonstrated that State regulation of broadband services provided over telecommunications networks can have a prohibitory effect on the deployment of such networks in violation of Section 253.<sup>45</sup> NCTA shared our concern, noting that such regulation reduces “the capital available for network expansion and upgrades.”<sup>46</sup> We agree and therefore urge the Commission to presume such regulation violates Section 253 and that the statute places a heavy burden on States and localities seeking to rebut the presumption.

## **6. Adopt an Expeditious, Effective Enforcement Mechanism**

The Commission has recognized that regulations expediting deployment of telecommunications and broadband infrastructure can have limited utility if an injured party cannot obtain expeditious relief.<sup>47</sup> We therefore proposed that the Commission establish as part of its Section 253 regulatory framework for wireline deployments an enforcement mechanism similar to the Rapid Broadband Assessment Team used for

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<sup>45</sup> ACA Connects Comments at 28-31.

<sup>46</sup> NCTA Comments at 21-23 (“The Commission should reaffirm that state and local laws...that impose prescriptive broadband regulation, can materially inhibit deployment of the multipurpose communications infrastructure that carries telecommunications services, broadband, and other advanced services.”).

<sup>47</sup> *See Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379, para. 11 (2023) (“After considering these competing concerns, we find that the adoption of targeted dispute resolution reforms, as set forth below, will address the expressed need for quicker resolution of pole attachment disputes that may impede or delay broadband deployment while ensuring sufficient fairness and due process for all involved parties.”).

pole attachment complaints.<sup>48</sup> Under this approach, Commission staff would be charged with expeditious review of petitions alleging that a State or local government has run afoul of the Commission’s Section 253 guidance and, where the staff finds such a violation, they would recommend that the Commission preempt such requirements.<sup>49</sup> The Commission would then act on staff’s recommendation within 90 days.

## V. CONCLUSION

Since enactment of the 1996 Telecommunications Act, American consumers, businesses, and institutions have reaped the benefits of Congress’s open entry policy. Investment is enormous; service innovation has burgeoned while prices have plummeted; and competition has become even more intense. With the explosion of AI and related technologies, demand for high-speed wireline connectivity is expected only to accelerate. The time has come to ensure that State and local barriers do not inhibit this progress. We therefore urge the Commission to move forward with a regulatory framework under Section 253 that ensures wireline telecommunications deployments are able to move forward without undue interference or delay.

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<sup>48</sup> In a recent *ex parte* filing, Extenet raised a similar concern. It noted that going to court to enforce its Section 253 rights for small cell wireless deployments is a “prolonged” process and urged the Commission to adopt a rapid response mechanism similar to the Rapid Broadband Assessment Team used to resolve pole attachment complaints. See *Ex Parte* Letter from Geoffrey G. Why, Counsel to Extenet, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 25-276, 25-253, and 17-84 (Dec. 5, 2025) (“Extenet suggested that the Commission implement an alternative dispute resolution pathway specific to wireless broadband deployments similar to the Rapid Broadband Assessment Team (“RBAT”) in the wireline pole attachment process.”).

<sup>49</sup> ACA Connects Comments at 31-32.

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