Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF INQUIRY

Adopted: September 30, 2025 **Released: September 30, 2025**

Comment Date: November 17, 2025
Reply Comment Date: December 17, 2025

By the Commission: Chairman Carr, Commissioner Gomez, and Commissioner Trusty issuing separate statements.

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I. INTRODUCTION

1. Today, we advance our Build America Agenda by launching an inquiry into state and local requirements that needlessly constrain the deployment of modern, high-speed wireline infrastructure. In 2018, the Commission took important steps to streamline regulations impacting high-speed deployments,[1] setting the stage for significant capital investments in communications infrastructure. The records in those proceedings indicated that billions of dollars of potential U.S.

[1] *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).

investment in expanding and upgrading networks would be considered over the coming years,[2] including an estimate that wireless providers would invest $275 billion in infrastructure needed to support 5G within seven years.[3] Multiple parties argued that a more streamlined and consistent approach to infrastructure regulation was needed to effectuate and maximize these investments,[4] and recent data indicates that is exactly what the reforms adopted by the Commission in 2018 have accomplished. According to one report, broadband providers invested $94.7 billion in communications infrastructure in the United States in 2023 alone, marking the second highest annual capital expenditure in 22 years.[5] It is thus not surprising that between December 2022 and December 2023, high-speed fiber-to-the-premises connections increased approximately 15%, while residential connections to slower copper services fell by almost 19%.[6] These investment and deployment figures, spurred by the Commission's reforms, reflect an evolution away from older, slower technologies and toward newer, faster, and more versatile services that are quickly becoming essential in every aspect of American life, from IP-based voice services provided over broadband facilities, which now make up more than 75% of retail fixed voice subscriptions,[7] to the advent of even newer technologies, such as artificial intelligence.

[2] *See* Comcast Corporation Comments, WC Docket No. 17-84, WT Docket No. 17-79, at 2 (rec. June 15, 2017) (Comcast 2017 Comments); Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84, WT Docket No. 17-79, at 2 (rec. June 15, 2017) ("Over the coming years, cable operators will consider plans to invest billions of dollars in expanding and upgrading their wireline and wireless networks. The largest cable operators all have announced that they expect to upgrade their wireline networks to include more fiber deployment, including some operators' plans to move to a fiber-to-the-premises service.").

[3] *See* Letter from Scott K. Bergmann, Senior Vice Pres., Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket Nos. 16-421, 17-79, and 15-180, at 1 (rec. Apr. 13, 2017) (citing Accenture Strategy, Smart Cities – How 5G Can Help Municipalities Become Vibrant Smart Cities, https://newsroom.accenture.com/content/1101/files/accenture-5g-municipalities-become-smart-cities.pdf (last visited Sept. 23, 2025)).

[4] *See* Letter from Thomas J. Navin, Counsel for Corning Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1, Attach. A at 2-3 (rec. Sept. 5, 2018) (finding that limiting small cell attachment and application fees could reduce deployment costs by $2.0 billion over five years and lead to an additional $2.4 billion in capital expenditure due to additional neighborhoods moving from being economically unviable to becoming economically viable); Letter from Ronald W. Del Sesto, Jr., Attorney for Uniti Fiber to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at 3 (rec. Mar. 1, 2018) (stating that to realize the goals and benefits of projected investments in 5G, "it is essential to streamline applicable regulations"); Comments of Crown Castle Corp., WT Docket No. 17-79, at v (rec. June 15, 2017) ("Crown Castle has already made substantial investments to develop state-of-the-art networks and is prepared to continue to make the investment necessary to deliver the promise of 5G and beyond. These efforts will spur innovation and unleash new technologies that will serve as economic drivers for decades to come. Without a more consistent regulatory framework, however, there is a risk that much of the United States will be left behind."); Comcast 2017 Comments at 1-2 (stating that consideration of future investments would be "buoyed by the prospect of a light regulatory touch from policymakers").

[5] USTelecom—The Broadband Association, *2023 Broadband Capex Report*, https://ustelecom.org/research/2023-ustelecom-broadband-capex-report/ (last visited Sept. 23, 2025).

[6] *See Communications Market Place Report*, GN Docket No. 24-119, FCC 24-136, at 11, paras. 16-17 (2024) (*2024 Communications Marketplace Report*).

[7] *See id.* at 118, para. 156; FCC, Office of Economics and Analytics, Voice Telephone Services: Status as of June 30, 2024 at 2-3 (May 2025), https://docs.fcc.gov/public/attachments/DOC-411462A1.pdf. In 2016, interconnected VoIP accounted for under half of all retail voice service connections. *See* FCC, Industry Analysis and Technology Division, Voice Telephone Services: Status as of June 30, 2016 at 2-3 (2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf.

2. Unfortunately, while providers have indicated a willingness to expand their facilities to reach additional consumers,[8] and the federal government recently made an unprecedented public investment in deploying communications infrastructure to communities throughout the nation,[9] we continue to be advised that deployment projects are getting stuck in red tape on the state and local level. To build out to consumers, providers must obtain authorizations from state and local governments to deploy facilities in the public rights-of-way and use them to provide service.[10] This can be an onerous task, often requiring applications to be filed with numerous jurisdictions, and resulting in delays and increased costs that impede deployments, disincentivize private investment in modern networks, and potentially waste taxpayer funded federal support.[11] The Commission has proactively exercised its authority to address these impediments in the context of Small Wireless Facilities,[12] establishing clear standards for when state and local fees imposed on Small Wireless Facility siting applications effectively prohibit the provision of service in violation of section 253 of the Communications Act[13] and deadlines

[8] As of 2022, over 24 million Americans lacked access to fixed broadband services at download speeds of 100 megabits per second and upload speeds of 20 megabits per second. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270, 2024 Section 706 Report, FCC 24-27, at 32, para. 61 (2024). As of 2023, 28.9% of U.S. households have access to only one provider of service at those speeds. *2024 Communications Marketplace Report,* FCC 24-136, at 38-39, para. 44, Fig. II.A.27.

[9] In 2021, Congress appropriated $65 billion in funding for the deployment of communications infrastructure throughout the country. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1701 et seq.) (Infrastructure Act). The largest component of this investment is $42.45 billion in funding for the Broadband Equity, Access, and Deployment (BEAD) Program, which provides support for infrastructure deployment and adoption programs in all 50 states, Washington D.C., Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. *See* NTIA, Broadband Equity Access and Deployment Program, https://broadbandusa.ntia.gov/funding-programs/broadband-equity-access-and-deployment-bead-program (last visited Sept. 24, 2025). The Commission's four universal service programs also disburse billions in support each year for the costs of communications deployments and services. Universal Service Administrative Company, 2024 Annual Report at 4 (2025), https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2024/2024_USAC_Annual_Report.pdf (last visited Sept. 24, 2025).

[10] *See* NTIA, *Local Permitting Importance, Challenges, and Strategies*, https://broadbandusa.ntia.gov/sites/default/files/2025-05/Local_Permitting_Importance_Challenges_and_Strategies.pdf (last visited Sept. 24, 2025).

[11] *See* ACA Connects – America's Communications Association Comments, GN Docket No. 24-119, at 15 (rec. June 6, 2024) (ACA Connects GN Docket No. 24-119 Comments) ("[A]ccess to public rights-of-way remains one of the most significant impediments to broadband deployment."); Letter from Michael R. Romano, Executive Vice President, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at 1 (rec. July 2, 2025) (NTCA July 2, 2025 *Ex Parte*) (stating that the challenges of building, upgrading, and maintaining networks in rural areas "are exacerbated by time-consuming and expensive permitting processes at the local, state, and federal levels that inhibit their ability to serve their rural communities"); INCOMPAS Comments, GN Docket No. 25-133, at 7 (rec. Apr. 14, 2025) (INCOMPAS GN Docket No. 25-133 Comments) (stating that "INCOMPAS' members consistently face delays in permitting and gaining access to the public rights-of-way"); Letter from Thomas Jones, Counsel, Zayo Group, LLC and Crown Castle Fiber, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, Attach. at 1 (rec. Oct. 21, 2020) (Zayo/Crown Castle/Lumen Oct. 21, 2020 *Ex Parte*) (stating that providers "that seek to deploy fiber facilities in public rights of way are frequently subject to extremely high compensation requirements imposed by state and local governments," that the high fees "cause service providers to delay, scale back, or modify fiber deployment," and "because funds available for investment in fiber deployment are finite, money spent on high State and Local Fees is unavailable for fiber deployment in other areas").

[12] For the purposes of this Notice of Inquiry, the term "Small Wireless Facilities" has the same meaning as the definition in section 1.6002(l) of the Commission's rules. 47 CFR § 1.6002(l).

by which state and local governments must act on such applications under section 332 of the Act.[14] For wireline telecommunications deployments and services, however, securing the authorizations needed to access state and local public rights-of-way remains a top concern for providers trying to connect American consumers.[15] Some providers have urged the Commission to take action under section 253 of the Act to limit processing times and fees for state and local authorizations in the wireline context, as it has done for Small Wireless Facilities.[16]

3. We thus launch this inquiry to collect data and examine: (1) the delays that providers encounter when seeking authorizations from state and local governments to access and use public rights-of-way to provide wireline telecommunications services; (2) the fees imposed on providers when seeking such authorizations; (3) the in-kind compensation requirements imposed on providers by state and local governments as a condition of accessing and using public rights-of-way; and (4) whether these fees, delays, and conditions prohibit or have the effect of prohibiting the provision of wireline telecommunications services in violation of section 253. We also invite broad comment on other types of state and local requirements that have a prohibitive effect on wireline telecommunications deployments and services within the meaning of section 253, including the identification of any specific state or local statutes, regulations, or legal requirements that the Commission could consider preempting should we opt to initiate a *sua sponte* preemption proceeding under section 253(d).[17]

II. BACKGROUND

4. The Telecommunications Act of 1996 was adopted "to promote competition and reduce

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[13] *See* 47 U.S.C. § 253; *Small Cell Order*, 33 FCC Rcd at 9110-30, paras. 43-80.

[14] *See* 47 U.S.C. § 332; *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (defining timeframes for state and local action on wireless facilities siting requests); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies et al*., WT Docket Nos. 13- 238 and 13-32, WT Docket No. 13-32, Report and Order, 29 FCC Rcd 12865 (2014); *Small Cell Order*, 33 FCC Rcd at 9142-63, paras. 104-47.

[15] In 2023, 283 small and mid-sized network operators installing fiber participated in a study produced for the Fiber Broadband Association. Fiber Broadband Association, *Fiber Installation Constraints Study*, (Feb. 27, 2024), https://fiberbroadband.org/wp-content/uploads/2024/03/Fiber-Installation-Constraint-Study.pdf. The providers were asked to comment on their current concerns and the challenges they were facing. Obtaining permits from governments to complete installations was among the top three concerns expressed. *Id*.

[16] *See* NTCA July 2, 2025 *Ex Parte* at 3 (urging the Commission to "consider how the 2018 limits on fees that state and local governments can assess in the context of wireless deployments can be extended and applied to wired network deployments in state and local [rights-of-way]" and "extend 'shot clocks' and limits on 'tolling' any timelines included therein as adopted in 2018 to all network facilities"); Letter from Thomas Jones, Counsel, Zayo Group, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at 1 (rec. Oct. 31, 2019) (Zayo Oct. 31, 2019 *Ex Parte*) (stating that "many local and state governments condition Zayo's access to public rights-of-way for the purpose of deploying wireline facilities on the payment of above-cost and discriminatory access fees as well as on compliance with ambiguous in-kind contribution requirements" and that the Commission should clarify that the declarations in the *Small Cell Order* apply "equally to wireline facilities"); Letter from Craig J. Brown, Assistant General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-83, WT Docket Nos. 17-79, 19-126, and 10-90, WC Docket No. 17-84, at 5 (rec. Oct. 30, 2019) ("[E]xercise of the Commission's Section 253 authority is necessary to effectuate the Commission's goals of advancing both wireline and wireless service expansion."). *But see* Anne Arundel County, MD et. al Reply, GN Docket No. 25-133, at 10 (rec. Apr. 29, 2025) (Local Government GN 25-133 Reply) ("Before rushing to extend these regulations to fiber, based on assumptions about the efficacy of its existing rules, the Commission should solicit and thoroughly review additional evidence to determine whether the industry came anywhere near the massive buildout projections it used to justify limiting local governments' power, and the reasons why.").

[17] 47 U.S.C. § 253(d).

regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[18] To do so, Congress sought to end local telephone monopolies and develop a national telecommunications policy that strongly favors local market competition.[19] Section 253(a) of the Act effectuates this objective by specifying 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."[20] This provision establishes "a rule of preemption" that "articulates a reasonably broad limitation on state and local governments' authority to regulate telecommunications providers"[21] and prevents them "from standing in the way of Congress's new free market vision."[22]

5. A state or local statute, regulation, or legal requirement that violates section 253(a) will be deemed lawful only if it qualifies for one of the exceptions contained in sections 253(b) and (c) of the Act. Section 253(b) makes clear that statutes, regulations, and legal requirements are not preempted if they are competitively neutral and, consistent with section 254 of the Act, "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of

[18] Telecommunications Act of 1996 (the Act), Pub. L. No. 104-104 pmbl., 110 Stat. 56, 56; *see also* S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Conference Report) (describing the purpose of the Telecommunications Act of 1996 as "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . .").

[19] *See Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 638 (2002) (stating that the 1996 Act "created a new telecommunications regime designed to foster competition in local telephone markets"); *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 371 (1999) (stating that "[u]ntil the 1990's, local phone service was thought to be a natural monopoly" but then "[t]echnological advances . . . made competition among multiple providers of local service seem possible, and Congress recently ended the longstanding regime of state-sanctioned monopolies"); *Verizon Commc'ns, Inc. v. FCC*, 535 U.S. 467, 476 (2002) (stating that provisions of the Act were "intended to eliminate the monopolies enjoyed by the inheritors of AT&T's local franchises; this objective was considered both an end in itself and an important step toward the Act's other goals of boosting competition in broader markets and revising the mandate to provide universal telephone service").

[20] 47 U.S.C. § 253(a).

[21] *Level 3 Commc'ns, L.L.C. v. City of St. Louis, Mo.*, 477 F.3d 528, 531-32 (8th Cir. 2007). For ease of reference, we use the term "provider" in this Notice of Inquiry to refer to entities that provide telecommunications services directly to consumers, as well as those that deploy infrastructure that may be used to provide telecommunications services. *See Crown Castle Fiber, L.L.C. v. City of Pasadena, Texas*, 76 F.4th 425, 436 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 820 (2024) ("It is evident that Crown Castle sells its services to the public by establishing the infrastructure to enable T-Mobile to provide wireless service and to transmit T-Mobile's voice and data signals across its network. T-Mobile is undoubtedly a common carrier, and Crown Castle, through its network and infrastructure contract, fits neatly within the protective umbrella of § 253(a)."); *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (*Public Utility Comm'n of Texas*) (finding that "section 253(a) bars state or local requirements that restrict the means or facilities through which a party is permitted to provide service"); *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket No. 98-1, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21705, para. 14 (1999) (*Minnesota Order*) (applying section 253 to a state's agreement with an infrastructure developer because the operative inquiry is whether the state's action has an effect on the provision of telecommunications services); *Moratoria Order*, 33 FCC Rcd at 7777, para. 145 n.531.

[22] *Cablevision of Bos., Inc. v. Pub. Improvement Comm'n of City of Bos.*, 184 F.3d 88, 98 (1st Cir. 1999); *see also Sprint Telephony PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 576 (9th Cir. 2008) (stating that section 253(a) "preempts state and local regulations that maintain the monopoly status of a telecommunications service provider").

telecommunications services, and safeguard the rights of consumers."[23] Section 253(c) makes clear that nothing in section 253 "affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[24] Section 253(d) requires the Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that violate section 253(a) or (b) to "the extent necessary to correct such violation or inconsistency."[25]

6. In 2018, the Commission released two orders targeting unlawful state and local regulatory barriers to the provision of telecommunications services under section 253. In August 2018, the Commission released the *Moratoria Order*, which declared that state or local statutes, regulations, or other written legal requirements that expressly prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities (i.e., express moratoria) are unlawful under section 253.[26] The Commission also determined that *de facto* moratoria that are not formally codified by state or local governments as outright prohibitions, but nonetheless prohibit or effectively prohibit the provision of telecommunications services through indefinite or unreasonable delays in the processing of applications or issuance of permits, are unlawful under section 253.[27]

7. In September 2018, the Commission released the *Small Cell Order*, which, in pertinent part: (1) reaffirmed that state or local statutes, regulations, and legal requirements have the effect of prohibiting the provision of telecommunications services in violation of section 253(a) when they materially inhibit or limit the ability of any competitor to compete in a fair and balanced legal and regulatory environment;[28] (2) extended that interpretation of "have the effect of prohibiting" to section 332(c)(7)(B)(i)(II) of the Act, which precludes state and local regulations for the placement, construction, and modification of personal wireless facilities that prohibit or have the effect of

[23] 47 U.S.C. §§ 253(b), 254.

[24] 47 U.S.C. § 253(c).

[25] *Id.* § 253(d). The Commission has exercised the authority in section 253(d) to preempt specific state and local statutes, regulations, and legal requirements that, for example, granted exclusive franchises and licenses to provide telecommunications services; imposed build-out obligations on certain providers that restricted the means or facilities through which a provider was permitted to provide service and imposed financial burdens that effectively prohibited service; protected rural incumbents from competition; and imposed duplicative fees for use of public rights-of-way. *See Classic Tel., Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13091-104, paras. 17-42 (1996); *Public Utility Comm'n of Texas*, 13 FCC Rcd at 3466, para. 13; *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15656-58, paras. 38, 42 (1997), *aff'd sub nom. RT Commc'ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000); *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5887-88, paras. 25-26 (2017); *see also Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC*, WC Docket No. 20-46, Declaratory Ruling, 35 FCC Rcd 12811, 12821-26, paras. 25-26, 28, 31, 36 (WCB 2020) (*Bluebird Order*).

[26] *Moratoria Order*, 33 FCC Rcd at 7777-80, 7782, paras. 145-48, 153.

[27] *See id.* at 7780-82, paras. 149-53. We address *de facto* moratoria in greater detail in Section III.A, below.

[28] *See Small Cell Order*, 33 FCC Rcd at 9102, 9104-05, paras. 35, 37.

prohibiting the provision of personal wireless services;[29] and (3) established a standard for when fees charged by state and local governments to access rights-of-way or government-owned property in rights-of-way for Small Wireless Facility deployments have the effect of prohibiting the provision of service in violation of section 253(a) and section 332(c)(7)(B)(i)(II).[30] The Commission also updated the shot clocks that were originally established in 2009 to implement language in section 332 requiring state and local governments to act on requests for authorization to "place, construct, or modify personal wireless service facilities within a reasonable period of time."[31]

8. In August 2020, the U.S. Court of Appeals for the Ninth Circuit upheld the actions taken by the Commission in the *Moratoria Order* and the *Small Cell Order* as described above.[32]

III. DISCUSSION

9. Providers continue to report that access to state and local public rights-of-way is a significant impediment to their ability to deploy facilities in new markets and to upgrade and expand their services, particularly state and local requirements that impose excessive delays and fees that derail both private and public investments in infrastructure.[33] In this Notice of Inquiry, we commence an examination into whether the Commission should take additional steps to address these impediments in the wireline context, with a particular focus on whether the Commission should construe section 253 to require state and local governments to process applications to access and use public rights-of-way in a timely manner and limit their fees and other demands for compensation as necessary to avoid prohibitive financial burdens.

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[29] *See id.* at 9103, para. 36; 47 U.S.C. § 332(c)(7)(B)(i)(II) ("The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.").

[30] *See Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50.

[31] *Id.* at 9142-47, paras. 105-12; 47 U.S.C. § 332(c)(7)(B)(ii). The Commission's shot clocks establish a presumptively "reasonable period of time" for the government to act, after which state or local inaction on wireless infrastructure siting applications constitute a presumptive "failure to act" within the meaning of section 332. *Small Cell Order*, 33 FCC Rcd at 9094, para. 19. In the *Small Cell Order*, the Commission expanded the shot clocks to apply to all permitting decisions and updated them to allow 60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. *Id*. at 9142-45, paras. 105-08. State and local governments retain the ability to rebut a presumed statutory violation by showing that the authorization request legitimately required more processing time. *Id*. at 9145, para. 109. The Commission also determined that a failure to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods established by the shot clocks constitutes a presumptive prohibition of the provision of personal wireless services within the meaning of section 332(c)(7)(B)(i)(II) of the Act. *Id*. at 9148-49, paras. 116-19.

[32] *City of Portland*, 969 F.3d at 1035, 1038-39, 1043-45, 1048-49, 1053. In the *Small Cell Order*, the Commission determined that aesthetic requirements applicable to Small Wireless Facilities do not violate section 253 if they are: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance. *Small Cell Order*, 33 FCC Rcd at 9130-32, paras. 84-88. In *City of Portland*, the Ninth Circuit vacated the latter two criteria. 969 F.3d at 1041-43, 1053.

[33] NTCA July 2, 2025 *Ex Parte* at 1-3; Letter from Max Staloff, Vice President of Regulatory Affairs, ACA Connects – America's Communications Association, WC Docket No. 17-84, at 2 (rec. June 27, 2025) (ACA Connects June 27, 2025 *Ex Parte*) ("[V]irtually every Member has a permitting or ROW 'horror story.' Sometimes the government review process is endless. Other times the cost is excessive. In any event, the result is the same: deployment is inhibited, if not stopped altogether."); Letter from Diana Eisner, Vice President, Regulatory & Legal Affairs, USTelecom—The Broadband Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (rec. July 31, 2025) (USTelecom July 31, 2025 *Ex Parte*) (stating that some state and local permitting requirements "add delays and costs that too often cause communities to lose out on broadband deployment that would otherwise occur"); *2024 Communications Marketplace Report*, FCC 24-136, at 251, para. 410 ("Commenters argue that difficulty in accessing . . . government rights of way remains a roadblock to network deployment.").

A. Authorization Delays that Violate Section 253

10. We seek comment on whether state and local statutes, regulations, or other legal requirements (e.g., required processes and procedures) create excessive delays when providers request authorizations to access or use public rights-of-way and whether those delays prohibit or effectively prohibit the provision of wireline telecommunications services. Providers have indicated that they encounter such prohibitive requirements when they engage with state and local governments to obtain franchises, license agreements, permits, and/or other authorizations to access and use public rights-of-way, and that the excessive delays impair their ability to complete deployments, expand their facilities and service offerings, and invest in new infrastructure builds.[34] While the Commission has already determined that most *de facto* moratoria—e.g., blanket refusals to process applications, refusals to issue permits for a category of structures, frequent and lengthy delays of months or even years in issuing permits and processing applications[35]—violate section 253,[36] it has not yet addressed the point at which delays caused by state and local requirements that fall short of moratoria effectively prohibit the provision of wireline telecommunications services.[37] We thus seek comment on that question here, and examine whether the Commission should act to establish time limits for state and local governments to negotiate, review, process, and issue right-of-way agreements and permits needed to access and use public rights-of-way in the wireline context.

11. *Authorization Types and Review Process*. We start by seeking comment on the specific authorizations that providers are required to obtain from state and local governments to deploy wireline telecommunications infrastructure and provide service, the forms that the authorizations take (e.g., franchises, licenses, permits), the specific steps providers are required to take to obtain each type of authorization, and how long each step takes.

12. When do state and/or local governments require providers to execute right-of-way agreements, licenses, franchises, or other contracts (collectively, right-of-way agreements) to use public rights-of-way to provide wireline telecommunications services?[38] Does it depend on the type of access or use of the public rights-of-way? Does it depend on the type of service or technology involved?[39] Are the agreements with states, localities, or both? What do the agreements authorize providers to do? Do the agreements have a typical term (e.g., 1, 5, 10, or 20 years)? Are there jurisdictions that do not require

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[34] *See* NTCA July 2, 2025 *Ex Parte* at 2 ("[T]he time to obtain permits from state and local governments for [right-of-way] access has steadily increased over time for most NTCA members."); USTelecom July 31, 2025 *Ex Parte* at 1-2; INCOMPAS GN Docket No. 25-133 Comments at 7-8 (stating "competitive providers face barriers when it comes to the lack of streamlined permitting processes and timelines for fiber"); Zayo Group, LLC Reply, WC Docket 17-84, WT Docket No. 17-79, at 2 (rec. July 17, 2017) (Zayo 2017 Reply) (stating that some localities "stifle deployment by imposing unworkable timelines" and that "[s]ometimes Zayo must endure lengthy processes to secure local authorization for access to [rights-of-way] that may include months or even years of licensing and permitting, project review, and negotiations").

[35] *See Moratoria Order*, 33 FCC Rcd at 7780-81, para. 149.

[36] *See id.* at 7780-82, paras. 149-53.

[37] In 2017, the Commission sought comment on whether it should take action to eliminate excessive delays in the negotiation and processing of rights-of-way agreements and permitting for telecommunications services separately from addressing moratoria. *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266, 3297-98, paras. 102-103 (2017) (*Wireline Infrastructure NOI*).

[38] Cable franchises regulated pursuant to Title VI of the Act are not the focus of this Notice of Inquiry.

[39] *See* USTelecom July 31, 2025 *Ex Parte* at 3 ("[M]any localities are increasingly recognizing the decline in traditional telecom revenues and, as a result, are requiring new telecommunications franchise agreements . . . In some cases, where a provider may already hold a franchise agreement, localities are delaying the deployment of new fiber broadband infrastructure until a franchise agreement is negotiated.").

right-of-way agreements and allow wireline telecommunications providers to just apply for permits to access and use public rights-of-way? If so, why do some jurisdictions require right-of-way agreements while others do not? What subjects do right-of-way agreements address that cannot be addressed through permits? Are there any existing studies or surveys that detail right-of-way agreement requirements on a state-by-state or more granular basis and that can be provided to the Commission?

13. What are the specific steps required to obtain a right-of-way agreement? Do states and localities provide information advising providers on how to commence the negotiation of an agreement, including contact information and any initial procedural steps? Are providers required to submit an application or other materials to commence the negotiation of a right-of-way agreement? If so, to what entity are the applications submitted and what are the content requirements? Do the government representatives that receive the application from the provider determine whether the application is complete? Do those same representatives negotiate the terms of the right-of-way agreement? Do states and localities typically use form agreements or are right-of-way agreements individually drafted?

14. What happens once a provider's application for a right-of-way agreement has been deemed complete and the terms of the right-of-way agreement have been reached? Can the representatives that negotiated the right-of-way agreement approve it, or must the right-of-way agreement be submitted for further rounds of government review? If the latter, what are those further levels of review? How common is it for right-of-way agreements to be sent to additional committees for review before they can be granted? How common is it for right-of-way agreements to be sent to a council or board for hearings? When committee meetings or hearings are required, are providers obligated to attend in-person to answer questions and/or provide testimony? Are providers required to publish public notices or send out mailers in advance of any meetings or hearings concerning right-of-way agreements? Are providers required to provide information beyond what is covered by the right-of-way application at the meetings and hearings? Are any required meetings and hearings scheduled on a timely basis? What determines when a right-of-way agreement will be put on the agenda for any required meetings or hearings? Are agenda deadlines established by state or local statutes, regulations, or legal requirements, or are agendas set at the discretion of the government body? How often are right-of-way agreements scheduled for a meeting or hearing, only to be bumped to a later meeting or hearing based on factors beyond the provider's control? How frequently do meetings and hearings where right-of-way agreements are considered occur, i.e., how long will a provider have to wait if a right-of-way agreement is not placed on a particular agenda or is bumped from an agenda? How often must right-of-way agreements be approved by the vote of a council or a board? What happens if a provider makes a change to its application or a draft right-of-way agreement at the request of government representatives while the agreement is under review? Is the provider required to start the entire review process all over again from the beginning or can the review process continue moving forward from the point where the requested change was made? What happens if, after the right-of-way agreement is executed, the provider determines that it wants to make a change in the way that it deploys service (e.g., a new construction method, a technology upgrade)? Do state and local governments allow providers to address that through the permitting process or a modification process for right-of-way agreements, or are providers required to go back to square one and negotiate an entirely new agreement?

15. How long does each step of obtaining a right-of-way agreement—from application submission to approval and execution—typically take to complete, and what is the overall amount of time required to obtain a fully executed and enforceable agreement?[40] We ask that commenters submit specific

[40] For instance, Lightower Fiber Networks said that it takes in excess of six months to obtain a local franchise for the deployment of telecommunications infrastructure. Lightower Fiber Networks Comments, WC Docket No. 17-84, at 20 (rec. June 15, 2017) (Lightower Fiber Networks 2017 Comments) ("In Lightower's experience, securing a local franchise for the deployment of telecommunications infrastructure often takes in excess of six months from the date of tendering an application for the same to the applicable governmental entity."). USTelecom states that approval of a franchise can take more than a year "in some parts of the South and Pacific Northwest." USTelecom July 31, 2025 (continued….)

examples of how long it has taken to obtain right-of-way agreements and explain why the specified length of time was required to complete the process. We ask that commenters submit examples of processes that providers have deemed both reasonable and unreasonable so that we may compare them. We also ask that commenters identify instances in which the process has been delayed, the length of the delay, and the source or cause of the delay (e.g., extensive mandated timeline, redundant or irrelevant submission requirements, submission of the agreement to a government body for a vote, staffing issues, shifting or unpredictable process requirements).[41]

16. What different types of permits are required by state and local statutes, regulations, and legal requirements to access and use public rights-of-way to provide wireline telecommunications services (e.g., excavation permits, zoning variance applications, electrical permits, parking permits, road closure permits)? Do they vary based on the type of provider, the technology used, whether a particular stretch of a deployment is aerial versus underground, or the topography in the work zone? Are there different or additional permits needed if the provider seeks to attach facilities to government-owned property in the public rights-of-way (e.g., poles owned or controlled by municipalities)? In general, which state and local agencies issue the needed permits? Are providers required to obtain multiple permits from multiple agencies within a single jurisdiction in order to obtain approval for a single project or a single segment of a project? Does it vary by the jurisdictions and/or the types of right-of-way involved in the project? For instance, if a project involves the deployment of facilities along state roads, do providers always work with the state's Department of Transportation (DOT) to obtain permits, or are they required to work with other government bodies instead of or in addition to the state DOT? Do state DOTs typically publish a manual containing a single set of requirements that providers may use to obtain permits for state rights-of-way located anywhere in the state? Or, are providers required to comply with the multiple permitting requirements of the localities traversed by the state right-of-way, in addition to or instead of state-level requirements? What information and supporting documents are providers typically required to submit with permit applications? Do application content requirements vary significantly between jurisdictions? Do permits expire within unworkable time periods, thereby requiring providers to resubmit documentation? Are there any existing studies or surveys that detail permitting requirements on a state-by-state or more granular basis and that can be provided to the Commission?

17. What are the specific steps required to obtain the different types of permits that states and localities require, and how long does it take to complete each step? What is the overall amount of time that it typically takes states and localities to review and act on permit applications?[42] We ask that commenters submit specific examples of how long it has taken states and localities to act on permit requests after providers have submitted their applications. We ask that commenters submit examples of processes and requirements that providers have deemed both reasonable and unreasonable so that we may compare them and gain a better understanding of how much time states and localities actually need to

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Ex Parte at 3. Zayo has said that it can take two years from initial contact with a locality to obtain franchises or licenses for a project. Zayo Group, LLC Reply, WC Docket 17-84, at 4 (rec. July 17, 2017) (Zayo 2017 Reply).

[41] We seek comment on the prohibitive effect of delays below.

[42] For example, ACA Connects states that its members "report that they generally receive permits to access [rights-of-way] and begin deploying facilities within 30-45 days of submission of a complete application," but the process can sometimes take many months. ACA Connects June 27, 2025 *Ex Parte* at 2. The Competitive Fiber Providers, a commenter group comprised of Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc., have stated that in the fourth quarter of 2013, Southern Light was able to obtain permits from the Alabama Department of Transportation on average within 31 days, but in 2017, obtaining a permit took more than 50 days. Conterra Broadband Services, Southern Light, LLC and Uniti Group Inc. Comments, WC Docket No. 17-84, WT Docket No. 17-79, at 8 (rec. June 15, 2017) (Competitive Fiber Providers 2017 Comments). Comcast has stated that it has been able to obtain permits from cities such as San Jose and Sacramento with an average wait time of less than 30 days, but the processes of other jurisdictions have resulted in average delays of two months or more, and some have taken six to ten months. Comcast 2017 Comments at 7.

review and process permit applications. We also ask that commenters identify specific sources or causes of delays in the permit review and approval process (e.g., onerous or irrelevant application requirements, such as requiring hard copy filings of faxes, redundant processing steps, excessive review periods),[43] and the length of the delays that providers have experienced before approvals have issued. We also seek comment on whether process requirements for permits are transparent or shifting and unpredictable.[44]

18. *Effective Prohibition Under Section 253(a)*. We seek comment on when delays in processing requests for authorizations to access and use public rights-of-way prohibit or have the effect of prohibiting the provision of wireline telecommunications services within the meaning of section 253(a). As noted above, the Commission has already found that inaction or a refusal to act by a state or local government that rises to the level of a *de facto* moratorium presumptively violates section 253(a).[45] In so doing, the Commission distinguished *de facto* moratoria that it found "inherently violate section 253(a)" from "state and local actions that simply entail some delay in deployment,"[46] and stated that "[s]ituations cross the line into *de facto* moratoria where the delay continues for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies."[47] The Commission described express and *de facto* moratoria as "some of the most extreme examples of state or local statutes, regulations, or legal requirements that violate section 253(a)," and found that the broad language of section 253 invalidates all state and local requirements that prohibit or have the effect of prohibiting telecommunications service, irrespective of whether they rise to the level of moratoria.[48] Thus, the Commission's conclusion that moratoria violate section 253 did not "reach the limits of what actions violate section 253(a)."[49]

19. Consistent with these findings, we now seek comment on when excessive delays in the issuance of right-of-way agreements and permits effectively prohibit the provision of wireline telecommunications services in violation of section 253(a), even if the delays do not rise to the "extreme"

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[43] *See* USTelecom July 31, 2025 *Ex Parte* at 2 (describing a five month process employed by one mid-Atlantic city, irrespective of project type, that includes a neighborhood mailing requirement that must occur during a particular eight-day window, a commission workshop, a pre-planning commission meeting, a public commission hearing, and two resubmission time periods if changes are required by the city).

[44] *See* ACA Connects June 27, 2025 *Ex Parte* at 2 (stating that "localities may change their access requirements after a provider has submitted permits or, even worse, after it has received approval and put shovels in the ground" and noting that at least one of its members had a project halted "because its permit was revoked due to changed deployment standards"); NTCA July 2, 2025 *Ex Parte* at 2 ("NTCA recognizes that many local and state governments may be short staffed, yet experience has shown that many of these delays are caused by a lack of standardized process and/or timeline for reviewing permits."); USTelecom July 31, 2025 *Ex Parte* at 1 ("[O]ur members have found that many states and localities do not provide and/or follow reasonable and transparent approval timelines.").

[45] *Moratoria Order*, 33 FCC Rcd at 7780-87, paras. 149-60 (concluding that *de facto* moratoria that violate section 253(a) are generally not saved by sections 253(b) or (c)). The Commission found that *de facto moratoria* prohibit or effectively prohibit an entity from providing telecommunications service if the provider cannot obtain approval or authorization to deploy from the state or local government due to inaction or refusals to act, even if there is no statute, regulation, or other express legal requirement restricting the acceptance, processing, or grant of applications or authorizations. *Id*. at 7782, para. 151.

[46] *Id*.at 7781, para. 150.

[47] *Id.* The Commission explained that "if applicants cannot reasonably foresee when approval will be granted because of indefinite or unreasonable delay, then an impermissible *de facto* moratorium is in place." *Id*. at 7782, para. 151.

[48] *Moratoria Order*, 33 FCC Rcd at 7781, para. 150 n.556.

[49] *Id.*

level of *de facto* moratoria.[50] We seek comment above on how long it typically takes for providers to obtain right-of-way agreements and permits required to access and use public rights-of-way. How long should it take and what are the specific prohibitive effects if those time frames are exceeded? Do the prohibitive effects include impeding a provider's ability to complete a current deployment, initiate future deployments, or to improve or expand its facilities and service offerings?[51] Can such delays significantly raise the cost of deployments by requiring contractors to suspend construction within a locality? Can commenters identify specific instances of providers abandoning wireline deployment projects completely, or significantly reducing them in scope, because of excessive delays in obtaining required authorizations from state and local governments?[52] By delaying deployment and raising the costs of deployment, can excessive delays in the grant of a right-of-way agreement or permit affect investment in the deployment of wireline telecommunications facilities on a local, regional, and/or national scale? For instance, the Competitive Fiber Providers have asserted that:

> Competitive carriers no longer build fiber networks on speculative business plans. To the contrary they are intently focused . . . on the economics of any new broadband project, particularly the period of time before the carrier can be expected to recoup its initial investment (i.e., the payback period). Their calculation of this payback period on the initial capital investment when evaluating whether to deploy fiber for that first customer in a new location or in a new market depends almost entirely on their ability to extend the planned network to serve other customers within a reasonable distance from the fiber within a certain timeframe and for a predictable cost . . . Lengthy permitting disputes and other unnecessary regulatory hurdles can delay and sink planned broadband infrastructure deployment when the uncertainty jeopardizes the [competitive fiber provider's] ability to achieve a return on its investment . . . Streamlining the local right-of-way approval process by removing excessive costs and delays, and making the process more uniform and predictable will help remove that uncertainty and stimulate the deployment of fiber

[50] The Commission has stated that "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." *Classic Tel., Inc.*, *Petition for Emergency Relief, Sanctions and Investigation*, CCBPol 96-10, Memorandum Opinion and Order, 12 FCC Rcd 15619, 15635, para. 28 (1997) ("[R]egulatory 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."). Some courts have also found that excessive delays in processing a franchise agreement can constitute an effective prohibition under section 253. For instance, the Second Circuit found that "the extensive delays in processing TCG's request for a franchise have prohibited TCG from providing service for the duration of the delays." *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (*City of White Plains*). In that case, the delay "spann[ed] over seven years since TCG's initial request in 1992, one [and] a half years since TCG's first request after the promulgation of the Ordinance [at issue in the case] and more than half a year since TCG's re-application in February 1999." *TCG New York, Inc. v. City of White Plains, N.Y.*, 125 F. Supp. 2d 81, 89 (S.D.N.Y. 2000), *aff'd in part, rev'd in part sub nom. City of White Plains*.

[51] *See* NTCA July 2, 2025 *Ex Parte* at 2 ("For NTCA members operating in areas of the country with weather-shortened construction seasons, these delays in processing permits can push much needed construction and maintenance into the next year. The delays, coupled with the uncertainty that these processes create, also impedes providers' ability to retain construction crews (typically outside contractors)."); USTelecom July 31, 2025 *Ex Parte* at 1 (stating that "[o]ne small provider in the South Central U.S. halted its deployment plans for years because of difficulty working with city permitting agencies").

[52] *See* Letter from Mike Lynch, Legislative & Regulatory Affairs Director, National Association of Telecommunications Officers and Advisors, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (rec. July 10, 2025) (urging the Commission to require providers to include the names of the jurisdictions in their filings and to ignore filings that fail to do so).

networks in areas where the risk right now is not worth the reward.[53]

20. Do other commenters agree? What are the specific financial considerations of a wireline telecommunications deployment that are affected by excessive delays in issuing authorizations for access and use of public rights-of-way? Stated differently, what is the specific economic argument for why excessive delays in issuing authorizations—on their own—have a prohibitive effect on wireline deployments? Can commenters provide estimates of recent deployment costs that increased due to authorization delays? What is the cost per day of delay imposed on a provider? What is the effect of the present discounted value of an investment project being lowered due to excessive delays? How do wireline telecommunications providers determine the threshold at which regulatory costs and delays render the provision of telecommunications services to a particular community uneconomical and, therefore, prohibitive? Do state and local regulations affect wireline telecommunications service providers' access to and cost of capital? Do delays have a uniquely harmful effect on wireline deployments as opposed to other types of deployments? Are these effects necessarily most apparent in remote and rural areas? Do delays impact different types of service providers in different ways?

21. Is there anything about how wireline deployments are being planned and implemented in 2025 that renders excessive delays in the issuance of authorizations a more severe impediment today than in past years? For instance, are there large-scale projects spurred by funding made available through the Commission's universal service programs, the Infrastructure Investment and Jobs Act, and/or other federal and state programs that could be significantly impaired by delays caused by the requirements of localities covered by the projects?[54]

22. We note that 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,"[55] and that section 253(d) directs the Commission, after notice and comment, to preempt a "statute, regulation, or legal requirement" that violates section 253(a) or (b) "to the extent necessary to correct such violation . . . ."[56] Are the excessive delays identified by commenters contained in state or local statutes, regulations, or legal requirements (e.g., mandated procedures or processes)?[57] Do state and local statutes, regulations, or legal requirements

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[53] Competitive Fiber Providers 2017 Comments at 6-7.

[54] *See* INCOMPAS GN Docket No. 25-133 Comments at 7-8 ("[W]ith new federal infrastructure funding being allocated to state and local governments, it is necessary to have guidelines in place that enable faster application/permit processing that will allow the deployment of wired and wireless broadband infrastructure more quickly."); USTelecom July 31, 2025 *Ex Parte* at 1 (stating that it took several months for a provider to obtain a single permit approval from the Oklahoma Highway Department for three miles of construction in a right-of-way where a highway has not yet been constructed, and while the provider expects to complete the project by the October 2025 deadline required by the American Rescue Plan Act grant that is funding it, "the permitting delay associated with a highway that does not even exist will increase deployment costs—specifically, engineering costs and placement costs that were not accounted for in the provider's funding application.").

[55] 47 U.S.C. § 253(a).

[56] *Id.* § 253(d).

[57] The Commission has recognized that "Congress intended that the phrase, 'State or local statute or regulation, or other State or local legal requirement' in section 253(a) be interpreted broadly. The fact that Congress included the term 'other legal requirements' within the scope of section 253(a) recognizes that State and local barriers to entry could come from sources other than statutes and regulations." *Minnesota Order*, 14 FCC Rcd at 21707, para. 18. Thus, "section 253(a) was meant to capture a broad range of state and local *actions* that prohibit or have the effect of prohibiting entities from providing telecommunications services." *Id*. (emphasis added). The Commission found this interpretation to be consistent with section 253(d), which requires the Commission preempt any statute, regulation, or legal requirement "*permitted* or imposed" by a state or local government if it violates sections 253(a) or (b). *Id*. (emphasis in original). *But see Crown Castle Fiber LLC v. City of Charleston*, 448 F. Supp. 3d 532, 543 (continued….)

establish deadlines by which state and local governments must act on authorization requests? If so, what are those deadlines and do state and local governments follow them?[58] How often do statutes, regulations, and legal requirements confer unfettered discretion on state and local governments to determine how much time they can take to review and act on an authorization request, or to impose additional requirements after the submission of an application that prolongs the process? How often are excessive delays not a result of obligations set forth in state or local statutes, regulations, or legal requirements, but due to factors involved in the handling of authorization requests, such as state and local government employee staffing shortages or limited access to engineers or other local subject matter experts?[59]

23. *Section 253(b) and (c)*. For any delays that commenters argue effectively prohibit the provision of telecommunications services in violation of section 253(a), we ask that they also provide a detailed analysis as to whether the statute, regulation, or legal requirement that creates or causes the delay qualifies for the exceptions in sections 253(b) or 253(c). Is there an argument that the particular state requirement that causes the delay is necessary to "preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers"?[60] Is there an argument that the particular state or local requirement that causes the delay is necessary for the management of the public rights-of-way?[61] Is the requirement that causes the delay imposed on a competitively neutral, nondiscriminatory basis, or is it imposed based on the technology used, incumbency, or another factor?

24. *Shot Clocks*. We seek comment on whether the Commission should establish time limits for state and local governments to act on requests for authorizations to access and use public rights-of-way for the provision of wireline telecommunications services.[62] Specifically, we seek comment on whether the Commission should adopt shot clocks that establish time periods for acting on different types of authorizations needed for wireline deployments, with failures to act within the specified time periods constituting a presumptive violation of section 253(a).

25. Do commenters support the establishment of shot clocks for state and local action on authorizations for use of public rights-of-way to provide and deploy wireline telecommunications services?[63] If so, what are the specific authorizations for which the Commission should consider

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(D.S.C. 2020) (stating that "the court fails to understand how the City's inaction, as opposed to an ordinance, regulation, or legal requirement, otherwise violates § 253(a)").

[58] *See* USTelecom July 31, 2025 *Ex Parte* at 2 (noting that the state of Hawaii has set a 60-day shot clock for broadband permitting requests, but "not a single permitting request has been subject to this shot clock because department agencies do not adhere to it," and though North Carolina has established a 30-day deadline for permit reviews, one provider "has found that some towns take 90 days or longer to review its permit requests").

[59] *Id.* at 1 ("[T]imelines for permitting can vary substantially in the same community between individual reviewers, for instance, in cases where the community has multiple reviewers or if a reviewer leaves and is replaced by another reviewer.").

[60] 47 U.S.C. § 253(b).

[61] *Id.* § 253(c).

[62] We note that franchising authorities must act on a competitive cable franchise application within 90 or 180 days, depending on whether the competitive applicant already has access to the right-of-way to provide a non-cable service. *See* 47 CFR § 76.41; *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5133-5140, paras. 65-81 (2007). The deadline is calculated from the date that the applicant files an application that includes information required by our regulation, and if a franchising authority fails to act within the allotted time, the franchising authority is deemed to have granted the application on an interim basis, under which the applicant may begin providing service. *Id.*

[63] *See* NTCA July 2, 2025 *Ex Parte* at 3 ("[T]he Commission should extend 'shot clocks' and limits on 'tolling' any timelines included therein as adopted in 2018 to all network facilities."); ACA Connects June 27, 2025 *Ex Parte* at
(continued….)

establishing shot clocks and what should the time period for the shot clocks be? Should the Commission consider two different shot clocks—one for right-of-way agreements and one for permits?[64] Should the Commission consider a single shot clock that establishes a time period for state and local governments to process all authorizations required for a wireline deployment in a particular jurisdiction in order to give providers more planning certainty,[65] or would that present a risk of inadvertently slowing down permitting processes that may require significantly less time?[66] Should any shot clock vary based on the technology to be deployed, the type of deployment (e.g., aerial or underground), or the size of the project?

26. If the Commission were to establish shot clocks, when should a shot clock be deemed to start? For permits, should it start when the permit application is filed? Are there pre-application filing requirements that should be considered when determining when a shot clock should start? In the case of right-of-way agreements, should the shot clock start at the beginning of negotiations for the agreements, and how would that start date be identified? Are there other start dates that would be more appropriate? What action should terminate the shot clock? The grant of a right-of-way agreement, the issuance of a permit, or another action? Should there be any bases for tolling the shot clock? For instance, should the shot clock be paused in cases where a provider submits an application that is incomplete or otherwise deficient? If so, should state and local governments be required to notify providers of the deficiencies with their applications in order to pause the shot clock? What time frames should apply to that notification, a provider's submission of corrective information, and the resumption of the shot clock? Should shot clocks be tolled due to natural disasters or other emergencies? If so, what criteria should apply to determine whether a particular event tolls a shot clock and when the shot clock should resume?

27. What consequences should states and localities face if they exceed any shot clock established by the Commission? Should the Commission establish a presumption that a state or local government's requirements for issuing a right-of-way authorization have effectively prohibited the provision of wireline telecommunications services in violation of section 253(a) if the state or local government fails to act within the time period specified by the pertinent shot clock? If so, should state and local governments be able to rebut that presumption by showing reasonable bases for needing additional time to process the requested authorization? How would the exceptions in section 253(b) and (c) apply in the context of a shot clock?

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2; USTelecom—The Broadband Association Comments, GN Docket No. 24-119, at 5 (rec. July 8, 2024) (USTelecom GN Docket No. 24-119 Reply) ("The Commission should [] exercise its Section 253 authority to ensure that States and localities act on requests for access to rights-of-way in a timely manner."); INCOMPAS GN Docket No. 25-133 Comments at 8 (stating that INCOMPAS supports "shot clocks applicable to wireline fiber deployment applications (as was done for wireless deployments)"); The Free State Foundation Reply, GN Docket No. 24-119, at 8 (rec. July 8, 2024) (Free State Foundation GN Docket No. 24-119 Reply) (stating that "[m]any providers report delays by local governments in gaining access to public rights-of-way [for] wireline infrastructure deployment" and supporting "shot clocks for permit application requests in public rights-of-way").

[64] For instance, where a state or local government requires a franchise agreement, the Competitive Fiber Providers have argued that the Commission should establish a 120-day deadline for processing and approving an initial franchise application. Competitive Fiber Providers 2017 Comments at 18. Crown Castle has stated that it supports a 30-day deadline for issuing "standard right of way access permits," and that a 30-day deadline should also apply when local governments require a franchise, license, or right-of-way agreement. Crown Castle International Corp. Comments, WC Docket No. 17-84, at 49 (rec. June 15, 2017) (Crown Castle 2017 Comments).

[65] Zayo has advocated for a single deadline "whereby localities have 60 days to approve or deny access to ROWs regardless of local procedure." Zayo 2017 Reply at 5 (stating that the shot clock should apply to "licensing through permitting" where a license or franchise is required) (internal quotation marks and citation omitted).

[66] *See* Crown Castle 2017 Comments at 49 ("In reality, the vast majority of standard right of way permits, particularly for fiber deployment are granted on a ministerial basis within a matter of a few days or perhaps a few weeks. The Commission does not want to inadvertently slow those processes by creating a 'shot clock' that may lead local governments to simply fall into taking the entire time.").

28. How would the shot clocks and any presumption adopted by the Commission be enforced? Section 253(d) directs the Commission to preempt specific state and local legal requirements that violate section 253(a) or (b), after notice and an opportunity to comment.[67] Would any presumption adopted by the Commission be enforceable through a petition to the Commission under section 253(d)? Does that statutory provision authorize the Commission to preempt a state or local requirement that establishes a review period that exceeds a shot clock established by the Commission? Does it authorize the Commission to order other relief, such as to require the state or local government to issue permits or right-of-way agreements if a state or local government fails to act within a shot clock period established by the Commission? Could the Commission require that an authorization be deemed granted if the state or local government fails to act within the time period established by the pertinent shot clock? Could a presumption adopted by the Commission be enforced through a complaint for relief in state or federal court? Are there other ways that any shot clocks established by the Commission could be enforced?

29. We acknowledge that the shot clocks that the Commission has established for state and local government action on Small Wireless Facility siting applications implement language in section 332 of the Act that is not contained in section 253.[68] In the *Small Cell Order*, however, the Commission determined that violations of Small Wireless Facility shot clocks also constitute an effective prohibition under the provision in section 332 that is the equivalent of section 253(a).[69] We view that approach as similar to the framework we seek comment on above, and seek specific comment on the Commission's authority to establish shock clocks on that basis to address state and local requirements that prohibit or effectively prohibit the provision of wireline telecommunications services by excessively delaying the issuance of authorizations needed to provide such services. We also seek comment on other sources of authority that the Commission could rely on to establish shot clocks applicable to wireline deployments.

30. *Alternative Solutions*. We seek comment on other approaches to reducing delays in the permitting process for wireline deployments. For example, is the planning and deployment of wireline telecommunications infrastructure becoming more standardized, and if so, would state and local governments save time by adopting a self-certification checklist and notification process?[70] Can states or local governments post easily accessible standardized self-certification forms for new projects? Have such processes already been implemented in certain jurisdictions, and if so, have they been effective? Are there any best practices that can be applied nationwide to expedite authorizations by encouraging

[67] 47 U.S.C. § 253(d).

[68] *See* 47 U.S.C. § 332(c)(7)(B)(ii) ("A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."). *See also* Local Government GN 25-133 Reply Comments at 11 ("Wireless shot clocks developed as an interpretation of the requirement to act within a 'reasonable period' under 47 U.S.C. § 332, which applies only to personal wireless service facilities—*i.e.*, not fiber projects. There is no language in Section 253 or elsewhere in the Communications Act that would support an expansion of the Commission's shot clock rules to apply to fiber build outs.").

[69] *Small Cell Order*, 33 FCC Rcd at 9148, paras. 116, 118 ("[W]e also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods . . . State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II)."); 47 U.S.C. § 332(c)(7)(B)(i)(II) ("The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.").

[70] In 2018, the Broadband Deployment Advisory Committee (BDAC) recommended the use of checklists and certifications to facilitate deployment projects. Broadband Deployment Advisory Committee, Report of the Removal of State and Local Regulatory Barriers Working Group, at 8 (2018), bdac-regulatorybarriers-01232018.pdf.

consistency and certainty in permitting processes?[71]

B. Fees that Violate Section 253

31. We seek comment on whether state and local governments are imposing fees that have the effect of prohibiting the provision of wireline telecommunications services within the meaning of section 253(a). Courts have recognized that excessive fees charged by local governments can violate section 253(a) by placing significant financial burdens on providers that effectively prohibit their ability to deploy telecommunications infrastructure and services.[72] The Commission has also recognized that state and local requirements that impose significant financial or other economic burdens on providers can effectively prohibit the provision of telecommunications services.[73] In the *Small Cell Order*, the Commission established standards for when state and local fees, including fees for access to state and local rights-of-way and use of government property in the rights-of-way, violate section 253 in the context of Small Wireless Facilities.[74] The Commission observed that section 253(a) has a broad preemptive scope,[75] and it construed section 253(c)'s "fair and reasonable compensation" provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by state and local governments, where the costs being passed on are themselves objectively reasonable.[76] The Commission found that:

> Although there is precedent that "fair and reasonable" compensation could mean not only cost-based charges but also market-based charges in certain instances, the statutory context persuades us to adopt a cost-based interpretation here. In particular, while the general purpose of [s]ection 253(c) is to preserve certain state and local conduct from preemption, it includes qualifications and limitations to cabin state and local action under

[71] *See* USTelecom July 31, 2025 *Ex Parte* at 1-2 (noting that permitting timelines vary "among neighboring jurisdictions" and "[t]his variance increases the likelihood of delays that can halt projects, and it generates uncertainty that reduces the business case for planning future investment").

[72] *See Puerto Rico Tel. Co. v. Municipality Of Guayanilla*, 450 F.3d 9, 18-19 (1st Cir. 2006) (*Municipality of Guayanilla*) (preempting an ordinance that imposed a 5% gross revenue fee that negatively impacted the provider's profitability, and together with other requirements, would place a "significant burden" on the provider); *City of White Plains*, 305 F.3d at 77-81 (preempting a franchise provision requiring a provider to pay 5% of its annual gross revenues to the City); *Qwest Corp. v. City of Santa Fe, N.M.*, 380 F.3d 1258, 1270-73 (10th Cir. 2004) (*City of Santa Fe*) (preempting an ordinance provision requiring provider to pay an annual $6,000 rental fee for a twelve-by-eighteen foot concrete pad based on a fair market appraisal of the right-of-way).

[73] *See Public Utility Comm'n of Texas*, 13 FCC Rcd at 3466, para. 13 (preempting build-out requirements applicable to holders of Certificates of Operating Authority "because they restrict the means or facilities through which a party is permitted to provide service in violation of section 253, and, independently, because they impose a financial burden that has the effect of prohibiting certain entities from providing telecommunications services in violation of section 253"); *Minnesota Order*, 14 FCC Rcd at 21709, para. 22 (declining to find that a right-of-way agreement that conferred exclusive physical access to freeway rights-of-way to one entity is consistent with section 253 where "evidence in the record [showed] that utilizing rights-of-way other than the freeway rights-of-way to install telecommunications infrastructure is substantially more expensive than using the freeway rights-of-way"); *see also Bluebird Order*, 35 FCC Rcd at 12822, para. 26 ("We find . . . that the Cities' requirements imposing rights-of-way user fees on LMW that are duplicative of those Bluebird pays under its rights-of-way agreements covering the same Network effectively prohibit the provision of telecommunications services in violation of section 253(a).").

[74] *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50. The standard also applies to effective prohibition claims brought under section 332(c)(7)(B)(i)(II) of the Act. *Id*. at 9103, para. 36 ("[W]e note that our Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7). This ruling is consistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute generally should be interpreted to have the same meaning.").

[75] *Id.* at 9114, para. 53.

[76] *Id.* at 9115, para. 55.

that savings clause in ways that ensure appropriate protections for service providers.[77]

32. The Commission went on to find that, "while it might well be fair for providers to bear basic, reasonable costs of entry, the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level . . . ."[78] The Commission thus concluded that "states and localities do not impose an unreasonable barrier to entry" in violation of section 253(a) "when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market,"[79] but that "fees that recover more than the state or local costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry."[80]

33. Applying these interpretations of section 253 to the record before it on Small Wireless Facility deployments,[81] the Commission found that "infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure,"[82] and that "fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere. This and regulatory uncertainty created by such effectively prohibitive conduct creates an appreciable impact on resources that materially limits plans to deploy service."[83] In reaching these conclusions, the Commission deemed it appropriate to consider "the aggregate effects of fees imposed by individual localities," stating that it "must consider the marketplace regionally and nationally and thus must consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve or potentially would serve."[84] Pursuant to these standards, the Commission concluded that, in the context of Small Wireless Facilities:

- Fees above a reasonable approximation of cost will have the effect of prohibiting wireless service in violation of section 253(a), even if they do not appear to be prohibitive in isolation, when the aggregate effects on Small Wireless Facility deployments are considered;[85] and
- Fees must not only be limited to a reasonable approximation of costs, but the costs included in the fees must themselves be objectively reasonable.[86]

34. Consistent with these standards, the Commission concluded that an appropriate "yardstick" for determining whether a Small Wireless Facility siting fee constitutes "fair and reasonable

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[77] *Id.*

[78] *Small Cell Order*, 33 FCC Rcd at 9116, para. 55.

[79] *Id.* at 9116, para. 56.

[80] *Id.* at 9117, para. 56.

[81] *Id.* at 9118, para. 60 n.167 ("While the relevant language of Section 253(a) and Section 332(c)(7)(B)(i)(II) is not limited just to Small Wireless Facilities, we proceed incrementally in our Declaratory Ruling here and address the record before us, which indicates that our interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.").

[82] *Id.* at 9118, para. 60.

[83] *Small Cell Order*, 33 FCC Rcd at 9118-19, para. 60.

[84] *Id.* at 9120, para. 62.

[85] *Id.* at 9112-13, 9122, paras. 50, 65. The Commission concluded that fees not reasonably tethered to costs appear to violate section 253(a) in the context of Small Wireless Facility deployments, including gross revenue fees that are generally not based on the costs associated with a provider's use of the rights-of-way. *Id.* at 9124-25, para. 70.

[86] *Id.* at 9112-13, 9124-25, paras. 50, 70 ("Any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual 'cost' to the government.").

compensation," as stated in section 253(c),[87] is "whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of, respectively, maintaining the [rights-of-way], maintaining a structure within the [rights-of-way], or processing an application or permit."[88] Rather than require states and localities to use a particular accounting system to substantiate these costs on a case-by-case basis, the Commission established certain safe harbors for Small Wireless Facility siting fees based on data contained in the underlying record.[89] Fees that are set at or below the safe harbor levels are presumed not to be prohibited by 253.[90] Governments may prevail in charging fees above the safe harbor levels if they can show that the fees: (1) are a reasonable approximation of costs; (2) factor in costs that are themselves reasonable; and (3) are nondiscriminatory.[91] On the latter point, the Commission emphasized that, to be competitively neutral as required by section 253(c), fees charged to one provider may not be materially higher than those charged to a competitor for similar uses.[92]

35. Against this backdrop, we seek comment on whether the Commission should establish standards for when fees imposed by state and local governments have a prohibitive effect that violates section 253 in the context of wireline telecommunications services, similar to how it has done for Small Wireless Facilities.

36. *Fees Charged for Wireline Deployments and Services*. We start by seeking comment on the fees imposed by state and local governments for different types of authorizations to deploy wireline telecommunications infrastructure and provide wireline telecommunications services. What fees or charges are assessed in connection with right-of-way agreements? How are the fees measured? Are they based on the linear feet occupied by the provider's facilities, a percentage of gross revenue from the provider's provision of service within the state or locality, actual costs incurred by the state or locality for managing their public rights-of-way, or another measure?[93] What is the most common fee measure?

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[87] 47 U.S.C. § 253(c) ("Nothing in this section affects the authority of a State or local government . . . to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.").

[88] *Small Cell Order*, 33 FCC Rcd at 9125, para. 72.

[89] The Commission found that the following fees would presumptively not be prohibited under section 253: (1) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole intended to support one or more Small Wireless Facilities; and (2) $270 per Small Wireless Facility per year for all recurring fees, including any possible right-of-way access fee or fee for attachment to municipally-owned structures in the right-of-way. *Id.* at 9129, para. 79.

[90] *Id.*

[91] *Id.* at 9130, para. 80.

[92] *Id.* at 9112-13, 9116, 9128-29 paras. 50, 55, 77.

[93] *See* NTCA July 2, 2025 *Ex Parte* at 2 (stating that fees for access to state and local rights-of-way "include not only one-time application fees, but also recurring fees assessed on a per-linear-foot-of-fiber basis for fiber placed in a [right-of-way], as well as surveys and other inspections that can cost several thousand dollars"); USTelecom July 31, 2025 *Ex Parte* at 2-3 ("[S]ome states, including Utah and Montana, have in some instances compelled providers to pay gross revenue fees as part of their [right-of-way] agreements . . . Our members have also encountered footage-based franchise fees in, for example, Alabama, Maryland, and Texas . . . ."); Zayo Oct. 31, 2019 *Ex Parte* Attach. at 1-4 (stating, for example, that three localities in Arizona require the payment of linear foot fees, two localities in Oregon, San Antonio, Texas, and Albuquerque, New Mexico require the payment of a percentage of gross revenues); Zayo/Crown Castle/Lumen Oct. 21, 2020 *Ex Parte*, Attach. at 1 ("[C]ompensation requirements . . . take many different forms, including per linear foot fees, fees based on a percentage of revenues in the jurisdiction, and in-kind compensation requirements."); Frontier Communications Corporation Comments, WC Docket No. 17-84, at 34 (rec. June 15, 2017) (Frontier 2017 Comments) (stating that in Michigan, an annual occupancy fee is imposed only on telecommunications providers and is levied based on a per foot basis).

What is the typical fee amount or fee range for a right-of-way agreement? Can providers submit to the Commission the fee requirements of recently executed right-of-way agreements?[94] Are there current surveys or studies of fees imposed by state and local statutes, regulations, and legal requirements for right-of-way agreements that would allow the Commission to compare the fees imposed by different jurisdictions on a regional or national basis? Are fees charged for right-of-way agreements typically one-time fees or recurring fees?

37. What fees or charges are assessed for different types of permits? Do they differ from those imposed for right-of-way agreements? How are permit fees measured? What is a typical permit fee for each type of permit and what fee amount would be considered atypically high? Are there surveys or studies of permit fees imposed by state and local statutes, regulations, and legal requirements that would allow the Commission to compare the fees charged by different jurisdictions or different permit types? We ask commenters to submit data to the Commission detailing the fees that they have been charged for various types of permits across multiple jurisdictions for recent projects, and any information or data that would help the Commission understand why fees for similar permits may vary between jurisdictions. Are permit fees typically one-time fees versus recurring fees?

38. Are providers required to pay fees to both state and local governments for a single use of the public rights-of-way? If so, are the fees duplicative or do they reflect different costs incurred by the state versus the locality? Are providers otherwise charged duplicative fees for a single use of a public right-of-way?[95] Have fees increased in recent years, and if so, by how much? What rationale, if any, have state and local governments given for fee increases?

39. What fees are charged for wireline attachments to poles and other structures in public rights-of-way that are government-owned?[96] How are the fees measured? Are they typically higher or lower than rates charged by utilities regulated under section 224?[97] What kinds of fees are state and local

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[94] We remind commenters that requests for confidential treatment of information submitted to the Commission may be submitted consistent with section 0.459 of the Commission's rules. 47 CFR § 0.459.

[95] The Commission clarified in 2019 that the Act prohibits franchising authorities from charging cable operators duplicative fees—for example, a cable franchise fee and a "broadband access fee"—for use of public rights of way. Section 622(a) of Title VI the Act states that any cable operator may be required under the terms of any franchise agreement to pay a franchise fee. 47 U.S.C. § 542(a). Section 622(b) provides that "[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." 47 U.S.C. § 542(a). In 2019, the Commission observed that "Title VI does not permit franchising authorities to extract fees or impose franchise or other requirements on cable operators insofar as they are providing services other than cable services" and preempted "(1) any imposition of fees on a franchised cable operator or any affiliate using the same facilities franchised to the cable operator that exceeds the formula set forth in section 622(b) of the Act . . . whether styled as a 'franchise' fee, 'right-of-access' fee, or a fee on non-cable (*e.g.*, telecommunications or broadband) services, and (2) any requirement that a cable operator with a Title VI franchise secure an additional franchise or other authorization to provide non-cable services via its cable system." *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable TV Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Third Report and Order, 34 FCC Rcd 6844, 6889, para. 80 (2019) (*Title VI Third Report and Order*), *aff'd in pertinent part City of Eugene, Oregon v. FCC,* 998 F.3d 701, 715 (6th Cir. 2021). It did so under the express preemption authority in Title VI, not under section 253 of the Act. *Id*. at paras. 81-82.

[96] In *City of Portland*, the Ninth Circuit upheld the Commission's determination in the *Small Cell Order* that its interpretations of section 253 extend to government-owned property in public rights-of-way. 969 F.3d at 1045-46 ("[C]ities act in a regulatory capacity when they restrict access to the public rights-of-way because they are acting to fulfill regulatory objectives . . . Municipalities do not regulate rights-of-way in a proprietary capacity.").

[97] Frontier 2017 Comments at 10 (arguing that "[u]nreasonable [pole] attachment fees imposed by municipally-owned organizations are precisely the type of barriers that Section 253 is meant to empower the FCC to knock (continued….)

governments charging for wireline infrastructure not located in public rights-of-way? Do these fees effectively prohibit wireline telecommunications service under section 253(a)?

40. *Effective Prohibition Under Section 253(a)*. Do the fees charged by state and local governments have the effect of prohibiting the provision of wireline telecommunications services in violation of section 253(a)? At what point do fees imposed by state and local governments have a prohibitive effect? Is it when they are so high that they disrupt plans for future deployments, facilities upgrades, or expanded services?[98] Is it when they have a disproportionate impact on a provider's profitability and discourage investment in wireline telecommunications services and infrastructure? Is it when they cause providers to reassess network designs and use technologies that are less than ideal for a particular project? Is it when they cause providers to change the scale of their deployment plans, and deploy to fewer locations than they otherwise would?[99] Are there certain fees that have a clear prohibitive effect within the market where they are assessed? Are there fees that may not be prohibitive when viewed in the limited context of a single market, but do have a prohibitive effect in the aggregate when assessed at the same or a substantially similar level across multiple markets? Are there specific examples of wireline deployments that have been terminated or reduced in scope due to the financial burden of state and local fees, or where providers have declined to explore deployment due to such fees?[100] Are there specific examples of plans to upgrade or expand wireline telecommunications services in certain markets that have been scrapped, modified, or delayed because of state and local fees?[101] Are there examples of providers discontinuing service in a particular area because recurring fees imposed by state and local governments have impaired their ability to continue operations and compete?

41. In responding to these questions, we ask that commenters identify the type of fees or specific fee amounts that they argue are prohibitive, along with detailed economic analyses, reports, calculations, and/or other data that demonstrate how the fees—in isolation or in the aggregate—create barriers to market entry, preclude network expansion or upgrades, impede the ability of providers to enhance or ensure the reliability of services offered to consumers, or otherwise prohibit or effectively prohibit the provision of wireline telecommunications services. We specifically ask commenters to submit data and analyses that could assist the Commission's consideration of whether there are particular levels of fees that can be presumed to violate section 253(a).

42. *Fair and Reasonable Compensation Under Section 253(c)*. Even if a state or local fee violates section 253(a), it could be saved from preemption if it constitutes "fair and reasonable compensation" for use of public rights-of-way within the meaning of section 253(c).[102] What constitutes

(Continued from previous page)
down" and that the Commission should "preempt rates that are greater than the current federal telecommunications and cable rates").

[98] USTelecom July 31, 2025 *Ex Parte* at 3 (stating that "[s]ome USTelecom members have made the difficult choice not to deploy in certain jurisdictions because of" revenue-based franchise fees).

[99] *Id.* at 2-3 ("For small and mid-sized providers seeking to expand their footprint, these fees can greatly increase the costs of deployment, inhibiting the provider from scaling their deployment as originally planned.").

[100] *See* Zayo/Crown Castle/Lumen Oct. 21, 2020 *Ex Parte*, Attach. at 2-3 (stating that Zayo reduced the number of fiber strands deployed in the Holland Tunnel by almost 90% from 1152 to 144 due to the Port Authority increasing rates charged for utilizing the tunnel's rights-of-way, including charging higher rates to companies with more fiber strands in the rights-of-way; that Crown Castle limited its fiber deployment in Albuquerque, New Mexico due to high linear foot fees imposed by the municipality; and that high fees forced Lumen to change a deployment plan from reliance on public rights-of-way to reliance on still expensive private rights-of-way).

[101] *See id.*, Attach. at 1-2 (stating that, in 2020, Zayo was planning to deploy a fiber facility between Dallas and Atlanta, but the project experienced substantial delays due to a dispute with the Vicksburg Bridge Commission over high compensation for attaching fiber to the bridge to cross the Mississippi River).

[102] 47 U.S.C. § 253(c).

"fair and reasonable compensation" in the context of wireline telecommunications infrastructure and services? Does section 253(c) require that fees be limited by the extent that a provider actually uses the public rights-of-way?[103] Does section 253(c) require that fees be cost-based, irrespective of the technology used?[104] Should the "fair and reasonable" compensation standard adopted for Small Wireless Facilities apply to wireline telecommunications infrastructure, i.e., fees may recover a reasonable approximation of a state or local government's objectively reasonable costs of maintaining the rights-of-way, maintaining a structure within the rights-of-way, or processing an application or permit?[105] Or, do the unique technological aspects of 5G deployments suggest that a different standard may be more appropriate for wireline telecommunications services?[106] If the latter, what standard should be applied to wireline telecommunications services? Should the standard differ based on the type of authorization (e.g., a right-of-way agreement or a permit), and whether the fee is a one-time fee or a recurring fee? If the Commission were to determine that fees must be cost-based to comply with section 253 of the Act, would that mean that revenue-based fees or linear foot fees could never comply with the statute? Would all state and local fees that are explicitly or implicitly intended to generate revenue for governments be

[103] *See Municipality of Guayanilla*, 450 F.3d at 23 (concluding that a 5% gross revenue fee does not constitute "fair and reasonable compensation" under section 253(c) when it "applies to the entire revenue derived from all calls that use any portion of the rights of way, regardless of the actual extent of use"); *City of Sante Fe*, 380 F.3d at 1272 (concluding that an annual rental fee based on a fair market appraisal of the right-of-way did not qualify as "fair and reasonable compensation" because, in part, "[n]othing in the record indicates that the 'fair market value' appraisal required by the Ordinance would take into account the limited use [of the right-of-way] contemplated"); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 993 (E.D. Mo. 2003) (noting that "[s]everal courts have held that fees charged by a municipality must be directly related to a company's use of the local rights-of-way, otherwise the fees constitute an unlawful economic barrier to entry under § 253(a)"); *see also Bluebird Order*, 35 FCC Rcd at 12824, para. 34 (finding that duplicative fees that were not based on an actual use of a locality's public rights-of-way did not constitute "fair and reasonable compensation").

[104] *See Municipality of Guayanilla,* 450 F.3d at 22 ("We agree with the district court's reasoning that fees should be, at the very least, related to the actual use of rights of way and that 'the costs [of maintaining those rights of way] are an essential part of the equation.'") (internal citation omitted); *City of Portland*, 969 F.3d at 1039 (observing that section 253(c) "requires that compensation be 'fair and reasonable;' this does not mean that state and local governments should be permitted to make a profit by charging fees above costs").

[105] *See* ACA Connects June 27, 2025 *Ex Parte* at 2 ("Whether a provider is seeking to install a small wireless facility or fiber-optic cable, the fees it pays for access should be based on a reasonable approximation of costs."); USTelecom GN Docket No. 24-119 Reply at 4-5 ("[T]he Commission should clarify that, consistent with the Commission's 2018 action to remove regulatory barriers that unlawfully inhibit the deployment of infrastructure, rights-of-way access fees charged by municipalities must be cost-based."); INCOMPAS GN Docket No. 25-133 Comments at 7 (supporting asking state and local governments "to charge fees that are based only on their actual, objectively reasonable costs"); ACA Connects GN Docket No. 24-119 Comments at 3 ("[T]he Commission should utilize its authority under section 253 to ensure State and local governments cannot erect barriers to right-of-way access, such as by levying non-cost-based fees . . ."); Free State Foundation GN Docket No. 24-119 Reply at 8 (arguing that cost-based fees "can effectively preserve resources for deploying additional infrastructure").

[106] In the *Small Cell Order*, the Commission explained that, in contrast to wireless infrastructure that relied on macro cells with relatively large antennas and towers that could be miles apart, 5G requires the deployment of many more small cell systems to ensure reliable service. *See Small Cell Order*, 33 FCC Rcd at 9096, 9112, paras. 24, 47-48. The Commission observed that "the need to site so many more 5G-capable nodes leaves providers' deployment plans and the underlying economics of those plans vulnerable to increased per site delays and costs." *Id.* at 9096, para. 24; *see also id.* at 9114, para. 53 ("[W]ith respect to Small Wireless Facilities, even fees that might seem small in isolation have material and prohibitive effects on deployment, particularly when considered in the aggregate given the nature and volume of anticipated Small Wireless Facility deployment."). *See also City of Portland*, 969 F.3d at 1035 (stating that the Commission explained in the *Small Cell Order* that its effective prohibition standard under section 253(a) "applies a little differently in the context of 5G, because state and local regulation, particularly with respect to fees and aesthetics, is more likely to have a prohibitory effect on 5G technology than it does on older technology").

unlawful?[107] Or, could such fees be permissible provided that the state or local government can show that the fee amounts constitute a reasonable approximation of their costs of managing the public rights-of-way?[108]

43. If the Commission were to interpret section 253(c) to require state and local fees to be limited to a reasonable approximation of the state or local government's costs of maintaining the rights of way, maintaining a structure within the rights-of-way, or processing an application or permit, or a similar cost-based standard, what are those costs in the context of wireline telecommunications service? Should they be limited to certain categories of costs (e.g., inspections, staff costs for processing applications or negotiating a franchise agreement)? Alternatively, are there any costs that should be expressly excluded because they are excessive, discretionary, or unrelated to the provider's use of the public rights-of-way? Should state and local governments be able to recover common or overhead costs for managing public rights-of-way? If so, how should those cost be allocated between all users of the public rights-of-way?[109]

44. Should the Commission establish safe harbors, with state and local fees set at or below the safe harbor level presumptively deemed "fair and reasonable compensation" under section 253(c)?[110] If so, what should those safe harbor levels be for wireline telecommunications services? What data and analyses should the Commission consider to set levels that would be consistent with section 253? How should variances in fees between jurisdictions be taken into account when setting safe harbor levels? Should technology, geography, population density or other factors be considered as differentiating factors that may result in cost differences when setting safe harbor levels? Should the Commission consider multiple safe harbor levels, and if so, what should each safe harbor cover (e.g., different safe harbors for recurring fees versus non-recurring fees, right-of-way agreement fees versus permit fees)? Should states and localities be able to charge fees above any safe harbors established by the Commission if they can show that the fees are limited to recovering their actual costs or other limiting criteria?

45. Section 253(c) also requires that fees imposed by state and local governments for use of public rights-of-way be competitively neutral and nondiscriminatory.[111] Are states and local governments imposing substantially similar fees for similar uses of their public rights-of-way? If not, how do the fees vary? Are fees being assessed differently based on the type of technology used, incumbency, or another factor? Section 253(c) mandates that "fair and reasonable" compensation required by state and local governments be publicly disclosed.[112] Do state and local governments post their fees for different types of permits? Do they publicly disclose fees that they have demanded in connection with the right-of-way agreements that they have executed?

46. *Applying Economic Principles to a Section 253 Analysis.* We seek comment on whether

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[107] For instance, Zayo has indicated that it has been required to pay a "privilege tax" in addition to other fees charged for permits. *See* Zayo Oct. 31, 2019 *Ex Parte* Attach. at 1 (stating that Goodyear and Scottsdale, Arizona both require the payment of a "privilege tax" on top of linear foot fees). It has also stated that the Ohio Department of Transportation issued a Request for Information "asking providers how ODOT can 'monetize' its ROW asset . . . ." *Id*., Attach. at 3. *See also* USTelecom July 31, 2025 *Ex Parte* at 2 ("[O]ne city in the Pacific Northwest sets fees based on the city's *revenue* needs, not actual costs for accessing the [right-of-way].") (emphasis in original).

[108] *See Small Cell Order*, 33 FCC Rcd at 9124-25, para. 70 (finding that "gross revenue fees generally are not based on the costs associated with an entity's use of the [rights-of-way]," and where that is the case in the context of Small Wireless Facilities, they "are preempted under Section 253(a)").

[109] We seek more detailed comment about the costs state and local governments should be permitted to recover below.

[110] ACA Connects June 27, 2025 *Ex Parte* at 2 ("ACA Connects request that the Commission place limits—or safe harbor ranges—on fees to prevent excessive charges that inhibit deployment.").

[111] 47 U.S.C. § 253(c).

[112] *Id.*

the Commission should evaluate the effective prohibition and fair and reasonable compensation standards in section 253 from an economic perspective. In particular, we seek comment on whether the Commission should consider the fact that state and local governments are not subject to competition when they set fees for right-of-way agreements and permits, and whether that allows them to charge fees that are higher than the direct or incremental costs of managing public rights-of-way.[113] We seek comment on whether this absence of competition results in a reduction in investments in deployments that would promote social welfare, and whether fees that exceed the direct or incremental costs of managing public rights-of-way effectively prohibit the provision of wireline telecommunications services on that basis. For instance, in competitive markets, prices tend toward marginal or incremental cost and greater economic efficiency. Should that support the view that fees that hew closely to recovering only direct or incremental costs are more acceptable under section 253, while fees that recover more overhead such as joint and common costs warrant greater scrutiny? Would an economic view of section 253 support the conclusion that revenue-based fees set without regard to a state or local government's costs are inconsistent with section 253?

47. As discussed above, should we allow localities to recover some portion of their joint and common costs as "fair and reasonable compensation . . . for use of public rights-of-way"?[114] We note that, with the exception of Ramsey pricing,[115] there is no non-arbitrary methodology for allocating common costs.[116] In view of this, would allowing recovery of common costs enable state and local governments to heavily load the fees they charge for use of public rights-of-way with significant common costs, such that the fees would discourage socially beneficial investments?

48. We seek comment on any appropriate limiting principles the Commission should consider if it were to conclude that state and local governments should be permitted to recover a portion of their joint and common as "fair and reasonable compensation" under section 253(c). In particular, would it be helpful for the Commission to define: (1) which types of potential common costs could be recovered from telecom providers; and (2) the portion of common costs that could be recovered from each provider? Should any recoverable common costs be limited to those that directly and unambiguously benefit the wireline telecommunications provider that pays the fee? Should state and local governments be required to employ a measure of usage and/or benefits of cost-imposing activity to determine the portion of common costs recovered from each provider using the right-of-way for which the fee is charged? We also seek comment on whether and to what extent we should consider cost recovery schemes the Commission has adopted in other contexts to inform our understanding of fees that "ha[ve] the effect of prohibiting" under section 253(a) and fall outside the scope of "fair and reasonable

[113] The terms "direct cost" and "incremental cost" are similar, but not identical. Economic literature recognizes both concepts, and the Commission's pricing rules in particular incorporate "direct cost" concepts. *See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, CC Docket No. 87–266, 7 FCC Rcd 5781 (1992); *see also Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58; Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone*, CC Docket No. 87–266, 10 FCC Rcd 244, paras. 217-220 (1994) (for purposes of the tariff, setting expectation that carriers reflect an allocation of common cost of shared plant).

[114] 47 U.S.C. § 253(c).

[115] *See* Frank Ramsey, *A Contribution to the Theory of Taxation*, 37 Econ. J.47 (1927); *see also* Mitchell & Vogelsang, Telecommunications Pricing: Theory and. Practice, Ch. 4 (RAND, 1991).

[116] *See* Stephen Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reform,* 92 Harv. L. Rev. 549, 564 (1979) ("[T]he allocation of joint costs in a competitive market is determined primarily by comparative demand for the final product. The butcher charges less per pound for chicken necks than breasts not because growing a neck requires less grain per pound, but because people want necks less. Thus, allocating joint costs in regulated markets is plagued by the uncertainty surrounding comparative demand.").

compensation" under section 253(c).[117]

49. *Enforcement*. If the Commission were to construe section 253 to limit the fees that state and local governments charge for use of public rights-of-way in the wireline context, how would such limits be enforced? We expect that a provider could seek relief by filing a preemption petition with the Commission pursuant to section 253(d).[118] We seek comment on that view and whether state and local governments would be incentivized to reform their fee structures to comport with any standards articulated by the Commission.

C. Conditioning Approvals on In-Kind Compensation

50. We seek comment on whether state and local government requirements that condition authorizations to access and use public rights-of-way on in-kind compensation (e.g., the installation of excess conduit or fiber for the government's use) or other concessions unrelated to a provider's use of the rights-of-way violate section 253. Some courts have suggested that in-kind compensation requirements that increase a provider's costs can have a prohibitive effect in violation of section 253,[119] and some providers have suggested that localities are doing just that—using the permitting process to demand concessions that increase the costs of their deployments. Sometimes, the concessions have taken the form of excess conduit and fiber installed for the government's use.[120] In other cases, providers have stated that they have been required to install video surveillance cameras for law enforcement use,[121] bring street curbs unrelated to the provider's deployment into compliance with federal requirements,[122] and repave entire street lanes and blocks when the project only required a minor street cut.[123] We are concerned that these additional demands by state and local governments could increase the financial burdens of

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[117] *See*, *e.g.*, 47 U.S.C. § 224(b) ("[T]he Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions"), (d) (providing in the context of pole attachments that "a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way"); *Moratoria Order*, 33 FCC Rcd at 7767-71, paras. 123-129 (revising rules to address rate disparities between incumbent LECs and similarly-situated telecommunications carriers and cable television systems); *Implementation of Section 224 of the Act*; *A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5442-43, paras. 4-7 (2011) (describing history leading up to the adoption of Section 224 of the Act and noting Congress's recognition of public utilities' ability to extract unreasonably high pole attachment rates).

[118] 47 U.S.C. § 253(d).

[119] *See City of Sante Fe*, 380 F.3d at 1271 (finding that an ordinance that required any telecommunications company installing conduit to install double capacity and dedicate the conduit to a city, together with an appraisal-based rental fee requirement, substantially increased costs for a provider and had a prohibitive effect within the meaning of section 253(a)); *see also City of Portland, Or. v. Elec. Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1064-65 (D. Or. 2005) (preempting a provision of a franchise agreement that required a provider to provide telecommunications duct and cable for the city's use under section 253).

[120] NTCA July 2, 2025 *Ex Parte* at 2; Zayo 2017 Reply at 6; Crown Castle 2017 Comments at 52; Competitive Fiber Providers 2017 Comments at 11-12; *see also* USTelecom July 31, 2025 *Ex Parte* at 3 ("In Alabama . . . one locality required free dark fiber or discounted lit services to be provided in exchange for the franchise. In Illinois, another provider was forced to install conduit and handholes for the locality as a condition of obtaining a franchise agreement.").

[121] Crown Castle 2017 Comments at 52.

[122] Comcast 2017 Comments at 9-10.

[123] *Id.*

deployments in a manner that is prohibitive within the meaning of section 253(a), either in isolation or in the aggregate if imposing in-kind compensation requirements is a common practice. We are particularly concerned if the concessions demanded are wholly unrelated to a provider's deployment project and are imposed in addition to fees that purport to compensate a state or locality for the provider's use of the public rights-of-way.[124] We, therefore, seek comment on in-kind compensation requirements imposed by state and local governments, the extent to which they have a prohibitive effect on the provision of wireline telecommunications service, and whether they qualify for the exceptions to preemption under sections 253(b) or (c).

51. What types of in-kind compensation do states and localities require? How often do states and localities require providers to install excess conduit and fiber strands for government use and at what scale? How often do states require providers to repair state or local roads, sidewalks, curbs, or structures in the public rights-of-way in a manner that is unrelated to, or far in excess of, the work the provider has done in the public rights-of-way to deploy its facilities and that goes beyond any costs the provider may have caused the jurisdiction to incur? How often do states or localities require providers to supply their governments with equipment (e.g., surveillance cameras)? Do states or localities commonly require providers to make financial or other forms of donations to governments as a condition of access to public rights-of-way (as opposed to fees paid expressly for use of public rights-of-way)? Are in-kind requirements imposed by states and localities contained in statutes, regulations, and legal requirements? If not, how are they communicated? What impact do in-kind compensation requirements have on the cost of providing wireline telecommunications services and deploying infrastructure? Are the increases in costs measurable, and if so, how are they measured? Have demands been so excessive that providers have abandoned planned deployments, reduced them in scale, or opted to forgo upgrades and enhancements?

52. Do requirements for in-kind compensation constitute "fair and reasonable compensation" for use of public rights-of-way under section 253(c)? Do states and localities present in-kind compensation requirements as compensation for use of their public rights-of-way? If the Commission were to establish standards that limit the fees states and localities charge for use of the public rights-of-way, as discussed in Section III.B above, should providers be required to reduce any fees they charge by the value of any in-kind compensation they demand as needed to stay within those limits?[125] Is there an argument that in-kind compensation requirements constitute management of the public rights-of-way within the meaning of section 253(c)?[126] Is there an argument that in-kind compensation requirements are "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers" within the meaning of section 253(b)?[127] Are in-kind compensation requirements imposed in a competitively neutral, nondiscriminatory manner? Should state and local governments be preempted from demanding in-kind compensation altogether?

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[124] *See* NTCA July 2, 2025 *Ex Parte* at 2 ("'[I]n-kind' contributions unrelated to the cost a local or state government incurs to manage [rights-of-way] are at times assessed[.]").

[125] The Commission has addressed in-kind compensation in the context of cable franchise fees, as defined by section 622(g) of the Act. 47 U.S.C. § 542(g). Specifically, the Commission has found that cable franchise fees "can encompass both monetary payments imposed by a franchising authority or other governmental entity on a cable operator, as well as 'in-kind' payments – *i.e.*, payments consisting of something other than money, such as goods and services – that are so imposed," *Title VI Third Report and Order*, 34 FCC Rcd at 6850, para. 12, and determined that specific types of cable-related, in-kind contributions are franchise fees subject to the 5% statutory cap under section 622(b) of the Act. *Id*. at paras. 25-48.

[126] 47 U.S.C. § 253(c).

[127] *Id.* § 253(b).

D. Identification of Specific State or Local Requirements with Preemptive Effect

53. We invite broad comment on any other types or categories of state or local requirements that commenters believe prohibit or have the effect of prohibiting the provision of wireline telecommunications service. For any requirements identified, we ask that commenters address why the requirements prohibit or effectively prohibit the provision of telecommunications service within the meaning of section 253(a) and are not saved by section 253(b) or (c). For instance, do any state or local governments impose requirements that prohibit or effectively prohibit the provision of next-generation telecommunications networks and services by compelling carriers to continue providing legacy voice service or preventing carriers from discontinuing such services? As artificial intelligence (AI) begins to play a bigger role in the provision of communications services, should the Commission consider whether state or local laws seeking to govern or limit uses of AI are prohibiting or effectively prohibiting the provision of wireline telecommunications services? Are there other state and local requirements that are not expressly tied to deployments in public rights-of-way (or attachments to government-owned property in public rights-of-way) but nonetheless prohibit or effectively prohibit the provision of wireline telecommunications services within the meaning of section 253?

54. We also invite providers to identify individual state and local statutes, regulations, and legal requirements that they argue have prohibited or effectively prohibited their ability to provide wireline telecommunications services should the Commission decide to initiate a preemption proceeding under section 253(d) *sua sponte*.[128] We ask that any provider that avails itself of this option: (1) identify the specific statute, regulation, or legal requirement that it argues has a prohibitive effect; (2) describe how the statute, regulation, or legal requirement has actually or effectively prohibited the provider from providing wireline telecommunications services within the meaning of section 253(a); (3) provide an analysis of why the statute, regulation, or legal requirement does not qualify for the exceptions in sections 253(b) or (c); and (4) submit any additional facts, documents, or other information the Commission would need to consider a petition for preemption under section 253(d). We specifically invite commenters to identify any express or *de facto* moratoria that state and local governments continue to impose on the deployment of wireline telecommunications services or facilities in contravention of the Commission's rulings in the *Moratoria Order*.[129]

E. Commingled Facilities

55. The Commission has found that the effective prohibition standard in section 253 of the Act applies to infrastructure that is "used for the provision of both telecommunications and other services on a commingled basis."[130] We seek comment on the services that providers offer on a commingled basis over wireline telecommunications infrastructure, and any additional requirements that state and local governments may impose on providers with respect to those additional services. For instance, do the types of authorizations that providers are required to obtain vary when a provider seeks access to public rights-of-way to provide wireline telecommunications services and other services over mixed-use infrastructure? Do permitting procedures and timelines vary? Do the fees imposed vary? Do states and localities impose increased fees due to the provision of multiple services over wireline telecommunications infrastructure, and if so, do the governments clearly indicate the fees that are associated with each service? Do any requirements imposed on providers due to a commingled use of wireline telecommunications infrastructure effectively prohibit the provision of the wireline telecommunications service?

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[128] *Id.* § 253(d).

[129] *Moratoria Order*, 33 FCC Rcd at 7777-86, paras. 145-60.

[130] *See id.* at 7790, para. 167 (citing authorities).

F. Legal Authority

56. In the *Moratoria Order*, the Commission concluded that we have authority to issue declaratory rulings that interpret whether certain types of state or local statutes, regulations, and legal requirements violate section 253(a) and whether they are saved by the exceptions in sections 253(b) or (c), and that we have the authority to issue such declaratory rulings on our own motion.[131] The Commission also explained that this authority is not limited by section 253(d), which authorizes the Commission to preempt specific state or local legal requirements.[132] We continue to believe that "Congress' inclusion of this express mechanism to consider whether specific state and local requirements are preempted, does not limit our 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 the section 253(b) or (c) exceptions."[133] We also continue to believe that nothing in section 253 prevents the Commission from declaring that a category of state or local laws is inconsistent with section 253(a), regardless of the enforcement mechanisms that may be available to providers seeking relief under the statute. We tentatively conclude that the Commission retains the authority to offer generally applicable interpretations under section 253 and seek comment on that view.

57. We also tentatively conclude that the Commission would have authority under sections 4(i), 201(b), 303(r),[134] or any other provision of the Act to adopt rules that codify standards for when state and local requirements create delays and impose fees that effectively prohibit the provision of wireline telecommunications services, including shot clocks for processing authorizations required by state and local governments for providers of wireline services to access and use public rights of way. We seek comment on that view, including the extent to which any rules adopted by the Commission would apply to intrastate telecommunications services.

58. Finally, we seek comment on delegating authority to the Wireline Competition Bureau to resolve petitions seeking preemption under section 253(d).

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[131] *Id*. at 7787, para. 161; 5 U.S.C. § 554(e); 47 CFR § 1.2; *see also City of Arlington, Tex. v. FCC*, 668 F.3d 229, 243 (5th Cir. 2012) (stating that "an agency need not be presented with a specific dispute between two parties in order to use section 554(e)'s declaratory ruling mechanism" and that section 554 "empowers agencies to use declaratory rulings to 'remove uncertainty'" by issuing statutory interpretations in cases involving "concrete and narrow questions of law the resolutions of which would have an immediate and determinable impact on specific factual scenarios"), *aff'd on other grounds*, 569 U.S. 290 (2013); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that "the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application") (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974)); *N.C. Utilities Comm'n v. FCC*, 537 F.2d 787, 790 n.2 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 ("[F]ederal administrative agencies are not restricted to adjudication of matters that are 'cases and controversies' within the meaning of Article III of the Constitution."); *N.Y. State Comm'n on Cable Television v. FCC*, 749 F.2d 804, 815 (D.C. Cir. 1984) (holding that the Commission, in preempting state and local entry regulation of satellite master antenna television, did not abuse its discretion in labeling its action a declaratory ruling and a consolidation of precedent, rather than engaging in a rule-making procedure).

[132] 47 U.S.C. § 253(d).

[133] *Moratoria Order*, 33 FCC Rcd at 7788, para. 163 (citing 47 U.S.C. §§ 303, 201(b)). The Commission further concluded that the Supreme Court's holding in *City of Rancho Palos Verdes v. Abrams* that "the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others," 544 U.S. 113, 121 (2005) (internal quotation marks and citation omitted), did not apply in the context of the *Moratoria Order*, which interpreted section 253(a) and did not specifically preempt any state or local law. *Moratoria Order*, 33 FCC Rcd at 7789, para. 164. The Commission was thus not exercising authority to enforce a substantive rule, but interpreting the scope of the substantive prohibition set forth in the statute. *Id*.

[134] 47 U.S.C. §§ 154(i), 201(b), 303(r).

IV. PROCEDURAL MATTERS

59. *Ex Parte Presentations*. To develop a fulsome record, this proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

60. *Comment Period and Filing Procedures.* Pursuant to section 1.430 of the Commission's rules, 47 CFR § 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Commenters should refer to WC Docket No. 25-253 when filing in response to this *Notice of Inquiry*.

- *Electronic filers*: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs.
- *Paper filers*: Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
    - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

61. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available via ECFS.

62. *People with Disabilities*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

63. *Contact Person.* For further information about this proceeding, please contact Elizabeth

Drogula, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-1591, or elizabeth.drogula@fcc.gov.

V. ORDERING CLAUSE

64. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 253, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 253, 303, and 403, that this Notice of Inquiry IS ADOPTED.[135]

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[135] Pursuant to Executive Order 14215, 90 Fed. Reg. 10447 (Feb. 24, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

STATEMENT OF
CHAIRMAN BRENDAN CARR

Re: *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry (Sept. 30, 2025).

Since its rollout in July, the Commission's Build America Agenda has been racking up wins for the American people. We've already advanced plans to accelerate the upgrade from old copper line networks to modern ones, to speed access to utility poles, and to modernize the FCC's approach to environmental reviews.

Building on this momentum, I recently traveled to Malvern, Arkansas to see how our Build America Agenda can help unleash more high-speed infrastructure builds. I got a chance to meet with Kalen and his crew who were laying fiber to bring high-speed connectivity to a community that previously had only copper-line service. Thanks in large part to the FCC's Rural Digital Opportunity Fund, this project currently serves 2,000 homes, expanding opportunity to so many hardworking Americans.

The Malvern, Arkansas success story is one that we want to see across the country. However, before crews like Kalen's can get shovels into the ground, providers must obtain authorizations from state and local authorities. This often requires obtaining permits and approvals from multiple jurisdictions with different timelines, different personnel, and different requirements—all of which increases costs, slows deployment, and discourages private investment. That's why, as part of the Commission's Build America Agenda, we are launching an inquiry to explore permitting reform for wireline networks.

Section 253 of the Communications Act expressly prohibits state and local regulations that effectively prohibit infrastructure builds. As we move forward today, we do so mindful of the FCC's past actions under Section 253. For instance, in 2018, the Commission issued a decision that concluded that Section 253(a) prohibited state and local governments from effectively shutting down new infrastructure builds through moratoria on those construction projects. That same year, the Commission limited process times and fees for the deployment of small wireless facilities. Following these actions, we saw a significant surge in wireline and wireless infrastructure investment. With today's item, the Commission will ask questions and explore ways that we can use that same authority to remove impediments to the deployment of wireline infrastructure.

For their great work on this item, I'd like to thank Malena Barzilai, Jonathan Campbell, Adam Candeub, Matt Collins, Liz Drogula, Garnet Hanly, Rick Mallen, Maria Mullarkey, Brendan Murray, Scott Novak, Anjali Singh, Donald Stockdale, and Geoff Waldau.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry (Sept. 30, 2025).

I agree with the Chairman and others who want the FCC to be doing everything it can to accelerate broadband buildouts, especially of wireline infrastructure that can deliver reliable, high-capacity connections necessary to meet this country's stated goal of winning the AI race.

While I welcome public input on how we can spur further investment, we must remember that our primary responsibility is ensuring these networks serve the public. That means adopting policies that encourage deployment, while also holding providers accountable for delivering affordable, reliable, and resilient service to all communities—rural, urban, and Tribal alike.

But we also must recognize the challenges people are facing right now. The lapse of the Affordable Connectivity Program has already created real uncertainty for millions of families who now face higher bills or the risk of losing service altogether. And in recent months, unnecessary political, ideological, and technical hurdles have slowed the BEAD program, leaving too many communities waiting.

That uncertainty is forcing businesses in many states to rethink investments. This Administration should stop treating BEAD as a moving target and let states be the best stewards of their communities' needs.

Looking ahead, I also want to caution against getting sidetracked by attempts to fulfill a failed congressional effort and second-guess states that are placing guardrails on AI. States can be important test labs for what may or may not work with emerging technologies like this one. Not to mention, our authority in this area is dubious at best, particularly after recent court decisions limiting our authority. We will be better served by focusing on the areas where we stand on firm legal ground.

So, I welcome this effort, and I look forward to working together to get it right.

STATEMENT OF
COMMISSIONER OLIVIA TRUSTY

Re: *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry (Sept. 30, 2025).

State and local governments and the FCC work together as partners in many ways. We share the goal of bringing advanced networks, capable of providing voice and data services, to all Americans through programs like universal service. And, among other things, we share the goal of protecting consumers from harms like illegal robocalls.

At times, however, state or local interests may take a different path, which can delay access to connectivity. In those situations, the Commission has a duty, under the Communications Act, to step in.

Section 253 is one example. Section 253(a) generally bars state or local requirements that actually or effectively prohibit a provider from offering telecommunications service. In past decisions, the Commission has explained how this provision preempts state or local moratoria on network deployment or fees that inhibit the placement of small wireless facilities essential for expanded or improved services. Today's Notice of Inquiry builds on that foundation.

As the item recognizes, delays in authorizations, even if not outright moratoria, can effectively prohibit wireline network deployment and the telecommunications services those networks enable. Likewise, wireline networks, like wireless networks, could be inhibited by excessive or burdensome fees. Costs can also take other forms, such as in-kind compensation requirements, on which the NOI appropriately seeks comment. When these costs or delays materially inhibit carriers' ability to provide service, consumers are harmed, public safety is diminished, and U.S. leadership in advanced communications networks is weakened. That is why it is timely to examine these issues as part of the Build America Agenda.

I recognize that state and local practices vary, and I appreciate the NOI's efforts to build a detailed record on these legal requirements. I also welcome examples of state and local approaches that successfully balance Congress's objective to foster telecommunications services with the important interests of state and local governments. In the past, the Commission has drawn on such best practices to guide implementation of provisions like section 253. Where the record warrants, however, the Commission should not hesitate to fulfill its responsibility to preempt state and local requirements that conflict with section 253.

I thank the Wireline Competition Bureau for its excellent work on this item. I look forward to working with the Chairman and other Commission staff to advance the Build America Agenda, and with Congress as it considers additional ways to reduce permitting-related barriers to broadband deployment.