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
	)	

REPLY COMMENTS OF INCOMPAS

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December 18, 2025

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INCOMPAS, by the undersigned, respectfully submits these reply comments in response to the Federal Communications Commission's ("Commission" or "FCC") *Notice of Inquiry* ("NOI") seeking comment on barriers to wireline deployment.[1] These reply comments highlight the consensus among diverse stakeholders that immediate Commission action is necessary to address state and local requirements that are materially inhibiting the deployment of critical wireline telecommunications infrastructure across the United States.

I. INTRODUCTION AND SUMMARY

The Commission's inquiry into state and local requirements that constrain the deployment of modern, high-speed wireline infrastructure has resulted in a consensus view among industry stakeholders. Rural cooperatives and urban fiber builders, incumbent carriers and new entrants, cable operators and competitive providers have indicated that state and local permitting practices are preventing Americans from receiving the high-speed connectivity that these companies and Congress has invested billions of dollars to deliver. The barriers described in the record by INCOMPAS members and others are not edge cases or isolated incidents, but rather systemic problems that require Commission intervention.

[1] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (rel. Sept. 30, 2025) ("NOI").

The factual patterns are strikingly similar across commenters. A western state provider describes a project proposed in December 2023 to connect 20,000 locations that "still has not been completed due to significant challenges presented by the permitting agency, such as shifting construction and engineering standards."[2] An Illinois fiber builder reports seeking permits in July 2025, only to have the village demand a master agreement in September that it has yet to provide months later.[3] A provider in North Carolina reports permits pending "for several months" with no confirmed timeline for review, threatening an ARPA-funded project's December 2026 deadline.[4] These complaints represent a chorus of diverse providers from across the industry documenting the same fundamental problem: the permitting process has become a barrier to deployment rather than a reasonable framework for managing rights-of-way.

As noted by INCOMPAS in our comments, the record demonstrates three common categories of barriers that recur with troubling frequency. First, virtually every type of provider experiences excessive delays in every region of the country. Even where states have enacted statutory "shot clocks"—60 days in Hawaii, 60 days in Ohio, 30 days in North Carolina—local governments routinely ignore them.[5] One provider reports that it has "never had a single permit processed" within a state's mandated 60-day timeline "because state agencies simply do not adhere to it."[6] While resourcing is undoubtedly a concern, the delays stem from systemic problems like unstated requirements that emerge mid-process, sequential rather than parallel reviews, demands for

[2] Comments of NCTA—The Internet & Television Association, WC Docket No. 25-253, at 7 (filed Nov. 18, 2025) ("NCTA Comments").
[3] Comments of Crown Castle Fiber LLC, WC Docket No. 25-253, at 13 (filed Nov. 18, 2025) ("Crown Castle Comments").
[4] Comments of USTelecom—The Broadband Association, WC Docket No. 25-253, at 13 (filed Nov. 18, 2025) ("USTelecom Comments").
[5] Comments of ACA Connects—America's Communications Association, WC Docket No. 25-253, at 5 (filed Nov. 18, 2025) ("ACA Connects Comments").
[6] *Id*.

master agreements that jurisdictions then fail to provide, and in some cases simple refusal to act on applications.[7]

Second, fees that bear no relationship to a permitting entity's costs are proliferating. Phoenix now requires fiber providers to pay the greater of $6 per home passed or 3-6% of gross revenues, effectively taxing deployment itself.[8] Peoria charges an "Annual Minimum Fee" scaled to subdivisions passed, transitioning to 3-6% of gross revenues with automatic inflation adjustments.[9] Los Angeles imposes "street damage restoration fees" that can reach $126 per linear foot, causing providers to forgo projects entirely.[10] These fees are not designed to recover permitting costs, they are instead revenue-generators that treat broadband infrastructure as a municipal cash source.

Third, conditions unrelated to legitimate rights-of-way management are making projects financially infeasible. Jurisdictions demand curb-to-curb street repaving for narrow microtrench cuts, ADA ramp replacement at intersections nowhere near construction sites, and installation of "shadow conduit" that doubles project costs so governments can compete with the very providers they regulate.[11] One Pennsylvania county demanded street restoration that would have added $2 million to construction costs for a $1 million project.[12] These requirements have nothing to do with managing rights-of-way and everything to do with extracting value from telecommunications projects.

The legal framework for addressing these barriers is well-established. Section 253(a) prohibits state and local requirements that "prohibit or have the effect of prohibiting" the provision

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[7] *See id*. at 15-17; Crown Castle Comments at 12-13; USTelecom Comments at 5-8.
[8] Crown Castle Comments at 21.
[9] *Id*. at 22.
[10] *Id*. at 22; USTelecom Comments at 10.
[11] NCTA Comments at 10-12.
[12] USTelecom Comments at 10.

of telecommunications service.[13] The Commission and courts have consistently held that requirements which "materially inhibit or limit" deployment constitute effective prohibitions, even when they do not completely bar entry.[14] The Commission applied this standard comprehensively in 2018's *Small Cell Order*, establishing shot clocks and fee caps that have accelerated wireless deployment and survived multiple court challenges.[15] Furthermore, as one commenter observes, the *Small Cell Order* "was not limited to small wireless facilities" but rather "articulated a technology-neutral interpretation of Sections 253 and 332."[16] The statute itself makes no distinction between wireless and wireline facilities, and Section 253 was applied primarily to wireline deployments for nearly two decades after its enactment.[17] Indeed, at least one federal district court has already applied the *Small Cell Order*'s fee analysis to wireline facilities, concluding "that there is no basis for applying a different standard to fees charged for linear telecommunications facilities than for fees charged for small wireless facilities."[18]

The consensus of industry stakeholders in this proceeding extends beyond the problem to the solution. Commenters across the competitive spectrum propose remarkably similar remedies: (1) uniform shot clocks (with most suggesting 30-90 days depending on complexity), (2) safe harbor fee levels based on actual costs (drawing on models from states like Florida, Georgia, and Michigan), (3) prohibitions on discriminatory treatment between incumbents and new entrants, and

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[13] 47 U.S.C. § 253(a).
[14] *California Payphone Ass'n, Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, Memorandum Opinion and Order, 12 FCC Rcd. 14191, para. 31 (1997).
[15] *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 v. United States*, 969 F.3d 1020 (9th Cir. 2020).
[16] Crown Castle Comments at 5.
[17] *Id*. at 5-6 & n.6.
[18] *Cellco P'ship v. City of Rochester*, 623 F. Supp. 3d 184, 198 (W.D.N.Y. 2022) (quoted in Crown Castle Comments at 18).

(4) transparency requirements ensuring all fees and procedures are publicly disclosed.[19] Several commenters highlight successful state models that demonstrate how these approaches work in practice proving that streamlined permitting is compatible with legitimate state and local management of rights-of-way.[20]

The urgency for competitive providers leveraging private and public capital for critical broadband and AI infrastructure projects cannot be overstated. Federal funding programs have fixed deadlines that cannot be extended. ARPA projects must be completed by December 31, 2026.[21] BEAD projects face similar constraints. Every month without permitting reform means more communities without service, more federal dollars at risk, and more ground lost to international competitors in deploying the infrastructure essential for AI development and economic competitiveness.

INCOMPAS urges the Commission to act decisively by issuing a *Notice of Proposed Rulemaking* in the instant proceeding that proposes specific shot clocks, fee safe harbors, and anti-discrimination rules, and, as necessary, declaratory rulings in cases that present clear violations of the Commission's permitting rules under section 253. Furthermore, the Commission should move quickly to adopt accelerated reforms in a *Report and Order* that will ensure that American providers can move faster to deliver the broadband infrastructure on which America's economy and national security depend.

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[19] *See* ACA Connects Comments at 18-19; USTelecom Comments at 14-17; Crown Castle Comments at 13-15, 19-20; NCTA Comments at 8-10.

[20] For example, Michigan's METRO Act provides statewide forms, a 45-day approval deadline, and uniform fees of $500 for applications and $0.05 per linear foot annually. *See* ACA Connects Comments at 9-10; USTelecom Comments at 16. Florida limits permit fees to $100 and bases them strictly on direct permitting costs. *See* USTelecom Comments at 16; Crown Castle Comments at 20.

[21] USTelecom Comments at 12.

II. THE RECORD DEMONSTRATES PERVASIVE PERMITTING BARRIERS THAT MATERIALLY INHIBIT WIRELINE DEPLOYMENT

A. Excessive Delays Are Preventing Deployment Across the Country

The record consistently shows how providers across every market segment are unable to get timely decisions on permit applications. As INCOMPAS and others reported, these delays are not measured in days or weeks but in months and years, and they are not limited to complex or novel deployments. Even routine fiber installations face extraordinary obstacles.

Particularly concerning to INCOMPAS' competitive providers is the experience of providers seeking to enter new markets. In addition to the evidence provided by the full membership of INCOMPAS in our initial comments,[22] Crown Castle offered for the record several examples of the delays it has experienced when entering new markets. In June 2022, it sought to deploy in a western city and nearly three years later, in May 2025, it obtained its first right-of-way permit.[23] Crown Castle also reports that it approached a city in 2023 about a fiber deployment project but was forced to walk away after nearly a year of negotiations over fees and terms.[24] These incidents represent an unfortunate pattern repeated across jurisdictions and provider types.

Even more concerning, some jurisdictions ignore their own statutory deadlines. The record documents this phenomenon in multiple states with explicit shot clock requirements. Hawaii law mandates 60-day permit review, yet one provider reports it has "never had a single permit processed under the legislatively mandated 60-day timeline because state agencies simply do not adhere to

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[22] Comments of INCOMPAS, WC Docket No. 25-253, Annex A at 1 (filed Nov. 18, 2025) ("INCOMPAS Comments").
[23] Crown Castle Comments at 12 (describing Inglewood, California experience).
[24] *Id*. at 21 (describing Huntsville, Alabama experience). In a third example, Crown Castle has been trying since 2022 to obtain permits in a major metropolitan area, facing a process that "takes, on average, nine months to issue a permit" for basic underground fiber installation. *Id*. at 12 (describing Los Angeles experience).

it."[25] Ohio statute requires municipalities to act within 60 days, but "members report that municipalities simply do not abide by that timeline."[26] North Carolina law sets a 30-day municipal review limit, yet providers report jurisdictions "routinely exceed" that deadline "by two to three months," with one member stating that one city "has granted none of its permit applications within the mandated timeline."[27] In these situations, providers have no predictability and no recourse short of litigation which is an expensive and time-consuming process that itself delays deployment.

The delays compound when jurisdictions impose multi-stage approval processes. One Maryland city requires "a series of sequential planning and development hearings, each contingent on narrowly timed public notice requirements," stretching the process to five months "or longer if an applicant misses a mailing window by even a single day."[28] A Michigan township demands that applicants obtain county permits before it will grant township permits for the same work.[29] Several Florida municipalities now require "separate approvals for traffic control plans, excavation, and right-of-way use even when all apply to the same construction area," with some agencies requiring "sequential reviews by separate internal departments (ROW, water, traffic, and safety), adding weeks or months to the approval process."[30] In some instances, even when permits are eventually granted the delays and permitting barriers can cause projects to become financially unsustainable.

The harm is often not limited to the immediate project. As one infrastructure provider explains, drawing on experience with both wireless and wireline deployments, "in a dynamic and constantly changing industry, consumers demand immediate access to the most recent technologies and services. As a result, delays of a few months, much less years, are unacceptable and can

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[25] ACA Connects Comments at 5.
[26] *Id*.
[27] *Id*.
[28] USTelecom Comments at 5.
[29] *Id*.
[30] *Id*. at 6.

fundamentally harm a company's ability to compete and succeed in the long term."[31] During the delay, the provider is "prevented from competing with ILECs and any other existing provider," giving incumbents an imposing first-mover advantage.[32] The damage to competition cannot be undone even if the permit is eventually issued.

Some jurisdictions impose *de facto* moratoria that stop all permitting activity. The record documents cities that have "issued indefinite stop work letters to multiple fiber providers, without notice, a cure period, or hearing" and have "failed to provide an end date to such *de facto* moratoria," with some lasting "multiple months."[33] One provider reports encountering jurisdictions that "refuse to accept any permit applications after other communications companies had already disturbed the ROW," effectively punishing one provider for another's actions.[34] Another describes a North Carolina town that initially announced a two-month moratorium but "has extended it indefinitely and will not process any permits."[35] These practices are not legitimate exercises of rights-of-way management authority, they constitute effective prohibitions on deployment that violate Section 253(a).

The problem extends beyond obtaining initial authorization. Some jurisdictions demand that providers negotiate master right-of-way agreements before even applying for construction permits, adding months or years to the process. The record documents cases where providers "submitted multiple related permit applications" only to discover the jurisdiction would not process them without a master agreement the jurisdiction had never mentioned and for which it did not have a template.[36] INCOMPAS member Crown Castle sought permits in Illinois in July 2025 for work in a

[31] Crown Castle Comments at 12.
[32] *Id*.
[33] INCOMPAS Comment at Annex A at 1.
[34] USTelecom Comments at 13.
[35] *Id*.
[36] Crown Castle Comments at 12-13.

village where it had obtained permits earlier that year. In September, "the Village, not yet having acted upon the permits, for the first time requested that Crown Castle enter into an agreement to cover all of Crown Castle's work in the rights-of-way."[37] Although the village "offered to provide a draft agreement, it later admitted it had no model agreement."[38] To expedite matters, the provider submitted its own draft in September. "As of this filing the Village has not (1) offered its own draft agreement, (2) provided comments on Crown Castle's draft, or (3) issued any permits—even after Crown Castle offered to negotiate terms of a master agreement in parallel with performing its ongoing work."[39] The project, originally scheduled for October 2025 completion, has been delayed into the following calendar year.[40]

This pattern of lengthy negotiations over agreements jurisdictions are unprepared to provide recurs throughout the record. As another association observes, "most Members" encounter "very slow, inefficient, or burdensome processes that can add months to a provider's deployment schedule."[41] The problem is not that jurisdictions lack authority to require agreements, it is that they demand agreements without having standard terms, then take months or years to negotiate while construction is frozen. The result, as multiple providers document, is that they "walk away from planned deployment projects and redirect their limited capital elsewhere."[42]

B. Fees Unrelated to Government Costs Are Making Projects Uneconomical

The second major barrier documented throughout the record is fees that bear no relationship to the actual costs governments incur in processing permits or managing rights-of-way. These fees

[37] *Id*. at 13.
[38] *Id*.
[39] *Id*.
[40] *Id*.
[41] NCTA Comments at 6.
[42] Crown Castle Comments at 12; *see also* ACA Connects Comments at 11.

are generally designed to generate general revenue but they have also been used in some instances to make competitive entry prohibitively expensive.

The most egregious examples involve fees calculated as a percentage of gross revenues—an approach the Commission and multiple courts have found unlawful because such fees "generally are not based on the costs associated with an entity's use of the ROW" but instead reflect "the business success of the rights-of-way user, not related to the actual costs incurred by state or local government."[43] Yet the record demonstrates such fees are proliferating. Phoenix charges licensed providers "an annual license fee of the greater of an alternative minimum annual fee (AMF) or a percentage of gross revenues: 3% of gross revenues for providers that directly serve end users, and 6% of gross revenues for providers of open access wholesale services," with the AMF set at "$6.00 per year for every residential unit passed by its fiber network."[44] This creates what amounts to "a 'per-home tax' on network deployment, even for homes that have not subscribed." For example, "a fiber builder passing 10,000 homes must pay at least $60,000 per year (10,000 × $6) regardless of how many homes actually buy service."[45]

Peoria adopted a similar structure in 2025, requiring providers to "pay an Annual Minimum Fee (AMF) (scaled by the number of subdivisions in the provider's service area) until they begin generating revenue, after which the fee transitions to a percentage of gross revenue."[46] Internet service providers must pay 3% of gross revenues while carriers leasing fiber to third parties pay 6%, "with automatic annual increases tied to inflation."[47] As Crown Castle observes, "such a fee

[43] Crown Castle Comments at 18 (quoting *Small Cell Order* at para. 70).
[44] *Id*. at 21.
[45] *Id*.
[46] *Id*. at 22.
[47] *Id*.

structure—effectively a franchise fee by another name—far exceeds any reasonable cost of managing the rights-of-way and treats broadband infrastructure as a municipal revenue stream."[48]

Portland imposes a 7% fee on incumbent carriers' exchange access revenues while charging competitive providers 5% of gross revenues.[49] Albuquerque charges 3% of gross revenues "including revenues derived from revenue for services provided to other telecommunications providers that also pay the city 3% of gross revenue" effectively double-taxing the same infrastructure.[50] The record documents numerous other jurisdictions in Arizona charging per-foot fees ranging from $0.89 to $3.18 annually, or percentage-of-revenue fees ranging from 2% to 6%, with some requiring providers to pay whichever is greater.[51] These fees accumulate across jurisdictions, making large-scale deployment unsustainable. Even where fees are not explicitly revenue-based, jurisdictions impose charges far exceeding any reasonable approximation of costs. One jurisdiction charges for overlashing fiber on an existing strand along 500 feet of right-of-way.[52] Los Angeles assesses "street damage restoration fees"[53] and Seattle requires full street restorations for essentially all trenching.[54]

The record also documents how fees are often hidden or imposed after the fact, making financial planning impossible. One Central Florida city initially "demanded a fee priced at five

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[48] *Id*.
[49] INCOMPAS Comments, Annex B at 1.
[50] *Id*.
[51] Crown Castle Comments at 22.
[52] *See* NCTA Comments at 9 (fees include $0.45/ft/day x 500 linear feet for sidewalk closure, $3.50/ft/day x 500 linear feet for parking lane closure, plus a $394 occupancy permit, totaling $6,319 for three days of work—compared to previous permits that cost "$195 each and allowed five days of work").
[53] *See* Crown Castle Comments at 22. These fees average $126 per foot of facilities, adding approximately $10,000 to average permit costs and causing providers to "forgo projects to build new infrastructure."
[54] *Id*. INCOMPAS member Crown Castle reports that Seattle's excessive street restoration requirements mean providers pay upwards of $2,700 to $3,400 per foot to restore the street after trenching.

percent of the total project cost, far in excess of what is allowed under state law," then "ultimately adopted an ordinance reforming its permitting process, lowering permit costs, and providing for the return of unused deposit funds," but subsequently "outsourced the permit review process to a third-party, and the ensuing application, question, revision, and review process took another full year."[55] Harrisburg and Wilmington "only permit the city or its contractor to perform all restoration and refuse to provide cost estimates until the restorative work is completed and passed onto the service provider, which makes financial planning impossible."[56] As one commenter emphasizes, Section 253(c) explicitly mandates that compensation be "publicly disclosed," yet "secret or ad hoc fees undermine the ability of providers to confirm that they are being treated in a non-discriminatory manner and they frustrate sound budgeting and investment decisions."[57]

Perhaps most troubling are fee structures that discriminate between providers based on factors unrelated to their actual use of rights-of-way. The record documents localities that "charge 7% of gross revenues for fixed-wireless or fiber services while applying 5% to cable services, or impose per-foot fees ranging from $3.86 to $5.00 for network facilities not directly serving end users."[58] Some jurisdictions impose different fees depending on whether providers serve retail customers directly or provide wholesale services, despite both using identical infrastructure that imposes identical burdens on rights-of-way.[59] Others charge new entrants fees that incumbents never paid and do not pay, giving incumbents permanent competitive advantages unrelated to efficiency or service quality.[60]

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[55] NCTA Comments at 7-8.
[56] INCOMPAS Comments, Annex B at 3.
[57] Crown Castle Comments at 20 (citing 47 U.S.C. § 253(c)).
[58] USTelecom Comments at 10.
[59] *See* Crown Castle Comments at 21-22.
[60] *See id*. at 23; ACA Connects Comments at 17.

The aggregate effect of these fees is to make deployment uneconomical, particularly in the rural and underserved areas where deployment is most urgently needed. The record documents numerous examples of providers forced to abandon projects because fees made them financially unsustainable. Crown Castle "had to walk away from a planned deployment in the City" after negotiations revealed an annual fee structure "so high it would have caused Crown Castle to lose money on its network operations."[61] Similarly, the company "was forced to walk away from a major network infrastructure investment in the city due to the prohibitive permitting costs" after a Minnesota municipality demanded fees that "go far beyond the city's costs," including a "$63,000" permitting fee and per-linear-foot charges that "for a single block—would have cost $28,964."[62]

The record demonstrates broad consensus that fees must be cost-based to comply with Section 253. Drawing on the *2018 Small Cell Order*, "fees violate Section 253(a) unless three conditions are met: (1) the fees are a reasonable approximation of government's actual costs, (2) only objectively reasonable costs are included, and (3) the fees are no higher than those charged to similarly-situated competitors in similar situations."[63] INCOMPAS supports the approach that the Commission should "mandate that all permit fees for providers of infrastructure capable of carrying telecommunications services be: (1) competitively neutral, technology-neutral, and nondiscriminatory; (2) established in advance and publicly disclosed; and (3) based on the permitting authority's actual, direct, and objectively reasonable costs caused by the relevant deployment."[64] The consensus extends to the remedy proposed by INCOMPAS: establish clear safe

[61] Crown Castle Comments at 22.
[62] *Id*. at 20.
[63] Crown Castle Comments at 16 (citing *Small Cell Order* at para. 50).
[64] NCTA Comments at 10.

harbor fee levels, as the Commission did for small wireless facilities, that provide a "bright-line 'yardstick' for fees that would satisfy Section 253(c)'s cost-based requirement."[65]

C. Unreasonable Conditions Are Forcing Providers to Abandon Projects

Beyond delays and excessive fees, the record documents a third category of barriers: in-kind conditions imposed on permits that have no reasonable relationship to the specific deployment at issue but substantially increase costs or render projects infeasible. These conditions use permit leverage to extract value or improvements unrelated to managing the provider's actual use of rights-of-way.

The most common unreasonable condition involves street restoration requirements far exceeding what is necessary to return disturbed areas to pre-construction condition. INCOMPAS provided a number of these examples in the Annex of our initial comments. Jurisdictions demand "curb-to-curb street repaving" for projects involving "minor street disruptions" or even narrow microtrench cuts.[66] One cable operator was "burdened" by a locality "imposing such repaving requirements plus a performance bond of $2 million and other unusual conditions, which together delayed the project by at least eight months."[67] In another case, a township "demanded that the operator pay nearly $2 million in what amounted to curb-to-curb street repaving or substantially similar restoration costs" for a project extending broadband "to over 3,000 homes."[68] Given the project budget was "approximately $7 million," the additional "$2 million made the project financially infeasible."[69] These requirements bear no relationship to legitimate restoration needs—

[65] Crown Castle Comments at 19.
[66] NCTA Comments at 11.
[67] *Id*.
[68] *Id*.
[69] *Id*.

they use telecommunications permits as mechanisms to fund general road improvements at provider expense.

Another common unreasonable condition requires providers to install or upgrade infrastructure that has nothing to do with their deployment. Many jurisdictions "require ADA ramp replacement at the discretion of a local official who may delegate that authority to ROW inspectors for the final decision," resulting in "having to replace ramps at all four corners of an intersection, even in cases where the construction does not disturb existing curbs."[70] As one commenter notes, "broadband providers should not be required to pay for fixing a problem that they did not cause or contribute to."[71] Yet the record documents jurisdictions requiring providers to "install ADA-compliant curb ramps at every intersection where the provider's fiber crosses—even if the construction work is nowhere near the corner or pedestrian walkway," effectively "turn[ing] telecom permits into public works mandates."[72]

Perhaps most troubling are requirements that providers install additional infrastructure for government use or benefit. The record documents that "numerous localities and some state permitting authorities have required that any broadband provider installing its own facilities in the ROW must also install additional 'shadow conduit' on the locality's behalf."[73] Under these conditions, "the locality will own the conduit and may use it to compete with the broadband provider or lease it to a competitor."[74] This practice can "double the project's conduit-related costs and adds significant complexity to project design," while also creating competitive distortions by

[70] NCTA Comments 11.
[71] *Id*. at 11-12.
[72] Crown Castle Comments at 25.
[73] NCTA Comments at 10.
[74] *Id*.

giving governments free infrastructure they can use against the very providers they regulate.[75] The record documents similar demands for free fiber, free services, or other in-kind contributions.[76]

Other unreasonable conditions impose procedural or technical requirements unrelated to the deployment itself. Jurisdictions "require providers to locate city-owned water and sewer lines for them so that the cities can create maps of this infrastructure," forcing providers to conduct surveys and prepare documentation that serves municipal interests rather than deployment needs.[77] One locality "sought to require a provider to pay for a metes and bounds survey of the city's right-of-way, because the city was unsure of its own GIS mapping, at an additional cost of nearly $7,000 for a project occupying only a few hundred feet of right-of-way."[78] Another demanded "real-time video monitoring of construction crews via CCTV or similar means, with the provider required to fund the equipment and feeds," a requirement that is "costly and often duplicative of normal inspection processes."[79]

Technical requirements can be equally problematic when they exceed industry standards without justification. One county "adopted standards in excess of NESC ground clearance requirements for aerial construction" and has "adopted bury depth requirements to 30" for underground service drops, forcing broadband providers to place no-voltage fiber alongside power

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[75] *Id*.
[76] *See* INCOMPAS Comments, Annex B at 2. One Illinois village "includes in its License Agreement a requirement to provide a 50% discount on fiber services to the village for any locations the village wishes to connect." Another Illinois city requires "install[ing] additional conduit or handholes for local governments." An Alabama locality demands providers "provide dark fiber at no cost." A New Jersey jurisdiction recently asked a provider to "give exclusive use of six strands of fiber to the City," including "the right to use any future overlashed fiber installed at a later date—as a condition of obtaining a permit for constructing fiber facilities to serve a single site." Crown Castle Comments at 25. These demands treat permit leverage as a mechanism to extract free goods and services rather than to manage rights-of-way.
[77] NCTA Comments at 11-12.
[78] *Id*. at 12.
[79] Crown Castle Comments at 25.

and gas, substantially increasing the cost to provide service."[80] Multiple jurisdictions "recently applied professional engineer stamp/certification requirements" for routine telecommunications work, despite state statutes exempting such work from licensure requirements.[81]

In some instances, INCOMPAS members have been subject to a series of unreasonable conditions leading to the abandonment of broadband projects. As one member relays:

> In 2023 in a midwestern county, our company applied for a number of permits for deployment of fiber optic backbone infrastructure and lateral support of wireless tower facilities. After a few months of timely responses and several permit approvals, the County became unresponsive, and repeated inquiries regarding permit review status were ignored for months at a time. The County then began a series of delays, denials, and additional and changing demands that were not only beyond the stated or published county requirements, but were imposed on our company exclusively. Such demands included, but were not limited to: (1) requiring the company to hire professional surveyors to survey unrelated utility placements and provide maps to the County, essentially using our requests for permits as leverage to map the County's underground utilities for the County; (2) consulting with, and getting approval of, our deployment plans by third party utilities; (3) requiring the company to maintain a balance of $50,000 for the County's use without any accounting requirements pertaining to the County's use of such balance; and (4) requiring the company to have both a professional surveyor stamp and a professional engineer stamp, which required an additional $300,000 investment. Although the company initially agreed to many of the increasing and changing demands, it became apparent the County would continue to impose ever-increasing demands, and the company would encounter ever increasing delays if it continued the broadband deployment project. As a result, we elected to abandon the remainder of the project in the County, impacting resiliency of existing networks and future broadband expansion.

It is evident that the cumulative impact of these conditions is substantial. As one commenter emphasizes, "conditions like these can add millions of dollars in cost to even modest fiber projects."[82] More fundamentally, they reflect a misunderstanding of the scope of legitimate rights-of-way management authority under Section 253(c). As another commenter argues, "if an imposed condition does not address a site-specific, project-specific concern arising from the deployment, it

[80] NCTA Comments at 13.
[81] USTelecom Comments at 7.
[82] Crown Castle Comments at 25.

should be deemed unreasonable under Section 253."[83] Local governments "retain ample authority to protect safety and manage public property—for instance, requiring proper traffic control, trench backfilling, and resurfacing of the disturbed pavement to similar quality as before."[84] However, "leveraging a fiber permit to extract unrelated infrastructure improvements or surveillance capabilities goes far beyond ROW management" and materially inhibits deployment.[85]

III. THE COMMISSION'S AUTHORITY TO ACT IS FIRMLY ESTABLISHED

Given that commenters have proffered multiple independent and complementary justifications for Commission authority under Section 253, the appropriate next step is for the Commission is to issue a *Notice of Proposed Rulemaking* that proposes specific rules based on these theories, allows all stakeholders to comment on their legal validity, and enables the Commission to adopt a comprehensive regulatory framework on a fully developed record.

A. Section 253's Technology-Neutral Framework Applies Fully to Wireline

The record confirms that the Commission's authority to address wireline permitting barriers under Section 253 is clear and well-established. As multiple commenters observe, the statute's prohibition on requirements that "prohibit or have the effect of prohibiting" telecommunications service draws no distinction between wireless and wireline facilities.[86] The Commission's interpretation of Section 253 in the 2018 *Small Cell Order* was technology-neutral, articulating general principles that apply to all telecommunications infrastructure before applying those principles to the specific context of small wireless facilities. The order's structure makes this clear. The Commission stated it would "articulate below the Commission's interpretation of Section 253(a) and the standards we adopt for evaluating when a fee for Small Wireless Facility deployment

[83] *Id*.
[84] *Id*.
[85] *Id*.
[86] 47 U.S.C. § 253(a).

is preempted, regardless of how the fee is challenged."[87] As Crown Castle explains, "the Commission's statement makes clear, first, that the Commission is articulating the general interpretation of Section 253(a)—without limiting this interpretation based on the technology involved. The second clause of the Commission's statement explains that it will then apply the standards to the specific case of small wireless facility deployment after it articulates the general standard."[88] The Commission's discussion of cost-based fees focuses "on the statute, not any particular technology," noting that "the statutory context persuades us to adopt a cost-based interpretation."[89]

At least one federal court has already recognized that the *Small Cell Order's* Section 253 analysis applies to wireline facilities.[90] The district court concluded "that there is no basis for applying a different standard to fees charged for linear telecommunications facilities than for fees charged for small wireless facilities," finding "no reason to conclude that the FCC's interpretation of the ambiguous phrase 'fair and reasonable compensation' . . . to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs is limited to small wireless facilities."[91]

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[87] *Small Cell Order* at para. 46.
[88] Crown Castle Comments at 6.
[89] *Id*. (quoting *Small Cell Order* at para. 55).
[90] *Id*. at 18. When the City of Rochester argued that the order "did not apply to challenges brought to" its ordinance "applying per foot fees to underground and aerial wireline telecommunications facilities," the district court rejected the argument after "analyzing the 2018 Broadband Deployment Order in detail."
[91] *Id*. (quoting *Cellco P'ship v. City of Rochester*, 623 F. Supp. 3d 184, 198 (W.D.N.Y. 2022)). This conclusion comports with Section 253's legislative history and implementation. Congress enacted the provision as part of the Telecommunications Act of 1996 to promote competition and rapid deployment of telecommunications infrastructure. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (preamble). For nearly two decades, the Commission and courts applied Section 253 primarily to wireline facilities, like fiber optic network deployments. In so doing, courts held that Section 253 was violated by municipal delays and excessive fees, among other requirements. *See* Crown Castle Comments at 8. Cases like *TCG New York, Inc. v. City of White Plains* addressed excessive delays in negotiating wireline franchise agreements. 305 F.3d 67 (2nd

The statutory text also supports technology-neutral application, including the protection of dark fiber infrastructure deployments where that fiber is used in the provision of telecommunications services. Section 253(a)'s prohibition extends to any requirement that may "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[92] As one commenter emphasizes, "the regulatory framework governing a deployment should not change simply because one service is added to (or no longer part of) the mix of services traversing a particular span of fiber or coaxial cable."[93] The statute focuses on effects on service provision, not on the specific technology used to provide service, as INCOMPAS noted in our initial comments.[94] If a state or local requirement materially inhibits a provider's ability to deploy fiber that will carry or is used in the provision of telecommunications services, that requirement violates Section 253(a) regardless of whether the fiber also carries broadband or other services.

B. The "Materially Inhibits" Standard Captures the Barriers in the Record

The Commission and courts have long recognized that Section 253(a)'s prohibition on requirements that "have the effect of prohibiting" service encompasses not just complete bars to entry but also requirements that materially inhibit or limit deployment. The Commission articulated this principle in *California Payphone*, determining that a requirement has "the effect of prohibiting" service if it "materially limits or inhibits the ability of any competitor or potential competitor to

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Cir. 2002). *Puerto Rico Tel. Co. v. Municipality of Guayanilla* addressed excessive fees for wireline infrastructure. 450 F.3d 9 (1st Cir. 2006). *Qwest Corp. v. City of Santa Fe* addressed requirements to install shadow conduit for wireline fiber. 380 F.3d 1258 (10th Cir. 2004). The Commission's application of Section 253 to wireless facilities was an extension of settled principles, not a departure from them.

[92] 47 U.S.C. § 253(a)

[93] NCTA Comments at 4.

[94] *See* INCOMPAS Comments at 19-22.

compete in a fair and balanced legal and regulatory environment."[95] The *Small Cell Order* reaffirmed this standard,[96] and the Ninth Circuit upheld it in *City of Portland*.[97] Multiple other circuits—the First, Second, Third, and Tenth—have adopted the same interpretation.[98]

The "materially inhibits" standard is not a loosening of Section 253's prohibition but rather a recognition of how barriers actually operate. A requirement that delays deployment for months or years materially inhibits service provision during that entire period, even if the permit is eventually granted. A fee that makes deployment uneconomical in a particular market effectively prohibits service in that market, even if deployment remains theoretically possible at a loss. Discriminatory treatment that gives incumbents permanent cost advantages materially limits new entrants' ability to compete, even if entry isn't completely foreclosed.

The barriers documented in this record fit squarely within the "materially inhibits" framework. Delays of months or years prevent service provision during the delay period and confer competitive advantages on incumbents that cannot be reversed when permits are eventually granted. As the Commission recognized in the context of wireless shot clocks, "failure to act [on an application] can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services."[99] Fees exceeding costs similarly materially inhibit deployment. The Commission found in the *Small Cell Order* that "even fees that might seem small in isolation have material and prohibitive effects on deployment, particularly when considered in the

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[95] *California Payphone Ass'n*, 12 FCC Rcd 14191, para. 31 (1997) ("*California Payphone*").
[96] *Small Cell Order* at paras. 31, 35-37.
[97] *City of Portland*, 969 F.3d at 1034-35.
[98] Crown Castle Comments at 8-9.
[99] *Small Cell Order* at para. 119. Courts have reached the same conclusion. The Second Circuit in *City of White Plains* held that a city's "unreasonable delay in negotiating a franchise agreement" had "the effect of prohibiting" service because "extensive delays in processing [a provider's] request for a franchise have prohibited [that provider] from providing service for the duration of the delays." *See City of White Plains*, 305 F.3d at 76.

aggregate."[100] Courts have consistently held that excessive fees violate Section 253.[101] Unreasonable conditions likewise materially inhibit deployment when they substantially increase costs or introduce uncertainty. The Commission has recognized that non-fee requirements can violate Section 253, holding that "a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."[102]

C. Courts Have Consistently Upheld Commission Preemption

The record also demonstrates that federal courts have consistently upheld the Commission's authority to preempt state and local requirements that materially inhibit telecommunications deployment. Principally, the "materially inhibits" standard itself has been adopted or applied by the First, Second, Third, Ninth, and Tenth Circuits.[103] The Ninth Circuit's decision in *City of Portland* is particularly instructive because it directly reviewed and upheld the Commission's application of

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[100] *Small Cell Order* at para. 53.

[101] The First Circuit in *Municipality of Guayanilla* found that a 5% gross revenue fee effectively prohibited service because, given the Commonwealth-wide application of such fees, "the enactment of gross revenue fees in multiple municipalities would" impose unsustainable costs on the provider. 450 F.3d at 21-23. The Tenth Circuit in *City of Santa Fe* held that requiring a provider to install shadow conduit at substantial cost "materially inhibit[ed]" deployment. *City of Santa Fe*, 380 F.3d at 1270-71. The Western District of New York recently applied these principles to per-foot fees on wireline facilities, holding that the city violated Section 253 where it "sought to impose per linear foot fees but could not produce evidence demonstrating the fees were based upon the City's actual and direct costs." *Cellco P'ship v. City of Rochester*, 719 F. Supp. 2d 256, 271-72 (W.D.N.Y. 2024).

[102] *Small Cell Order* at para. 37. Courts have again reached similar conclusions. The Fifth Circuit recently recognized that restrictions on deployment "seem to fall within the scope of the statute's text" because "just because a provider can provide some limited level of service does not mean that it cannot improve that level, expand its capacity, or otherwise offer an upgraded or additional form of telecommunications service." *Crown Castle v. City of Pasadena*, 76 F.4th 425, 440 (5th Cir. 2023).

[103] Crown Castle Comments at 8-9.

Section 253 to fees and delays. The court sustained the Commission's determination that fees exceeding costs "materially inhibit service," holding that "the FCC reasonably found that even fees that fall short of completely prohibiting service can have that material effect, and thus 'effectively prohibit' service within the meaning of § 253(a)."[104] The court also upheld shot clocks, recognizing that "extended delays can amount to an effective prohibition."[105]

Importantly, *City of Portland* remains good law even after the Supreme Court's decision in *Loper Bright* eliminated *Chevron* deference. As one commenter notes, "while the Ninth Circuit in *City of Portland* relied in part on *Chevron* deference in sustaining the FCC's interpretation, the same outcome can be reached today under the statute's plain meaning."[106] Section 253(a)'s text prohibits requirements that "have the effect of prohibiting" service—language that naturally encompasses material inhibitions even without agency deference. The statute focuses on effects, not intent, and on ability to provide service, not theoretical possibility of doing so at unsustainable cost or after unreasonable delay.

Courts have applied Section 253 to preempt a wide range of state and local requirements affecting wireline deployments.[107] The judicial consensus extends to the specific remedies the Commission adopted in the *Small Cell Order*. *City of Portland* upheld both the fee safe harbors and

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[104] *City of Portland*, 969 F.3d at 1038.
[105] *Id*. at 1039.
[106] Crown Castle Comments at 6.
[107] The Second Circuit in *City of White Plains* affirmed that excessive delays in franchise negotiations violate Section 253. *City of White Plains*, 305 F.3d at 76. The First Circuit in *Municipality of Guayanilla* held that gross revenue fees violate the statute because they are not cost-based. *Municipality of Guayanilla*, 450 F.3d at 21-23. The Tenth Circuit in *City of Santa Fe* found that requirements to install shadow conduit materially inhibit deployment by substantially increasing costs. *City of Santa Fe*, 380 F.3d at 1270-71. District courts have reached similar conclusions regarding discriminatory fee structures, duplicative permit requirements, and above-cost access charges. *See*, *e.g*., *Bell Atlantic-Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805, 818-19 (D. Md. 1999), *Montgomery County v. Metromedia Fiber Network, Inc.*, 326 B.R. 483, 494 (S.D.N.Y. 2005), *Zayo Group, LLC v. Mayor and City Council of Baltimore*, No. JFM-16-592, 2016 WL 3448261 (D. Md. Jun. 14, 2016) respectively.

the shot clocks, rejecting arguments that the Commission lacked authority to adopt such rules.[108] This decision confirms that the Commission may adopt specific numeric standards as implementations of Section 253's prohibition on effective prohibitions.

Notably, courts have recognized that Section 253's protections extend beyond entities providing telecommunications services directly to end users. The Commission has held that Section 253 applies to "infrastructure that can be used for the provision of both telecommunications and other services on a commingled basis."[109] The Fifth Circuit applied this principle in *Crown Castle v. Pasadena*, holding that an infrastructure provider that "establish[es] the infrastructure to enable" another company "to provide wireless service and to transmit" that company's "voice and data signals across its network" falls "neatly within the protective umbrella of § 253(a)."[110] The same reasoning applies to fiber infrastructure providers: they are protected by Section 253 when they deploy facilities that enable telecommunications service provision, even if they don't themselves offer retail services.

This robust body of precedent provides firm foundation for immediate Commission action. The Commission's authority to adopt specific numeric limits on fees and delays has been upheld. What remains is for the Commission to apply these settled principles to the extensive factual record of wireline permitting barriers documented in this proceeding.

IV. THE COMMISSION SHOULD PROMPTLY ADOPT RULES BASED ON STAKEHOLDER CONSENSUS

The record reveals not just consensus on the barriers that providers face but also agreement on the solutions the Commission should propose in a Notice of Proposed Rulemaking. Industry

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[108] *City of Portland*, 969 F.3d at 1038-39.
[109] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, para. 167 (2018) ("*Moratoria Order*").
[110] *Crown Castle*, 76 F.4th at 438.

stakeholders urge the Commission to adopt (1) shot clocks to prevent unreasonable delay, (2) safe harbor fees based on actual costs, (3) prohibitions on discriminatory treatment, and (4) transparency requirements ensuring all terms are publicly disclosed. These proposals build directly on the *Small Cell Order's* approach while tailoring it to wireline deployments' specific characteristics.

A. Shot Clocks Will Provide Needed Certainty for Deployment

On shot clocks, Crown Castle observes, "the Commission has recognized that shot clocks are an effective means to balance interests and ensure timely deployment of advanced services in a number of contexts," including wireless facility siting, eligible facilities requests, competitive cable franchises, and pole attachment applications.[111] Shot clocks simply ensure that local review occurs within reasonable timeframes that do not materially inhibit deployment. The record demonstrates that many jurisdictions can act quickly when they choose to. Some process permits "within days," while others take "many months—or even well more than a year—to complete."[112] Cities like Leawood, Kansas "process[] complete applications within one to two business days using digital tracking tools."[113] The variation proves that lengthy delays are not inevitable but rather reflect policy choices. Shot clocks would ensure that jurisdictions adopt the efficient practices that leading communities are already using.

There is substantial consensus on appropriate timelines. Multiple commenters propose 30-90 days depending on complexity, drawing on existing models. Michigan's METRO Act requires municipalities to approve or deny applications "within 45 days."[114] North Carolina law establishes

[111] Crown Castle Comments at 13-14.
[112] USTelecom Comments at 5; ACA Connects Comments at 15.
[113] Comments of the Fiber Broadband Association, WC Docket No. 25-253, at 4 (filed Nov. 18, 2025) ("FBA Comments").
[114] Mich. Comp. Laws § 484.3115(3). INCOMPAS notes that the 45-day timeline for review and approval of permit applications is consistent with the FCC's 45-day shot clock for review of simple make-ready work pole attachment applications. 47 C.F.R. § 1.1411(d)(2). Having the pole

30 days for municipal review.[115] Ohio requires action within 60 days.[116] Drawing on these precedents, commenters suggest shot clocks of "30 days" for "routine permits" and "60 days for more complex deployments."[117] Others propose "60 days should be presumed reasonable for standard broadband construction permits, and no more than 90 days for complex or multi-jurisdictional projects."[118] While INCOMPAS specifically recommends that the Commission adopt a 30-day shot clock, sufficient proposals exist for the Commission to adopt a Notice of Proposed Rulemaking and seek public comment based on the principle that shot clocks for wireline deployments should be long enough to permit genuine review but short enough to prevent foot-dragging. As one commenter observes, given that "local governments have already issued many standard right-of-way access permits to other cable, telecom, and electric utilities over the course of decades," there is "no basis for significantly delaying their review of these requests."[119]

Shot clocks should apply to all stages of the permitting process. Some jurisdictions separate master agreement negotiations from individual permit applications, using the former to delay the latter. As the record documents, providers encounter localities that demand agreements before processing permits, then take months to negotiate agreements they haven't prepared.[120] Ensuring Commission-established shot clocks encompass both the negotiation and approval of any necessary right-of-way use agreement and the issuance of associated construction permits" will prevent procedural manipulation.[121]

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attachment timeline run concurrently with the right-of-way agreement and permit review would be efficient and minimize additional delays.

[115] N.C. Gen. Stat. § 160D-934(a).
[116] Ohio Rev. Code § 4939.03(c)(2).
[117] INCOMPAS Comments at 7.
[118] ACA Connects Comments at 19.
[119] Crown Castle Comments at 15.
[120] *Id*. at 12-13.
[121] INCOMPAS Comments at 7.

Furthermore, the shot clock should run from application submission, not from some later "completeness" determination. Jurisdictions can game completeness reviews by discovering new deficiencies at each stage of review, forcing providers to restart repeatedly.[122] As one commenter proposes, shot clocks should "run from the date of initial application submission," and tolling should be permitted "only for bona fide incompleteness in an application."[123] If a genuine deficiency exists, the jurisdiction should identify it promptly and the clock should resume once the deficiency is cured, not restart from zero.

Batch applications should receive batch treatment. Providers deploying fiber networks "frequently must submit multiple related permit applications within a jurisdiction (e.g., dozens of permits across a city or county for one fiber project)."[124] As the *Small Cell Order* recognized for wireless facilities, "batched" applications should be "subject to the same shot clocks . . . on a per batch, not per node, basis."[125] Otherwise, jurisdictions could multiply review time by requiring separate applications for each street segment or utility crossing. A "batched set of related permits should be reviewed within the same presumptively reasonable period as a single application."[126]

Most critically, shot clocks need teeth. The Commission should adopt "deemed granted" remedies where jurisdictions fail to act timely, as Congress provided for eligible wireless facilities under Section 6409.[127] This approach ensures shot clocks are not merely aspirational but create actual consequences for delay. Short of deemed grant, the Commission should at minimum establish that "missing the deadline should constitute a 'failure to act' that presumptively violates

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[122] Additionally, the Commission should consider requiring mutual agreement for the tolling of any shot clock deadline to ensure that the jurisdiction does not leverage its review process unfairly.
[123] INCOMPAS Comments at 7.
[124] *Id*.
[125] *Small Cell Order* at para. 114.
[126] INCOMPAS Comments at 7.
[127] 47 U.S.C. § 1455(a).

Section 253(a) enabling providers to seek expedited relief."[128] Without enforcement mechanisms, shot clocks become suggestions rather than requirements as the record's examples of ignored state statutory deadlines demonstrate.[129]

B. Safe Harbor Fee Levels Will Prevent Above-Cost Charges

The consensus on fees is equally strong: they must be cost-based, technology-neutral, nondiscriminatory, and publicly disclosed.[130] The *Small Cell Order* established that fees violate Section 253 unless "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."[131] These principles should apply with equal force to wireline deployments.

The record demonstrates that certain fee structures are inherently problematic, including gross revenue fees[132] and per-home-passed fees.[133] INCOMPAS urges the Commission to establish clear safe harbor fee levels, as it did for small wireless facilities. The *Small Cell Order* set "a one-time non-recurring fee of $500 for up to five small cell sites (plus $100 for each site beyond five), and a recurring fee of $270 per year for all associated rights-of-way usage" based on cost surveys.[134] The same approach should apply to wireline fees. Drawing on state models such as

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[128] INCOMPAS Comments at 7.
[129] *See* ACA Connects Comments at 5.
[130] *See*, *e.g.*, NCTA Comments at 10.
[131] *Small Cell Order* at para. 50.
[132] Gross revenue fees "generally are not based on the costs associated with an entity's use of the ROW" but instead reflect "the business success of the rights-of-way user." Crown Castle Comments at 18 (quoting *Small Cell Order* at para. 70).
[133] Per-home-passed fees similarly tax deployment rather than compensating for government costs. Phoenix's $6-per-residence-passed fee means "a fiber builder passing 10,000 homes must pay at least $60,000 per year . . . regardless of how many homes actually buy service—a significant overhead, especially in early years of a build when take-rates are low." Crown Castle Comments at 21.
[134] *Id*. (quoting *Small Cell Order* at para. 79).

Florida, Georgia, or Michigan, the Commission could establish safe harbors such as "$100-$500 per permit based on complexity" for one-time fees and $0.05-$0.10 per linear foot for any recurring fees.[135]

Fees above safe harbor levels should not be automatically prohibited but should shift the burden of proof. Under the *Small Cell Order*, localities seeking to charge above safe harbor amounts must demonstrate the fees meet Section 253's requirements.[136] The same framework should apply to wireline fees: amounts at or below safe harbors are presumptively reasonable, while amounts above them require jurisdictions to prove they reflect actual costs, include only reasonable cost categories, and are nondiscriminatory. This approach "will curb the temptation of all authorizing entities to treat right-of-way access as a general revenue raising opportunity" while giving localities who have genuine above-average costs the ability to "justify fees on a case-by-case basis."[137]

In-kind demands must be counted toward total compensation. Jurisdictions cannot evade cost-based limits by requiring providers to furnish goods or services instead of cash. As one commenter argues, "any such in-kind compensation must be counted toward the total rights-of-way fee burden. A locality should not be able to evade Section 253's requirements by characterizing part of the payment as 'in-kind' as the form is irrelevant if the effect is to exact above-cost value from the provider."[138] Arizona law already codifies this principle, prohibiting municipalities from requiring "any in-kind facilities or services" beyond cost-based fees and requiring that any agreed-

[135] INCOMPAS Comments at 12.
[136] *See Small Cell Order* at para. 80.
[137] Crown Castle Comments at 19.
[138] *Id*. at 25.

upon in-kind payments be "offset against any linear foot charges or transaction privilege license tax otherwise required."[139] The Commission should adopt the same rule nationally.

C. Rules That Prevent Discrimination Between Providers That Offer Functionally Equivalent Services Will Level the Playing Field

The record documents pervasive discrimination between incumbents and new entrants, and between providers using different technologies to offer functionally equivalent services. Such discrimination violates Section 253(c)'s requirements that compensation be "on a competitively neutral and nondiscriminatory basis."[140] INCOMPAS urges the Commission to adopt clear rules prohibiting such practices.

Commenters have suggested that this discrimination takes multiple forms. Some jurisdictions "charge 7% of gross revenues for fixed-wireless or fiber services while applying 5% to cable services."[141] Others impose fees for facilities providers that do not directly serve end users while charging lower fees or no fees for providers serving retail customers.[142] These distinctions have no cost basis as wholesale and retail fiber impose identical burdens on rights-of-way. Perhaps most concerning to INCOMPAS members is discrimination between incumbents and new entrants. As Crown Castle observes, "as a competitive fiber provider, Crown Castle far too frequently encounters" situations where "fees and costs [are] imposed on new entrants that are not imposed on the ILEC or other companies that previously deployed telecommunications networks in the rights-of-way."[143] The record also includes examples like Portland imposing "a 7% exchange access fee on incumbent carriers, while imposing a 5% gross revenue fee on competitive local exchange

[139] Ariz. Rev. Stat. § 9-582(D).
[140] 47 U.S.C. § 253(c).
[141] USTelecom Comments at 10.
[142] *Id*.
[143] Crown Castle Comments at 23.

carriers," and requiring these CLECs to "agree to an onerous license requirements or enter into an agreement with the city whereas incumbent carriers do not."[144]

Courts have recognized that such discrimination violates Section 253. The Southern District of New York held that "subjecting new market entrants . . . to a lengthy and discretionary application process, while exempting the incumbent provider . . . from such process, has the effect of prohibiting the provision of telecommunications services, because it 'materially inhibits or limits the ability' of the new entrant 'to compete in a fair and balanced legal and regulatory environment.'"[145]

To prevent discrimination between provider types, the Commission should adopt rules making clear that fees must be identical for all providers offering telecommunications services over wireline facilities, regardless of whether they also offer other services, whether they serve retail or wholesale customers, or what technology they use. Furthermore, requirements must be identical for all providers, meaning incumbents and new entrants face the same application procedures, review timelines, technical standards, and substantive conditions. Any deviation must require cost justification, meaning if a jurisdiction claims two situations impose genuinely different costs, it must prove that difference with objective evidence. Finally, INCOMPAS urges the Commission to find that discrimination is evidence of effective prohibition, meaning discriminatory treatment creates a presumption of Section 253 violation that the jurisdiction must rebut.

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[144] INCOMPAS Comments, Annex B at 1.

[145] *Montgomery County v. Metromedia Fiber Network, Inc.*, 326 B.R. 483, 494 (S.D.N.Y. 2005). The Second Circuit in *City of White Plains* found Section 253 violation where a city required a competitive provider "to pay franchise fees and other forms of compensation as part of a telecommunications franchise while excusing the ILEC from any comparable requirements." *City of White Plains*, 305 F.3d at 76.

D. Transparency Requirements Will Enable Compliance and Planning

Section 253(c) explicitly requires that compensation for rights-of-way use be "publicly disclosed."[146] Yet the record demonstrates widespread failure to meet this statutory requirement. The record is replete with examples of jurisdictions negotiating fees case-by-case, discovering new charges mid-project, or demanding compensation not mentioned in any published schedule. Such practices violate the statute and frustrate deployment planning.

To address these concerns, INCOMPAS urges the Commission to establish clear transparency requirements. At a minimum, jurisdictions must publicly disclose all fee schedules, application requirements, processing timelines, master agreement templates, and annual reporting. As one commenter argues, "any application or annual fees that are not publicly disclosed in writing and in advance are per se not 'fair and reasonable' under Section 253(c) and thus violate Section 253(a)."[147] Section 253(c)'s explicit disclosure requirement is not hortatory—it is a statutory mandate. "Secret or ad hoc fees undermine the ability of providers to confirm that they are being treated in a non-discriminatory manner and they frustrate sound budgeting and investment decisions."[148]

Transparency has practical benefits beyond statutory compliance. Published fee schedules "reduce disputes and litigation" because "local governments would not have to justify fees on a case-by-case basis if they set them at or below the safe harbor."[149] Published timelines and requirements enable providers to plan multi-jurisdictional builds, "as it removes uncertainty and

[146] 47 U.S.C. § 253(c).
[147] Crown Castle Comments at 20.
[148] *Id*.
[149] *Id*. at 19.

outlier costs that can derail project budgets."[150] Published agreements reveal discriminatory treatment, creating pressure for competitive neutrality.

As noted above, several states demonstrate that transparency works. Michigan's METRO Act provides "a single, statewide framework (including a standard application and permit forms)" and "creates an annual report of permit applications submitted to municipalities and the number of days it takes to issue the permit."[151] These reports, "which provide transparency about the time the permit process takes in various municipalities, [are] available" to the public.[152] Such transparency both pressures outlier jurisdictions to improve and provides the Commission evidence of noncompliance.

V. IMMEDIATE ACTION IS ESSENTIAL TO ACHIEVE NATIONAL BROADBAND GOALS

Given the above-described barriers to deployment, the urgency of Commission action cannot be overstated. Federal funding programs have fixed deadlines that are rapidly approaching. ARPA projects must be completed by December 31, 2026[153] and BEAD projects are sure to face similar constraints. Permitting delays are already putting these projects at risk.[154] These are not hypothetical risks they are imminent failures of federal broadband deployment programs caused by state and local permitting challenges. The consequences of missing deadlines are severe. ARPA

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[150] *Id*.
[151] ACA Connects Comments at 9-10; USTelecom Comments at 16.
[152] USTelecom Comments at 16 n.26.
[153] American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9901, 135 Stat. 4, 223 (2021).
[154] USTelecom Comments at 13. A North Carolina provider "building out an ARPA project" reports "permits pending with a town for several months" with no "confirmed timeline for when it will review the provider's permits." Another North Carolina city "will only issue permits for broadband deployment in a phased approach, meaning the provider's construction phases will push their timeline past the ARPA deadline." *Id*. An Oklahoma provider "had to wait months for approval of a right-of-way permit for a highway segment that is not even planned for construction for several more years, jeopardizing the provider's ability to complete the broadband project within its federal funding window." *Id*. at 12

funds cannot be reprogrammed or extended.[155] For providers, missed deadlines mean not just lost subsidy but often lost sunk costs, including engineering, make-ready, and contractor mobilization, that cannot be recovered if projects cannot proceed. For communities, missed deadlines mean continued lack of service, as federal programs are unlikely to offer another opportunity to fund deployment to the same locations.

The competitive marketplace is dynamic, making delay particularly harmful. As one infrastructure provider explains, "in a dynamic and constantly changing industry, consumers demand immediate access to the most recent technologies and services. As a result, delays of a few months, much less years, are unacceptable and can fundamentally harm a company's ability to compete and succeed in the long term."[156] First-mover advantages are real and permanent. Once a competitor captures customers, switching costs and contractual commitments make it extremely difficult for later entrants to compete. Delay of months can mean loss of markets that cannot be recovered.

The stakes extend to national competitiveness. As one commenter emphasizes, "eliminating permitting barriers is also essential to unleashing the transformative potential of AI. Swift, coordinated solutions will unlock innovation, drive economic progress, and ensure the United States remains at the forefront of the global AI revolution."[157] AI development requires massive data infrastructure. Data centers are being built at unprecedented scale and speed but they are useless without fiber connectivity—connectivity that permitting barriers are preventing. Every month of delay gives advantage to countries that do not face similar regulatory obstacles.

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[155] *See* American Rescue Plan Act, § 9901.
[156] Crown Castle Comments at 12.
[157] FBA Comments at 4 n.10.

As noted above, the Commission has authority to act immediately. Given the extensive record already developed through this *NOI*, INCOMPAS urges the Commission to expeditiously issue a notice of proposed rulemaking proposing specific rules based on the consensus documented in the record and to adopt a report and order establishing accelerated reforms for wireline permitting before the end of 2026. This timeline is aggressive but achievable and necessary. The *Small Cell Order* moved from NPRM to final order in approximately one year.[158] This proceeding deserves similar consideration because the issues are more clearly defined, the stakeholder consensus is broader, and the urgency is greater. With federal broadband funding deadlines little more than a year away, the Commission must act now if its rules are to have meaningful effect.

VI. LOCAL GOVERNMENTS' PUBLIC-SAFETY ARGUMENTS DO NOT JUSTIFY REJECTING SHOT CLOCKS OR COST-BASED FEE REQUIREMENTS

Local government commenters devote substantial portions of their filings to arguing that the Commission cannot adopt shot clocks or cost-based fee requirements for wireline deployments because doing so would endanger public safety.[159] However, these concerns, while important when grounded in actual safety obligations, do not support the extreme conclusion that local authorities must retain unchecked discretion over timelines, fees, or conditions related to rights-of-way access. The record demonstrates that establishing reasonable timelines and requiring cost-based fees neither undermines public safety nor interferes with the proper management of the rights-of-way. To the contrary, predictable review processes and transparent, cost-based compensation frameworks will

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[158] Compare *Small Cell Order* (adopted Sept. 26, 2018) with *Accelerating Wireless Broadband Deployment*, WT Docket No. 17-79, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017).

[159] *See*, *e.g.*, Comments of the United States Conference of Mayors, The National Association of Counties, The National League of Cities, and The National Association of Telecommunications Officers and Advisors, WC Docket No. 25-253, 2-6 (filed Nov. 17, 2025) ("NATOA/USCM/NLC/NACo Comments") at 2–6; Comments of the National Association of Towns and Townships, WC Docket No. 25-253, 8-14 (filed Nov. 17, 2025) ("NATaT Comments").

enhance safety outcomes, encourage provider cooperation, reduce construction risk, and enable more responsible deployment practices.

A. Local Filers Conflate Legitimate Safety Oversight with Indefinite Delay

The Local Government Associations assert that permitting obligations are "not obstacles" but rather reflect "essential management of finite, complex, multi-tenant public resources."[160] From this premise, state and local stakeholders argue that any imposition of time limits would inevitably lead to insufficient review and safety failures. NATaT similarly contends that wireline deployment activities, like trenching, boring, microtrenching, vault installation, and seasonal construction limits, are too varied and complex to fit within standardized federal timelines.[161] However, these arguments rest on a false equivalence. No party disputes that state and local governments play a critical role in enforcing construction standards, coordinating among multiple utilities, and ensuring that excavation or boring does not endanger workers or the public. INCOMPAS members and industry stand ready to work with state and local governments to identify public safety concerns and address these issues in the permitting and engineering stages. However, local authority to manage rights-of-way does not require unlimited time to conduct reviews, nor does it authorize unbounded discretion or opaque processes that stretch for months or years. Local commenters present no evidence that a 30–60 day review period would compromise their ability to conduct utility-locate checks, review engineering drawings, impose restoration conditions, conduct safety inspections, or coordinate with other utility owners.

Numerous state, federal, and local agencies operate under statutory timelines for far more complex permitting activities. Environmental agencies issue Clean Water Act and Clean Air Act permits within specific timeframes. Departments of Transportation routinely process right-of-way

[160] NATOA/USCM/NLC/NACo Comments at 2.
[161] NATaT Comments at 3, 10–12.

encroachment permits within predictable periods. Historic preservation bodies review Section 106 applications within defined timelines. Local governments themselves impose strict processing timelines on private developers seeking building, zoning, and land-use approvals. Against this backdrop, the claim that wireline construction permits are uniquely incompatible with standardized deadlines is implausible and unsubstantiated.

The Local Government Associations also cite a series of gas line strikes, water line strikes, and other incidents involving broadband construction.[162] These examples include gas line hits in Texas, Colorado, and Missouri; incidents in Alexandria, Virginia; and a tragic explosion in Lexington, Missouri.[163] From these anecdotes, they argue that local governments must be permitted to take as long as necessary to review applications, inspect work, or impose conditions. Yet, these examples underscore a very different problem: inadequate coordination and lack of process standardization—not insufficient time. The Common Ground Alliance's research, cited by local commenters, identifies the primary causes of utility strikes as insufficient locate markings, incomplete as-built records, inconsistent coordination among utilities, and lack of early-stage planning.[164]

None of these causes are mitigated by maintaining unpredictable or unbounded permitting timelines. Instead, predictable timelines promote earlier utility coordination, ensure that Dig Safe locates occur within valid windows, and allow providers to schedule crews and safety trainings more effectively. When contractors face protracted or uncertain permitting processes, they often must demobilize and remobilize crews, retrigger locate requests, and compress already tight

[162] NATOA/USCM/NLC/NACo Comments at 3–4.
[163] *Id*.
[164] *Id*. at 3.

construction schedules to meet funding or seasonal deadlines—all of which increase the potential for mistakes.

Moreover, many of the utility-strike examples arise from deficiencies outside of provider control. Local governments often lack accurate records of water, sewer, stormwater, drainage, and legacy utility locations, particularly in older communities where infrastructure predates modern documentation. NATaT acknowledges that townships routinely rely on part-time boards, outside contract engineers, or fragmented recordkeeping systems.[165] INCOMPAS posits that the answer to these challenges is not giving local authorities unlimited time, but improving processes, standardizing coordination expectations, and ensuring that local fees reflect only the actual cost of administering safe construction practices.

B. Section 253(b) Does Not Authorize Delay, Revenue Maximization, or Duplicative Processes

State and local stakeholders lean heavily on Section 253(b), which preserves a state's authority to protect public safety and welfare.[166] However, Section 253(b) is not a loophole that permits localities to impose *any* delay or fee simply by invoking safety concerns. Courts have consistently held that Section 253(b) must be read harmoniously with Section 253(a) and (c), and cannot be interpreted to nullify Congress's express prohibition on requirements that "prohibit or have the effect of prohibiting" service. Nothing in Section 253(b) authorizes localities to: (1) indefinitely delay the processing of permits; (2) require multi-month or multi-year negotiations before an application can even be filed; (3) impose fees unrelated to actual administrative costs; or (4) demand unrelated in-kind contributions as a condition of access.

[165] NATaT Comments at 7–11.
[166] NATOA/USCM/NLC/NACo Comments at 4–6; NATaT Comments at 8–10. Section 253(b)'s reservation of authority, however, only applies to state governments. *See* 47 U.S.C. § 253(b).

Local commenters identify no decision, FCC-related or judicial, holding that Section 253(b) allows unbounded discretion over timing or authorizes revenue-generating fees. The Commission has also repeatedly rejected claims that broad public-safety justifications permit localities to impose requirements with a prohibitory effect.[167] If safety-based delay were permissible, the Commission's long-standing moratoria precedents would be meaningless.

C. Local Governments' Own Descriptions Reveal Process Inefficiency Not Safety Necessity

Ironically, the filings of local government associations confirm that the primary drivers of delay are process inefficiencies, not legitimate safety concerns. NATaT explains that many townships meet only once per month, require sequential approvals from multiple boards, rely heavily on third-party engineers who are not always available, and impose multi-stage reviews that must occur before applications are even deemed complete.[168] These are governance choices, not safety necessities. Similarly, the Local Government Associations acknowledge that jurisdictions often do not maintain complete or accurate infrastructure maps, do not coordinate planned street work with providers, and sometimes reopen newly paved streets because providers were not included in resurfacing planning.[169] Again, these are failures of process, precisely the type that the Commission's proposed rules would address by standardizing expectations and promoting early coordination. Localities also describe burdens arising from "installing equipment without a permit," "failure to restore roads," or "damages to public property."[170] These matters are readily addressed through bonding requirements, inspections, stop-work authority, and enforcement mechanisms rather than retaining unfettered timing discretion.

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[167] *See Moratoria Order* at 7770–71; *Small Cell Order* at 9105–10.
[168] NATaT Comments at 10–12.
[169] NATOA/USCM/NLC/NACo Comments at 4–5.
[170] *Id*. at 5–6.

Nothing in the record suggests that shot clocks or cost-based fee requirements would prevent localities from enforcing safety standards, conducting inspections, or penalizing improper construction. The Commission has never interpreted Section 253 to restrict local safety authority, and the *Small Cell Order* expressly preserved it. The same framework applies here.

Predictable timelines for permit review support public safety in multiple ways. First, they allow providers to coordinate early with utilities, schedule Dig Safe ticketing within valid windows, and avoid rushed construction. Second, they reduce the need for contractors to demobilize and remobilize, which increases the risk of miscommunication and operational errors. Third, they allow local governments to plan staffing and inspection schedules more efficiently, especially when combined with clear application requirements and standardized documentation.

Experience under the *Small Cell Order* confirms this. For more than six years, localities have operated under 60- and 90-day shot clocks for wireless siting. Local commenters do not identify any stand-alone or systemic evidence that these timelines compromised safety or prevented adequate review. This is unsurprising as the *Small Cell Order* explicitly preserved local safety authority, and local governments have continued to exercise that authority without difficulty. Wireline permitting can and should meet the same standard. Indeed, many jurisdictions already process wireline construction approvals within 30–45 days, demonstrating that these timelines are feasible even in resource-constrained environments.

VII. CONCLUSION

The record in this proceeding demonstrates broad consensus that certain wireline permitting challenges are constraining broadband deployment. The factual record is extensive. Commenters provide detailed, specific examples of permitting barriers affecting projects across the country. They document delays that prevent deployment, fees that make projects uneconomical, and conditions that force providers to abandon markets. These barriers are preventing Americans from

receiving connectivity that private industry and Congress have invested billions to provide. However, industry is closely aligned on solutions and remedies. In this proceeding, the Commission can and should adopt shot clocks, establish cost-based fee safe harbors, prohibit discrimination, and require transparency.

The legal authority is clear. Section 253 prohibits state and local requirements that materially inhibit telecommunications service. The Commission's interpretation of that standard in the *Small Cell Order* applies fully to wireline facilities. Courts have consistently upheld Commission preemption of excessive fees, unreasonable delays, and discriminatory treatment.

Finally, industry stakeholders have indicated that the urgency to create reform is evident. Federal funding deadlines are imminent, federal and private broadband deployment projects are already at risk and delay means more communities without service, more federal dollars wasted, and more ground lost to international competitors. INCOMPAS respectfully urges the Commission to issue a *Notice of Proposed Rulemaking* immediately, proposing specific rules that will establish shot clocks of 30 days for all wireline agreements and permits; create safe harbor fee levels based on actual government costs; prohibit discriminatory treatment between providers and technologies; require public disclosure of all fees, requirements, and timelines; and create enforcement mechanisms ensuring compliance.

Respectfully submitted,

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December 18, 2025