INCOMPAS
THE FUTURE OF COMPETITION

1100 G STREET, NW, SUITE 800
WASHINGTON, DC 20005

December 31, 2025

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: ***Build America: Eliminating Barriers to Wireless Deployments,*** **WT Docket No. 25-276**

Dear Ms. Dortch,

INCOMPAS, the competitive communications and AI infrastructure association, respectfully submits this letter in connection with the Commission's proceeding concerning the deployment of wireless infrastructure and the growing impact of state and local regulation on the use of artificial intelligence ("AI") in communications networks.

INCOMPAS represents competitive providers of wireline, wireless, broadband, cloud, and AI-enabled communications services. Our members design, deploy, and operate the physical and virtual infrastructure that increasingly supports both next-generation wireless networks and the AI-driven applications and network management tools that depend upon them. As a result, INCOMPAS has a strong interest in Commission policies that ensure state and local regulation does not materially inhibit the provision of covered communications services or frustrate the deployment of critical infrastructure.

INCOMPAS recently filed comments in WC Docket No. 25-253 addressing the Commission's authority and responsibility to preempt state and local regulations that impede the deployment of AI-enabled telecommunications infrastructure. Those comments were drafted primarily in the context of wireline deployments, including fiber networks and data-intensive facilities that increasingly support AI workloads. Nevertheless, the core legal and policy principles articulated in those comments apply with equal force to wireless networks, which are rapidly integrating AI technologies into radio access networks, network optimization, spectrum efficiency, security, and service provisioning.

Accordingly, INCOMPAS submits its previously filed comments in WC Docket No. 25-253 into this proceeding to ensure that the Commission has the benefit of a consistent and comprehensive record regarding the intersection of AI regulation and communications infrastructure deployment. The same fragmented and evolving landscape of state and local AI

laws that threatens wireline investment also poses significant risks for wireless providers, particularly where such regulations operate as effective prohibitions on the ability to deploy, operate, or upgrade covered services using AI-enabled technologies.

Wireless providers increasingly rely on AI for functions that are integral to the provision of service, including dynamic spectrum management, predictive maintenance, network slicing, interference mitigation, and cybersecurity. State or local measures that restrict, condition, or prohibit the use of AI in these contexts, whether directly or indirectly, can materially inhibit wireless deployment, increase costs, delay network upgrades, and undermine national communications policy objectives. As the Commission has recognized in other contexts, such outcomes raise serious concerns under the Communications Act and longstanding federal preemption principles.

INCOMPAS submits its wireline-focused comments here not to conflate the distinct technical characteristics of wireline and wireless networks, but rather to highlight the shared regulatory risk posed by inconsistent and uncoordinated state and local AI regulation across all communications platforms. The Commission's questions in this proceeding regarding whether such regulations may amount to effective prohibitions on wireless service underscore the importance of developing a unified federal approach that protects infrastructure investment, promotes innovation, and ensures competitive neutrality.

INCOMPAS appreciates the Commission's attention to these issues and respectfully urges the Commission to consider the arguments and legal analysis set forth in its previously filed comments as it evaluates the impact of state and local AI regulation on wireless deployment. INCOMPAS and its members stand ready to work with the Commission to develop a framework that enables the responsible use of AI while preserving the Commission's longstanding role in preventing barriers to communications infrastructure deployment.

Respectfully submitted,

/s/ *Christopher L. Shipley*

Christopher L. Shipley
Executive Director of Public Policy
cshipley@incompas.org

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

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COMMENTS OF INCOMPAS

Staci Pies
Christopher L. Shipley
Taylor Abshire
INCOMPAS
1100 G Street NW
Suite 800
Washington, DC 20005
spies@incompas.org
cshipley@incompas.org
tabshire@incompas.org

Tamar Finn
Ronald W. Del Sesto
Brett P. Ferenchak
Cooley LLP
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, DC 20004
tfinn@cooley.com
rdelsesto@cooley.com
bferenchak@cooley.com

Counsel for INCOMPAS

Dated: November 18, 2025

EXECUTIVE SUMMARY

INCOMPAS respectfully urges the Commission to exercise its authority under Section 253 of the Communications Act to eliminate state and local barriers that are materially inhibiting the deployment of wireline telecommunications infrastructure across the nation. At a time when Congress has made a generational investment in bridging the digital divide and the Administration has prioritized U.S. leadership in artificial intelligence, excessive delays, unreasonable fees, and burdensome permit conditions imposed by state and local governments threaten to derail broadband deployment and undermine national policy objectives.

INCOMPAS members, primarily competitive communications providers deploying broadband networks nationwide, face three principal barriers when seeking access to public rights-of-way:

1. **Excessive and Unpredictable Delays.** Providers routinely experience protracted approval processes that can stretch for months or years. Many jurisdictions lack standardized processes, forcing providers to negotiate right-of-way agreements from scratch before even applying for construction permits. These delays raise deployment costs, force contractors to suspend work, and in many cases cause providers to abandon projects entirely.
2. **Above-Cost Fees That Bear No Relation to Government Expenses.** Despite clear legal precedent that fees must be cost-based, many localities impose charges designed to generate general revenue rather than recover reasonable administrative costs.
3. **Burdensome Non-Monetary Conditions.** Beyond excessive fees, jurisdictions impose unrelated requirements that drive up costs or render projects infeasible. These requirements violate Section 253(a) as they materially inhibit deployment, raise costs, reduce competition, and delay or prevent communities from receiving broadband service.

The Commission's authority to preempt these barriers rests on firm legal ground. Section 253(a) prohibits any state or local "statute or regulation, or other State or local legal requirement" that "prohibit[s] or ha[s] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." The statute draws no distinction between wireless and wireline facilities, and the Commission has repeatedly confirmed that Section 253 applies to all infrastructure necessary to provide covered services. In the *Small Cell Order*, upheld by the Ninth Circuit in *City of Portland v. FCC*, the Commission interpreted Section 253 to preempt state and local requirements that "materially inhibit or limit" a provider's ability to deploy facilities or provide service. The same standard applies with equal force to wireline deployments. Moreover, Section 253's protections extend beyond traditional voice telephony to dark fiber infrastructure and broadband networks that carry telecommunications services. Federal courts have recognized that infrastructure providers fall within Section 253's protective scope when their facilities enable others to provide telecommunications services.

INCOMPAS further urges the Commission to adopt the following measures to eliminate barriers to wireline deployment:

1. **Establish Reasonable Shot Clocks for Right-of-Way Access:** The Commission should require that all applications and permits for wireline deployment be reviewed and approved or denied within **30 days** of submission.
2. **Establish Safe Harbor Fee Levels Based on Reasonable Costs:** Building on the *Small Cell Order's* approach, the Commission should establish clear safe harbor fee levels for wireline infrastructure.
3. **Require Public Disclosure of All Fees:** The Commission should declare that any fees not published in advance in writing are *per se* unreasonable and violate Section 253(a). Providers must be able to know the full cost of accessing rights-of-way before committing capital to a market.

4. **Prohibit Unrelated Permit Conditions or Count In-Kind Demands Toward Total Compensation:** The Commission should explicitly prohibit permit conditions that are not reasonably related to the actual installation work or necessary to restore the affected portion of the right-of-way to its pre-construction condition. In the alternative, the Commission should make clear that the value of any in-kind exaction must be counted toward and offset against monetary fees, so that total compensation remains within cost-based limits.
5. **Clarify Section 253's Application to Modern Networks:** Finally, the Commission should confirm that Section 253 protections extend to broadband networks and dark fiber infrastructure.

Additionally, as artificial intelligence becomes integral to network operations and drives unprecedented demand for fiber and data infrastructure, the Commission must ensure that state and local AI regulations do not become barriers to telecommunications deployment. The Administration's *AI Action Plan* explicitly directs the FCC to "evaluate whether state AI regulations interfere with the agency's ability to carry out its obligations and authorities under the Communications Act." In 2025 alone, states have introduced a substantial number of AI-related bills that have the potential to create three categories of barriers:

1. **Infrastructure Deployment Barriers:** States may condition fiber or data center permits on AI governance certifications, triggering additional review processes that extend timelines by months or years.
2. **Operational Restrictions:** Broad state AI laws increasingly restrict the use of algorithmic tools for core network functions—traffic engineering, fraud detection, robocall mitigation, accessibility services, and automated permit processing. Restrictions on such tools materially inhibit carriers' ability to provide, improve, or maintain telecommunications services.
3. **Compliance Fragmentation:** Varying state AI laws create a patchwork that fragments markets, increases compliance costs, and discourages national-scale infrastructure investment. Infrastructure developers make long-term capital

deployment decisions based on projected demand; regulatory fragmentation undermines confidence in where AI applications will be viable.

In these comments, INCOMPAS urges the Commission to clarify that Section 253(a) applies when state or local AI requirements materially inhibit telecommunications infrastructure deployment or network operations, apply the same shot clocks to permits for AI-enabling infrastructure (fiber huts, edge nodes, interconnection points) as for other wireline facilities, reaffirm that commingled-service infrastructure—fiber carrying both AI applications and telecommunications—falls within Section 253 protection, exercise its Section 253(d) preemption authority where state AI laws effectively prohibit covered services, and solicit specific examples of AI-related permitting barriers to build a comprehensive record.

The Commission's action in this proceeding will determine whether America's wireline infrastructure can be deployed at the speed necessary to meet national needs. INCOMPAS members are prepared to invest in next-generation networks that will connect unserved communities, support economic development, and enable AI-driven innovation. But they cannot do so profitably or sustainably if state and local governments treat rights-of-way access as general revenue opportunities or impose unrelated infrastructure obligations on telecommunications projects. The economics of broadband deployment, particularly in rural and underserved areas, are challenging under the best circumstances. Arbitrary fees and delays push marginal projects into the uneconomical category, leaving communities without service.

INCOMPAS urges the Commission to act decisively. Every month of delay means more communities waiting for broadband service, more federal funding at risk of going unspent, and more ground lost to international competitors in the AI race. The Commission should adopt rules that eliminate barriers, promote competition, and ensure that America's communications infrastructure is built at the speed of innovation.

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COMMENTS OF INCOMPAS

INCOMPAS, by the undersigned, respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Inquiry ("NOI") seeking comment on the barriers to wireline deployment.[1]

I. BACKGROUND

INCOMPAS represents a broad coalition of competitive communications providers, broadband builders, and technology innovators committed to expanding access, AI supporting infrastructure, innovation, and competition in American communications markets. Our members are at the forefront of large-scale network builds, projects that require access to public rights-of-way owned by state or local governments. Unfortunately, some state and local governments have created onerous procedures and requirements that result in delays in gaining access to public rights-of-way and in some cases create effective prohibitions to access. These requirements typically share three elements in common: (1) an application and/or permit is required to gain access; (2) a process (often protracted) governs approval of the application or permit; and (3) fees or other contributions (financial or in-kind) embedded in lengthy and onerous franchise or license agreements, are demanded as a condition of access. While any of these elements can *de facto* prohibit deployment on its own, a combination of them almost certainly will.

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[1] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket 25-253, Notice of Inquiry (Sept. 30, 2025) ("*Wireline Deployment NOI*").

Our members strongly support Commission action that reduces deployment barriers and improves predictability in the public right-of-way access process. Despite substantial efforts to work collaboratively with state and local governments, providers continue to encounter persistent obstacles—most notably, delays in the application and permit processes and fees for access or maintenance that are not tied to reasonable costs. These procedural bottlenecks and unnecessary costs threaten to delay or derail broadband deployment at a time when communities across the country are urgently awaiting better, faster, and more affordable service options and Congress has made a generational investment in expanding connectivity to bridge the digital divide. INCOMPAS is pleased that the Commission recognized these issues in the *Moratoria Order*[2] and *Small Cell Order*[3] and issued the NOI to develop a record regarding similar impediments faced in the deployment of broadband wireline facilities. As the Commission evaluates barriers to wireline deployments, INCOMPAS urges that any new rules reflect the operational realities and challenges our members face and prioritize transparency, consistency, and efficiency in the process for accessing the public rights-of-way. Doing so will accelerate wireline broadband deployment and reduce costs for consumers. To that end, INCOMPAS supports measures such as extending the Section 253 analysis applied to wireless facilities in the *Small Cell Order* to wireline deployments, establishing shot clocks for processing applications and permits for right-of-way access, establishing fee safe harbors, and clarifying that both *de facto* moratoria and

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[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al*., WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Decl. Ruling, 33 FCC Rcd 7705 (2018) ("*Moratoria Order*"), *aff'd City of Portland v FCC*, 969 F.3d 1020 (9th Cir. 2020) ("*City of Portland*").

[3] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al*., WT Docket No. 17-79, WC Docket No. 17-84, Decl. 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).

unpublished fees or fees not limited to reasonable costs constitute effective prohibitions under Section 253(a).

II. THE *SMALL CELL ORDER'S* SECTION 253 ANALYSIS SHOULD BE APPLIED TO WIRELINE DEPLOYMENTS

The *Small Cell Order* interpreted Sections 253 and 332 to preempt certain local impediments to deploying wireless facilities reaffirming the "material inhibition" standard from *California Payphone*.[4] In that order, the Commission explained that a state or local requirement effectively prohibits service under Section 253 if it materially inhibits or limits a provider's ability to deploy facilities or provide service.[5] The U.S. Court of Appeals for the Ninth Circuit in *City of Portland v. FCC*[6] upheld the bulk of the *Small Cell Order*, affirming that the Commission acted within its authority to interpret Sections 253 and 332 to bar fees above cost and lengthy delays that effectively prevent service.[7] The *Small Cell Order* also concludes that Section 253 and Section 332 "have the same meaning and . . . reflect the same standard, including with respect to preemption of fees that could 'prohibit' or have 'the effect of prohibiting' the provision of covered service."[8] This legal precedent confirms that measures to curb local impediments to rights-of-way access for the provision of telecommunications services and facilities are on firm footing. Notably, 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

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4 *California Payphone Ass'n*, 12 FCC Rcd 14191 (1997) ("*California Payphone*").

5 *Small Cell Order* at para. 37, 67.

6 *City of Portland*, 969 F.3d 1020 (9th Cir. 2020).

7 *City of Portland*. The court only vacated a portion of the aesthetic criteria as insufficiently explained, while sustaining the fee caps and shot clocks. *Id.*

8 *Small Cell Order* at para. 68.

plain meaning even after the Supreme Court's decision in *Loper Bright* eliminating *Chevron* deference.[9]

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*."[10] Importantly, Section 253(a) does not limit "telecommunications service" to any particular mode of transmission (*e.g.*, wireline versus wireless). Although the *Small Cell Order* applied Section 253 (and Section 332) to small wireless facilities, as former Commissioner O'Reilly observed in his statement, "many of the interpretations in [the *Small Cell Order*] apply … to other telecommunications services, including those provided by traditional wireline carriers…."[11] Indeed, in the *Moratoria Order* the Commission made clear that Section 253 applies broadly to *all* facilities necessary to provide covered telecommunications services.[12] The *Wireline Deployment NOI* likewise uses the term "provider" to encompass entities "that deploy infrastructure used to provide telecommunications

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9 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244 (2024) (eliminating Chevron deference).

10 47 U.S.C. §253(a) (emphasis added).

11 *Small Cell Order*, Statement of Comm'r O'Reilly at p. 110.

12 *Moratoria Order* at ¶145, n. 531 (citing: *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, CCB Pol 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 Preemption Order*") (concluding that Section 253(a) preempts a state's agreement with an infrastructure developer—even though the developer deployed facilities rather than provided telecommunications services—because the operative inquiry is whether the state's action has an effect on the provision of telecommunications services)).

services" and does not limit the term to only those providing telecommunications services directly.[13] And, the Commission in the *Moratoria Order* stated "Section 253(a) on its face applies to 'any interstate or intrastate telecommunications service[,']"[14] and the Commission and Federal courts have applied Section 253(a) to all manner of telecommunications services and facilities.[15] This provides the Commission a strong basis to adopt a similar approach under Section 253(a) for fiber and other wireline facilities as it did in the *Small Cell Order* for Small Wireless Facilities.

INCOMPAS members have identified numerous instances of delay and drawn-out processes that, while perhaps falling short of an outright moratorium, nevertheless materially inhibit the provision of wireline services. These include excessive negotiation periods for right-of-way use agreements, imposition of onerous prerequisites before permits can be filed, and other bureaucratic hurdles that significantly slow deployment. Additional details and case studies of such delays are provided in Annex A. Likewise, INCOMPAS members have experienced excessive fees imposed by certain localities that make wireline deployment projects

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13 *Wireline Deployment NOI* at n. 21 (quoting *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).") ("*Crown Castle v Pasadena*"); *Public Utility Comm'n of Texas at ¶ 74; Minnesota Preemption Order* at para. 14)).

14 *Moratoria Order* at n. 523.

15 *See e.g., New England Public Comms. Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd 19713 (1996) (applying Section 253(a) to payphones); *California Payphone* (applying Section 253(a) to payphone facilities); *CNSP, Inc. v. Webber*, 2022 WL 4536132 (D. New Mex. 2022) (applying Section 253(a) to fiber internet service provided by a competitive exchange carrier); *Qwest Corp. v. City of Santa Fe*, 2013 WL 12241199 (D. New Mex. 2013) (applying Section 253(a) to facilities used to provide a variety of local exchange, long distance, switched access, private and internet access services).

uneconomical—in many cases resulting in little or no return on investment at reasonably anticipated subscription levels (also referred to as "take rates" or "penetration rates"). Examples of such excessive fees are included in Annex B and some are highlighted herein.

III. SHOT CLOCKS SHOULD BE ESTABLISHED FOR PERMITS FOR ACCESS TO THE PUBLIC RIGHTS-OF-WAY

As emphasized by INCOMPAS's Broadland USA initiative in its *Broadband Ready City Checklist*,[16] streamlined and transparent reviews of applications for access to rights-of-way and associated permits are critical to timely broadband deployment. The Commission should, therefore, establish reasonable "shot clocks" on federal, state and local approvals of right-of-way access applications and permits. In the *Small Cell Order*, the Commission deemed 60 days (for collocation on an existing structure) and 90 days (for attachment to a new structure) as presumptively reasonable timeframes for local approval of small wireless facility applications.[17] While those wireless shot clocks were a step in the right direction, further action is needed to ensure timely processing of wireline deployment requests. INCOMPAS recommends that the Commission require that all applications and documentation related to a wireline deployment project be reviewed and approved or denied within 30 days of submission.[18] Thirty days is an appropriate timeframe for review if the requirements for permit applications are made plain and are published by the jurisdiction—either electronically or hardcopy. Review timeframes are greatly increased both for the provider wishing to deploy and for the jurisdiction when jurisdictions impose unknown additional requirements following the submission of an application.

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16 Available at: https://broadlandusa.com/checklist/ ("*Broadband Ready City Checklist*").

17 *Small Cell Order* at paras. 13, 105.

18 *See Broadband Ready City Checklist*.

The Commission's shot clock rules should apply to the entire process to obtain a permit to install facilities in the rights-of-way. Wireline providers often face a two-step process: first negotiating a franchise, license, or other right-of-way use agreement with the relevant government authority, which typically is itself a protracted endeavor, and only then applying for construction permits. Each of these steps can introduce unreasonable delay that effectively prohibits access to the rights-of-way in violation of Section 253(a). A master right-of-way use agreement is largely duplicative of the permitting process and, therefore, not necessary and should not be allowed. For example, delays in executing a master right-of-way use agreement may stem from disputes over terms unrelated to the actual deployment such as unreasonable fees (addressed in Section IV below), excessive bond or letter of credit requirements, overbroad restoration obligations, or other onerous conditions that prevent a provider from accepting the agreement on any economically viable basis. In some cases, delay results simply because the locality lacks an established process or template for a right-of-way use agreement, forcing negotiations to start from scratch.[19] Demonstrating that a master right-of-way agreement is not necessary, one INCOMPAS member with facilities in over 500 municipalities is only required by nine of those municipalities to have a right-of-way use agreement or annual permit and pay an annual fee. The other 491 municipalities have no agreements, permits or annual fees for ongoing occupancy of the right-of-way. To the extent the Commission allows localities to continue requiring a master rights-of-way use agreement separate from the permit, the negotiation of such a master rights-of-way use agreement should not be a precursor to the issuance of the permit, which permit would be subject to the shot clock. If the Commission allows localities to continue

[19] Government authorities often utilize outside consultants or counsel to draft right-of-way use agreements and attempt to pass those costs onto the provider.

requiring a master rights-of-way use agreement before permits are issued, the shot clock established by the Commission must encompass *both* the negotiation and approval of any necessary right-of-way use agreement and the issuance of associated construction permits. While this may require some localities to streamline their approval process, which in certain jurisdictions involve multiple readings or public meetings, it will ultimately simplify deployment by providing certainty and forcing parallel progress on all required approvals.

The Commission should also extend the shot clock concept to batch applications. Providers deploying wireline 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). In the *Small Cell Order*, the Commission found that batched wireless facility applications are subject to the same shot clocks (60 or 90 days) on a per batch, not per node, basis.[20] The same principle should apply to batch filings for wireline permits: submitting 20 permit applications at once should not multiply the review timeframe by 20. A batched set of related permits should be reviewed within the same presumptively reasonable period as a single application for the scope of work.

To make these shot clocks effective, the Commission can allow tolling of the clock only for bona fide incompleteness in an application. If a shot clock expires without a decision, the permit should be deemed granted by operation of law just as Congress provided in Section 6409(a) of the Spectrum Act for eligible wireless facility collocations. At a minimum, missing the deadline should constitute a "failure to act" that presumptively violates Section 253(a) enabling providers to seek expedited relief. These measures would mirror the *Small Cell Order*'s

[20] *Small Cell Order* at para. 114.

approach to wireless shot clocks while tailoring it to wireline needs and would encourage authorities to streamline and consolidate their internal processes rather than risk a deemed grant.

INCOMPAS members also support efforts to standardize the rights-of-way access application process across different jurisdictions. While complete uniformity would require changes at all levels of government, the Commission could establish certain safe harbor application practices that would be deemed presumptively reasonable under Section 253(a). For instance, some states have already implemented standardized forms and procedures statewide, greatly reducing the burden on carriers operating in multiple localities. The Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("Michigan METRO Act")[21] is one such example: it provides a single, statewide framework (including a standard application and permit forms) for telecommunications right-of-way access, requires municipalities to approve or deny an application within 45 days of filing,[22] and authorizes the Michigan Public Service Commission to impose fines of up to $40,000 per day on municipalities for violations of the Michigan METRO Act.[23] The Michigan METRO Act also sets uniform fee levels—a one-time $500 application fee[24] and an annual maintenance fee for competitive providers, which is the lesser of $0.05 per linear foot or the fee paid by the ILEC.[25] These standard processes across Michigan simplify deployment since every locality follows the same

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21 Mich. Comp. Laws § 484.3101 *et. seq*.

22 Mich. Comp. Laws § 484.3115(3).

23 Mich. Comp. Laws § 484.3118(2)(c).

24 Mich. Comp. Laws § 484.3106(4).

25 Mich. Comp. Laws § 484.3108.

rules. The Michigan Public Service Commission creates an annual report of permit applications submitted to municipalities and the number of days it takes to issue the permit.[26]

Other states have taken a similar approach by granting statewide authorizations to use rights-of-way. For example, in Florida, municipalities and counties are prohibited from requiring providers that hold a state certificate or an FCC authorization to obtain any local franchise or license; such providers need only register with the locality providing basic information and proof of insurance in order to use the rights-of-way.[27] In Florida, this limits duplicative red tape at the local level. The Commission should affirm that state approaches which grant providers statewide right-of-way access or otherwise prevent local franchise agreements are reasonable and consistent with federal policy. The Commission should use its persuasive authority to encourage all states to adopt statewide access laws to speed broadband deployment and consider whether federal support programs could be conditioned on states offering statewide access to rights-of-way without additional local agreements. Such approaches streamline deployment and are exactly the kind of practices the Commission should be encouraging. Conversely, where states have not adopted similar streamlining, federal rules are even more crucial to fill the gap.

IV. SAFE HARBORS SHOULD BE ESTABLISHED TO ENSURE THAT FEES ARE BASED ONLY ON REASONABLE COSTS TO REVIEW AND ADMINISTER THE PUBLIC RIGHTS-OF-WAY

As the NOI recognizes, the Commission and courts have long held that excessive fees to access public rights-of-way or government property in the rights-of-way can "effectively

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[26] The reports, which provide transparency about the time the permit process takes in various municipalities, is available at https://www.michigan.gov/mpsc/regulatory/telecommunications/metro/reports.

[27] Fla. Stat. § 337.401(3)(a).

prohibit" the provision of service in violation of Section 253(a).[28] In the *Small Cell Order*, the Commission established that 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.[29] Despite this clear standard, many localities continue to impose fees on wireline deployments that bear no apparent relation to actual costs or that exceed the costs imposed on similarly-situated incumbents.[30] The Commission should reaffirm, with respect to access to rights-of-way for wireline facilities, that application fees and recurring fees that are not based on reasonable cost recovery are not "fair and reasonable" under Section 253(c) and therefore violate Section 253(a).

Fees that are not based on reasonable cost recovery include, for example, annual rights-of-way fees set as a percentage of gross revenues or extremely high per-linear foot rates unrelated to cost. INCOMPAS highlights a few examples of excessive fee demands that our members have encountered:

- Phoenix, Arizona: Under Chapter 5D, "Network Infrastructure Services," of the Phoenix City Code, a provider of network infrastructure services and open access wholesale services must obtain a license to install facilities in the public highways of the city.[31] While the goal was to standardize access, the fee structure is draconian from an industry perspective. Phoenix now requires licensed wireline broadband providers to pay 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

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28 *Wireline Deployment NOI* at ¶31 (citing *Small Cell Order* at para. 55).

29 *See Small Cell Order* at ¶50.

30 As stated in Section III above, one INCOMPAS member reported that only nine of the over 500 municipalities where it has installed facilities have an annual fee to occupy the rights-of-way and the rest have no annual fees whatsoever, which raises questions whether municipalities incur costs for maintaining the rights-of-way.

31 *See* Phoenix, Ariz., Code Chap. 5D, *available at*: https://phoenix.municipal.codes/CC/5D.

providers of open access wholesale services.[32] The AMF is $6.00 per year for every residential unit passed by its fiber network, which shall increase at each five-year renewal based on the Cumulative Consumer Prices Index All Urban Consumers (CPI-U) U.S. city average for the month of June during each year of the license.[33] This effectively acts as 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 – a significant overhead, especially in early years of a build when take-rates are low. The Phoenix license also runs for only 5 years,[34] after which fees can be re-negotiated or adjusted, creating further uncertainty for return-on-investment calculations.

- City of Portland, Oregon: The city imposes a 7% exchange access fee on incumbent carriers, while imposing a 5% gross revenue fee on competitive local exchange carriers. Prior to being able to access public right-of-ways, CLECs must agree to an onerous license requirements or enter into an agreement with the city whereas incumbent carriers do not.

- City of Albuquerque, New Mexico: The city charges a fee of 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.

- City of Los Angeles, California: The city charges a "street damage restoration fee" that has led INCOMPAS members to forgo projects to build new infrastructure.

- City of Glendale, Arizona: The city imposes a $6,000 non-refundable application fee just to initiate license negotiations.[35] This hefty fee (intended to cover staff and legal review) must be paid upfront, at risk, by any provider seeking to enter Glendale's market. Once a license is granted, Glendale historically has charged annual license fees.[36] Glendale also requires licensees to pay all transaction

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[32] *See* Phoenix, Ariz., Code § 5D-5, *available at*: https://phoenix.municipal.codes/CC/5D-5.

[33] *See id.*

[34] *See* Phoenix, Ariz., Code § 5D-4, *available at*: https://phoenix.municipal.codes/CC/5D-4.

[35] *See City of Glendale, Arizona, Application for a License Agreement to Access the Public Right of Way*, *available at*: *https://cdnsm5-hosted.civiclive.com/UserFiles/Servers/Server_15209001/File/Departments/Engineering/APPLICATION%20FOR%20A%20LICENSE%20AGREEMENT%20TO%20ACCESS%20THE%20PUBLIC%20RIGHT%20OF%20WAY.pdf*); *see also* Glendale, Ariz., Code § 10-12 (*available at*: https://library.municode.com/az/glendale/codes/code_of_ordinances?nodeId=PTIICOOR_CH10TEFICATE_ARTIIIGELIRE_S10-32LIFE.

[36] For example, *License Agreement for Fiber Optic Network between the City of Glendale, Ariz. and AGL Networks, LLC, available at*: https://docs.glendaleaz.com/WebLink/DocView.aspx?id=69418&dbid=0&repo=City-of-

privilege taxes (TPT) on telecommunications services like any business, meaning providers face multiple layers of fees. Conditions in Glendale's licenses can include providing the city with fiber strands or conduit space for free, and extensive insurance and bonding beyond standard requirements (precise terms vary by agreement). Transparency is limited – aside from the application form, Glendale provides little public guidance on fee levels or timelines, making the process unpredictable. Taken together, Glendale's approach – high entry fees, discretionary timeline, and potentially above-cost ongoing fees – creates a substantial barrier to deployment.

- City of Peoria, Arizona: In 2025, the City of Peoria adopted an ordinance establishing a new licensing framework for fiber providers using the rights-of-way. Providers must obtain a five-year license and pay an Annual Minimum Fee (AMF)[37] (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. Internet service providers must pay 3% of gross revenues from services, while carriers leasing fiber to third parties pay 6% of gross revenues, with automatic annual increases tied to inflation.[38] Such a fee 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.[39]

Glendale. Although the City of Glendale renamed its Chapter 10 of its City Code from "Cable Television" to "Telecom, Fiber and Cable Television" in 2020, it is unclear whether the provisions now extend to telecommunications services. If they do, the license fee is 5% of gross revenues. *See* Glendale, Ariz., Code § 10-32 (*available at*: https://library.municode.com/az/glendale/codes/code_of_ordinances?nodeId=PTIICOOR_CH10TEFICATE_ARTIIIGELIRE_S10-32LIFE).

[37] Peoria, Ariz., Code § 23-114(a) ("*Annual Minimum Fee (AMF):* Means the annual fee assessed prior to the Licensee earning revenues from the provision of Fiber Optic Communications Services, which is based on the size of Licensee's service area and impact on City's infrastructure as determined by the City Engineer.")

[38] *See* Peoria, Ariz., Code § 23-114, *available at*: https://codelibrary.amlegal.com/codes/peoriaaz/latest/peoria_az/0-0-0-61488#JD_23-114.

[39] *See Peoria adopts ordinance to license fiber-optic broadband providers in city rights-of-way*, Citizen Portal (April 30, 2025), *available at*: https://citizenportal.ai/articles/6257507/Peoria/Maricopa-County/Arizona/Peoria-adopts-ordinance-to-license-fiber-optic-broadband-providers-in-city-rights-of-way#:~:text=Ben%20Ganados%20of%20Development%20and,annual%20increases%20tied%20to%20CPI.

- County of Bernalillo, New Mexico: Proposed Right of Way Use Agreement included a fee of the greater of $1.00/linear foot installed or 3% of gross revenue for years 2-5.[40]

Additional examples of above-cost fees collected by our members are provided in Annex B. These examples are by no means exhaustive; indeed, in several instances the excessive fees led our members to abandon planned projects in those localities as uneconomic.

INCOMPAS urges the Commission to establish clear "safe harbor" fee levels under Section 253.[41] For Small Wireless Facilities, the *Small Cell Order* set specific fee amounts as presumptively lawful; 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.[42] These levels were derived from cost surveys and meant to provide a bright-line "yardstick" for fees that would satisfy Section 253(c)'s cost-based requirement.[43] The Commission should similarly should define "safe harbor" fee levels for wireline facilities. Doing so will curb the temptation of all authorizing entities to treat right-of-way access as a general revenue raising opportunity. It will also benefit localities by reducing disputes and litigation—local governments would not have to justify fees on a case-by-case basis if they set them at or below the safe harbor, and providers would "almost never" litigate fees at or below those

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40 The proposed fee for year 1 was the greater of $0.15/linear foot installed or 3% of gross revenue. Compared with the Michigan METRO Act fee of $0.05/linear foot, this fee also is unreasonable. Other fiber providers in the County of Bernalillo have had a similar fee for year 1 but the fees for years 2-5 were the greater of a specific amount or 3% of gross revenues. Rights-of-Way Use Agreement between Bernalillo County, NM and Gigapower, LLC (effective Mar. 1, 2025) (stating in Section 6.1: "Years 2 – 5: Greater of $78,000/year or 3% of gross revenue."); Rights-of-Way Use Agreement between Bernalillo County, NM and Vero Fiber Networks, LLC (effective Feb. 1, 2025) (stating in Section 6.1: "Year 2 – 5: Greater of $34,850/year or 3% of gross revenue"). It is unclear how the specific amount was determined.

41 *Wireline Deployment NOI* at para. 34.

42 *Small Cell Order* at para. 79; *Wireline Deployment NOI* at n. 89.

43 *Small Cell Order* at paras. 7, 61-64; *City of Portland* at 1039.

levels.[44] Moreover, having predictable fee caps will greatly aid providers in planning multi-jurisdictional fiber builds, as it removes uncertainty and outlier costs that can derail project budgets.

In addition, the Commission should declare that any application or annual fees that are not publicly disclosed in writing and in advance[45] are *per se* not "fair and reasonable" under Section 253(c) and thus violate Section 253(a). Section 253(c) explicitly mandates that compensation required by a state or locality for use of public rights-of-way must be "publicly disclosed." 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. We urge the Commission to make clear that undisclosed fees (for example, case-by-case "negotiated" payments or any fees not set forth in a published schedule or ordinance) are inherently suspect under Section 253. Providers must be able to know the cost of doing business in a jurisdiction up front.

Several states have already imposed their own limits to ensure rights-of-way fees remain cost-based and transparent. For instance, Georgia has established fixed permit and rent fees for fiber installations along state highway rights-of-way, administered by the Georgia DOT: the application fee is $1,400 for routes of one mile or more (or $742 for less than a mile), and the recurring annual fee is $300 per mile (with a 25% fee reduction for joint trenching or sharing

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44 *See Small Cell Order* at para. 80.

45 *See* 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.") (emphasis added); *NOI* at para. 45 (stating "Section 253(c) mandates that 'fair and reasonable' compensation required by state and local governments be publicly disclosed.").

infrastructure).[46] Florida provides another useful model—under Florida law, localities that charge communications providers a permit fee for rights-of-way work must base the fee on the direct cost of permitting, cannot include any additional general overhead or property rental value, and in any event may not exceed $100 per permit.[47] Florida also gives local governments the option to forego permit fees entirely and instead slightly increase their local communications tax rate to offset the lost revenue, but if they opted not to charge fees as of 2019, they cannot later start imposing fees.[48] This framework has effectively capped permit fees at a nominal level (or eliminated them) in most of Florida, demonstrating that cost-based limits are workable. We believe the Commission's safe harbor for wireline fees could be set at levels reasonably reflective of typical permitting costs (drawing on data from states like Florida, Georgia, Michigan, and others) and still accommodate the needs of even smaller jurisdictions.

Finally, the Commission should address fees combined with in-kind demands. Some localities attempt to require providers to pay a monetary fee and furnish in-kind goods or services (for example, free fiber strands, conduit, or services to the city) as a condition of ROW access. These in-kind exactions, if not offset against the monetary fees, can result in total compensation far exceeding cost. The NOI seeks comment on whether providers should be required to reduce any fees by the value of in-kind contributions demanded, to ensure total charges stay within permissible limits.[49] We submit that 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" —the form is irrelevant if

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46 Ga. Comp. R. & Regs. 672-11-.04(2).

47 *See* Fla. Stat. § 337.401(c).

48 *See Id.*

49 *Wireline Deployment NOI* at para. 50.

the effect is to exact above-cost value from the provider. In fact, at least one state (Arizona) has already codified this principle: Arizona law prohibits municipalities from requiring a telecommunications provider to provide any in-kind facilities or services, or to pay any fee beyond the cost-based fees authorized by statute, as a condition of consent to use public highways.[50] The Commission likewise should declare that demands for free fiber, free service, or other in-kind contributions unrelated to right-of-way management are strong evidence of an effective prohibition, unless the value of such contributions is credited against the provider's fees so that total compensation remains cost-based.

V. IMPOSITION OF OTHER UNREASONABLE CONDITIONS TO ACCESS CAN RESULT IN EFFECTIVE PROHIBTION

Excessive fees often grab the spotlight, but non-monetary conditions imposed by some jurisdictions can be equally prohibitive. INCOMPAS members report that certain municipalities attach burdensome conditions to right-of-way permits that go well beyond what is necessary to manage the right-of-way, driving up costs or causing project cancellations. These requirements may take the form of unrelated public improvements, onerous procedural hurdles, or other extraneous obligations that a provider must fulfill as a permit condition. A few illustrative examples of permit conditions our members have encountered include:

- Requiring the provider 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. Forcing broadband projects to bear the cost of unrelated sidewalk upgrades effectively turns telecom permits into public works mandates.

- Imposing excessive street restoration beyond the area of actual disturbance – for instance, requiring a provider who performs microtrenching (a narrow 4–6 inch cut) along one lane to mill and repave the entire lane or even the full width of the

[50] *See* Ariz. Rev. Stat. § 9-582(D). A locality and provider, however, may agree to in-kind payments in an amount less than or equal to and are offset against any linear foot charges or transaction privilege license tax otherwise required. *Id.*

street. This can multiply the cost of a build many times over and is often not commensurate with any legitimate engineering need.

- Mandating real-time video monitoring of construction crews via CCTV or similar means, with the provider required to fund the equipment and feeds. Such a condition is costly and often duplicative of normal inspection processes and may raise safety or privacy issues for workers and the public.

Conditions like these can add millions of dollars in cost to even modest fiber projects. In particular, broad pavement restoration mandates have frequently forced providers to abandon planned builds; the economics simply fail if a city requires resurfacing an entire road for a narrow trench in one part of it. INCOMPAS urges the Commission to explicitly prohibit permit conditions and requirements that are not related to the actual installation of the facilities or not reasonably necessary to restore the affected portion of the right-of-way to its pre-construction condition. Put simply, if an imposed condition does not address a site-specific, project-specific concern arising from the deployment, it should be deemed unreasonable under Section 253. 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. But leveraging a fiber permit to extract unrelated infrastructure improvements or surveillance capabilities goes far beyond ROW management and "materially inhibits" deployment by layering on arbitrary costs. The Commission should make clear that such unrelated conditions are prohibited.

VI. SECTION 253 MAY BE APPLIED TO DARK FIBER AND BROADBAND

INCOMPAS further emphasizes that the Commission's authority under Section 253 is not limited to traditional telephony or purely lit services—it also extends to dark fiber infrastructure and, as reclassification proceeds, to broadband internet services. The legal analysis for dark fiber and broadband can be nuanced, but the Commission has several paths to ensure these deployments are protected from barrier regulations.

A. Dark Fiber Supporting Telecommunications Services

The Commission's authority under Section 253 is not limited to traditional voice telephony or "lit" services—it can extend to dark fiber infrastructure where that fiber is used in the provision of telecommunications services. In other words, even if a company deploying fiber is not itself providing end-to-end service to consumers, its deployment is protected by Section 253(a) so long as the fiber is an input to another provider's telecommunications service. Long-standing Commission precedents confirm this principle. For example, in the 1999 *Minnesota Preemption Order*, the Commission addressed a state's arrangement granting exclusive freeway right-of-way access to a fiber developer that would lease capacity wholesale. The Commission indicated that such an arrangement would violate Section 253(a) because it could "have the effect of prohibiting facilities-based entry" by other carriers—since alternative routes were far costlier, locking up the freeway rights-of-way effectively barred other providers from installing fiber to offer telecommunications services.[51] What matters under Section 253 is the impact of a state or local requirement on the ability to provide telecom services over the infrastructure, not the exact identity or classification of the entity deploying it. In sum, whenever dark fiber is leased or used to carry another carrier's communications, it is functionally part of the provision of a telecommunications service, and state or local regulations that "materially inhibit" the deployment of such fiber fall within Section 253(a)'s preemptive scope.

INCOMPAS does not ask the Commission to classify dark fiber as a telecommunications service. Rather, the Commission should reaffirm that Section 253(a) applies when ROW restrictions materially inhibit the provision of telecommunications services over a fiber network,

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[51] *Minnesota Preemption Order* at 21709, para. 22 (concluding that a state-granted exclusive fiber franchise for highway ROW could "have the effect of prohibiting facilities-based entry" by other providers, given the cost disadvantage of alternative routes).

even if the entity deploying the facility is not itself the end-user service provider, and that discriminatory access or exclusivity arrangements are unlawful.

B. Broadband Internet Access and Section 253

With respect to broadband internet access services delivered over wireline facilities, it is important to recognize that most modern broadband networks are multi-use platforms—they carry broadband data services (classified as information services) but can also carry telecommunications in various forms. If a provider uses its broadband infrastructure to offer any telecommunications service, then Section 253(a) is squarely implicated by barriers to that infrastructure. For example, many wireline ISPs (especially cable or fiber providers) also offer wholesale connectivity, business data services, or traditional voice (or VoIP) telephony alongside broadband. In such cases, a municipal restriction or fee that deters the installation of the fiber network necessarily inhibits the provision of the Title II service over that same facility.

The Commission should make clear that in these mixed-use scenarios, states and localities may not impose requirements that effectively prohibit the provider's ability to furnish the telecommunications service component. Even if the telecom service is only a portion of the network's use (or is offered by an affiliate or wholesale customer of the broadband provider), Section 253's protections apply: a rule that makes it materially harder to deploy the physical network impedes the provision of telecommunications services to the public using that network. This principle finds support in precedent, including the FCC's own view that Section 253 focuses on the multitude of ways services can be offered and whether a requirement "materially inhibits or limits" the ability of any competitor to provide telecom services in a fair manner.[52] Thus, at

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[52] *See Small Cell Order*, at ¶¶ 37-42; 55-56 (highlighting that an effective prohibition occurs where a requirement imposed by a jurisdiction "inhibit's the provider's ability to engage in any of a variety of activities related to its provision of a covered service[]" and clarifying that state or local requirements that "materially inhibit" the deployment of wireless facilities – e.g.,

minimum, any broadband network that also enables voice telephony or similar telecom offerings should receive Section 253's shield against unjustified barriers.

Moreover, the Commission has repeatedly recognized in its universal service decisions that high-cost support may fund broadband-capable networks so long as the support is used for the "provision, maintenance, and upgrading" of supported services and facilities under Section 254(e)—and it has emphasized that the universal-service challenge is to ensure networks that support high-speed internet access.[53] The Commission also has required providers of interconnected VoIP services to contribute to USF under Section 254(d), relying on the statute's permissive authority and the fact that such providers are "providers of interstate telecommunications," even absent a formal Title II classification.[54]

These precedents support a pragmatic approach under Section 253: when a fiber deployment carries or is reasonably foreseen to carry Title II telecommunications (including stand-alone transport, special access, or VoIP-related transmission), local requirements that materially inhibit the deployment of the physical network effectively inhibit the covered service and are preempted. This approach does not require reclassifying broadband internet access. It

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overly high fees or spacing rules – effectively prohibit the provision of telecommunications service in violation of § 253(a); even if a provider can offer some service, regulations that limit network improvements or expansion can be preempted as barriers under the *California Payphone* standard); *Crown Castle v. Pasadena* at 438 (finding that the imposition of certain obligations on providers by localities can violate Section 253 if they effectively prohibit the construction and installation of certain facilities even if they do not explicitly do so).

53 *See Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17685–17686, paras. 64–65 (2011) ("USF/ICC Transformation Order").

54 *Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, paras. 38–45 (2006) (finding interconnected VoIP providers are "providers of interstate telecommunications" and imposing USF contributions under permissive authority).

simply recognizes the mixed-use nature of modern networks and the long-standing USF framework that has supported broadband-capable facilities used to provide supported services.

C. Title I Ancillary Authority as a Backstop

Where a particular deployment or offering falls outside Section 253's direct scope, the Commission may rely on Title I ancillary jurisdiction to preempt state or local practices that frustrate the Commission's ability to carry out its statutory responsibilities—for example, ensuring universal service (Section 254), just and reasonable practices (Section 201), and nationwide communications networks (Sections 1 and 706). The Supreme Court has repeatedly recognized the Commission's Title I power when the agency regulates in a manner "reasonably ancillary" to its statutory duties and has upheld preemption grounded in such authority. In *Southwestern Cable and Midwest Video I*, the Court sustained FCC regulation of cable as reasonably ancillary to broadcasting responsibilities.[55] In *Capital Cities (Crisp) and City of New York*, the Court upheld FCC preemption of conflicting state or local constraints on cable content and technical standards.[56] *Louisiana PSC* clarifies the limiting principle: ancillary power cannot override explicit statutory limits or extend to purely intrastate matters where Congress withheld authority.[57]

Taken together, these decisions endorse measured ancillary action tied to specific statutory mandates and demarcate its limits. Applied here, if a locality's fee or condition on fiber installation materially undermines the Commission's ability to implement Sections 201 and 254

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55 *See United States v. Southwestern Cable Co*., 392 U.S. 157, 178–81 (1968) (*Southwestern Cable*); *United States v. Midwest Video Corp.* (*Midwest Video I*), 406 U.S. 649, 661–70 (1972).

56 *Capital Cities Cable, Inc. v. Crisp,* 467 U.S. 691, 698–711 (1984); *City of New York v. FCC*, 486 U.S. 57, 63–70 (1988).

57 *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373–79 (1986).

or to preserve the effectiveness of pro-competitive federal policies affirmed in the 2018 orders, the Commission can invoke ancillary authority to preempt. At the same time, consistent with *Louisiana PSC* and *Comcast v. FCC*, the Commission should anchor any ancillary action to concrete statutory responsibilities and avoid imposing common-carrier-like obligations where Congress has foreclosed them.[58]

D. No Need for Reclassification to Protect Broadband

INCOMPAS maintains that the Commission does not have to reclassify broadband as Title II in order to ensure that broadband infrastructure deployments enjoy the protection of federal law. Section 253 can apply to many broadband deployment scenarios right now: whenever those networks are used to provide any "telecommunications service" directly or indirectly, and no matter however small or ancillary, state and local barriers that impede such use are subject to preemption. For purely broadband services, the Commission has solid analytical grounds—grounded in Section 254's interpretation and other precedent—to conclude that facilitating broadband deployment is intertwined with maintaining telecommunications services given the multipurpose use of such networks. Additionally, the Commission can rely on its Title I ancillary authority to strike down above-cost fees, discriminatory permitting denials, or other measures that substantially inhibit broadband builds, on the basis that such measures ultimately frustrate the communications needs of the public and the statutory objectives established by Congress. By using these approaches, the Commission can protect dark fiber and broadband initiatives from unreasonable barriers without having to shoehorn these services into Title II through formal reclassification. Instead, it can recognize the practical reality that broadband

[58] *See id.; Comcast Corp. v. FCC,* 600 F.3d 642, 644, 651–61 (D.C. Cir. 2010) (limiting ancillary jurisdiction absent tie to specific statutory responsibilities).

networks support and include telecommunications and thereby ensure that the deployment of those networks is not stifled by local regulations or requirements contrary to the public interest.

VII. THE COMMISSION SHOULD WIELD ITS PREEMPTION AUTHORITY TO PROTECT THE GROWING INTERSECTION OF AI INFRASTRUCTURE AND TELECOMMUNICATIONS

INCOMPAS supports the Commission's inquiry into whether state or local requirements, including those addressing artificial intelligence ("AI"), prohibit or have the effect of prohibiting the provision of wireline telecommunications services under Section 253(a). AI technologies are becoming indispensable to the nation's communications networks. AI enhances network performance, improves reliability, and supports essential telecommunications functions, from intelligent traffic management and cybersecurity threat detection to robocall mitigation and network optimization. The facilities that enable these services form the backbone of modern telecommunications infrastructure, and their deployment is critical to achieving the Administration's goals for broadband expansion and AI leadership.

As AI becomes integral to network operations and infrastructure planning, overly broad or ambiguous state AI regulations risk creating new barriers to fiber and data center deployment and the provision of service over these facilities. The Commission should clarify that such measures fall within the scope of Section 253(a) and, where necessary and appropriate, exercise its preemptive authority under Section 253(d).

Congress has long charged the FCC with ensuring that interstate communications networks are deployed and operated efficiently and without undue barriers. Consistent with that mandate, and the Communications Act's express barriers-removal provisions, the FCC may seek to preempt state AI measures that prohibit or effectively prohibit the provision, improvement, or maintenance of telecommunications or personal wireless services. A law that blocks or materially constrains operators' use of AI for core network functions (*e.g.*, traffic engineering, predictive

maintenance, provisioning, or demand management) is an "effective prohibition" under Sections 253 and 332 because it materially limits providers' ability to compete, expand, or improve service.

Individual U.S. states are rushing to enact new laws regulating AI technologies in the absence of a preemptive federal framework, creating a divergent and conflicting patchwork of laws with varying definitions, scope, and substantive requirements that pose an increasing obstacle to AI innovation and adoption across sectors, including telecommunications. In 2025, more than 1,080 state-level bills that would regulate some aspects of artificial intelligence development or use were introduced across the U.S.[59] In California alone, approximately 25 new laws that directly regulate AI technology were enacted between 2024 and 2025. The emergence of a state-by-state approach to AI model governance is particularly concerning given that maintaining America's global leadership in AI is a top priority for the Administration and individual states are not well positioned to consider the geopolitical implications of their statutes.[60]

For instance, California's SB 53 regulates "frontier" AI based on a developer's revenue and the compute used to train a model, not actual capabilities, likely imposing expansive duties on leading domestic firms while leaving many foreign competitors outside the scope of the state's jurisdiction.[61] New York City's bias-audit mandate for AI models used for employment

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[59] Austin Gold & Townsend Brown, *AI Legislation Across the U.S.: A 2025 End of Session Recap,* Retail Industry Leaders Ass'n (Sept. 8, 2025) (*available at* https://www.rila.org/blog/2025/09/ai-legislation-across-the-states-a-2025-end-of-ses).

[60] *See* White House, "Winning the Race: America's AI Action Plan," at 3 (2025) (*available at* https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-ActionPlan.pdf) ("*AI Action Plan*").

[61] *Transparency in Frontier Artificial Intelligence Act*, Cal. Sen. Bill No. 53, Chapter 138 (Cal. Stat. 2025).

purposes is another example that illustrates the challenge. In 2021, New York City passed an ordinance requiring businesses to obtain and publish independent third-party bias audits of certain technologies used when hiring employees.[62] However, a lack of consensus on standards and best practices for audits chills adoption of beneficial AI technologies, raising costs and reducing efficiency in the workforce.

A. Advancing National AI and Infrastructure Goals Under the Commission's Leadership

INCOMPAS respectfully urges the Commission to ensure that its ongoing Wireline Deployment Inquiry fully incorporates the intersection of AI-related laws, infrastructure deployment, and telecommunications service provision. The Administration's *AI Action Plan* explicitly directs the FCC to "evaluate whether state AI regulations interfere with the agency's ability to carry out its obligations and authorities under the Communications Act of 1934."[63] The Commission is therefore uniquely positioned to identify and remedy instances where state or local AI laws or permitting frameworks inadvertently impede the deployment or operation of telecommunications and AI-enabling networks.

As AI becomes a core enabler of communications services and as AI workloads drive unprecedented demand for advanced fiber and data infrastructure, the Commission's leadership will be essential to ensuring that America's digital backbone remains competitive and innovation driven. Through its authority under Section 253, the FCC can safeguard the deployment of next-generation networks against fragmented and burdensome state and local regimes, whether those

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62 New York City Local Law 144 of 2021, codified at N.Y.C. Admin. Code §§ 20-870 to 20-876 (requiring bias audits of automated employment decision tools).

63 *See AI Action Plan* at 3.

regimes arise in the context of AI governance, permitting, or operational use. By doing so, the Commission will not only fulfill its statutory responsibility to prevent barriers to entry but also advance the Administration's broader objectives of accelerating responsible AI development, expanding broadband access, and strengthening U.S. competitiveness in the global digital economy.

INCOMPAS encourages the Commission to use this proceeding to reaffirm its leadership in modernizing national infrastructure policy, by recognizing that the fiber networks supporting AI are the same networks that power America's communications future, and to ensure that no state or local action, however well-intentioned, stands as an unlawful barrier to that progress.

B. The Commission Has Sufficient Authority Under Section 253 to Address AI-Related Deployment Barriers

INCOMPAS believes the Commission already possesses meaningful tools under Section 253(a)–(d) to preempt state and local actions that materially inhibit the deployment of telecommunications infrastructure, including fiber facilities used in connection with AI and data-center operations. Section 253(a)'s prohibition on any state or local legal requirement that "may prohibit or have the effect of prohibiting" the provision of telecommunications service provides a broad and flexible foundation for Commission action. This proposed preemption is targeted in that it does not regulate AI models writ large and preserves reasonable, competitively neutral rights-of-way management and compensation, while allowing the Commission to invalidate state measures that impede core network operations. The Commission should not hesitate to use this authority to ensure that broadband and fiber infrastructure deployment, including facilities supporting AI workloads, proceeds in a competitively neutral, timely, and technology-agnostic manner.

That said, if the Commission concludes that its current statutory tools are insufficient to address certain AI-related governance frameworks that indirectly burden or delay fiber and AI-enabling infrastructure deployment, it should recommend that Congress take targeted legislative action to supplement the Commission's authority. Such legislation could provide an explicit statutory basis for preempting infrastructure-related burdens tied to AI regulation, ensuring that state or local measures ostensibly targeting "AI safety" or "algorithmic transparency" do not become *de facto* barriers to fiber investment.

C. State AI Laws That Impede Fiber Deployment or Restrict the Use of AI Tools for Permitting and Environmental Review Violate Section 253(a)

Emerging proposals and legislation that could attach AI governance conditions to permitting processes, if enacted, may materially inhibit fiber deployment. For example, one potential risk is that states might adopt additional reporting or certification obligations tied to AI governance, when if implemented, could impose non-neutral burdens on fiber deployment. In addition, in-kind obligations linked to AI governance frameworks, if enacted, could create non-cost-based conditions that deter investment. The Commission should affirm that AI-related state or local requirements that materially inhibit fiber deployment constitute an "effective prohibition" under Section 253(a) and are not preserved by Section 253(b) or (c).

Similarly, as carriers and contractors increasingly deploy AI-assisted tools to streamline permitting, environmental compliance, and infrastructure siting, including automating *National Environmental Policy Act (NEPA)* and *National Historic Preservation Act (NHPA)* reviews, state or local prohibitions on the use of such tools can also have a materially inhibiting effect. An AI regulation that forbids or delays the use of automated permit processing, predictive environmental modeling, or algorithmic workflow management could substantially increase costs and timelines for fiber deployments. When such requirements attach to projects involving

rights-of-way or communications facilities, they operate as barriers to deployment in the same manner as extended or discretionary local permitting regimes previously found unlawful by the Commission.

Under Section 253(d), the Commission has clear authority to preempt these types of measures to the extent they materially inhibit telecommunications services. AI-related restrictions that limit carriers' ability to deploy or operate networks efficiently are neither competitively neutral nor consistent with legitimate rights-of-way management under Section 253(c). Preempting such laws would not prevent states from regulating AI in other contexts; rather, it would ensure that those regulations do not intrude into or burden federally regulated telecommunications functions.

D. AI-Related State Laws That Interfere with the Provision of Telecommunications Services

In addition to addressing state AI-related laws that create barrier to infrastructure deployment, the Commission should consider how state and local AI laws may inadvertently impede the operation or administrative processes that enable the provision of telecommunications services. Just as permitting delays can function as *de facto* prohibitions on deployment, overly broad or ambiguous AI regulations, particularly those that restrict the use of AI in network management, fraud prevention, or permitting automation, can materially inhibit service provision within the meaning of Section 253(a). The Commission's inquiry should therefore extend beyond physical construction to encompass AI-related restrictions that impair the delivery or facilitation of telecommunications services themselves, including network operations and the use of AI-driven tools that enhance compliance, reliability, and efficiency.

INCOMPAS members, including providers of VoIP, messaging, and cloud communications services, are developing tools that will rely on AI for:

- **Spam and fraud detection:** AI models analyze call and message metadata to detect robocalls, spoofing, and scam traffic in real time.
- **Customer service automation:** AI-powered virtual agents handle routine inquiries, reducing wait times and improving service quality.
- **Call routing and prioritization:** AI systems optimize network traffic and ensure emergency or high-priority calls are handled appropriately.
- **Accessibility tools:** AI-driven text-to-speech and voice synthesis applications support users with hearing or speech disabilities.

For example, Bandwidth is developing AI-powered tools which will connect AI voice agents directly to SIP infrastructure.[64] In addition, Bandwidth's APIs support fraud detection, voice-to-text transcription, and real-time call analytics. Microsoft is also utilizing AI to protect consumers from scam calls and fraudulent messages[65] and has urged the FCC to protect accessibility use cases and clarify that AI tools used for consumer protection are a valuable part of modern voice services.[66]

Recent state legislative activity demonstrates the breadth and variability of emerging AI requirements that could implicate telecommunications operations and inhibit the deployment of AI tools. California's Artificial Intelligence Accountability Act would require companies using AI systems that pose "significant risk" to consumers to complete impact assessments, potentially encompassing AI-enhanced call analytics, robocall mitigation, or network management tools. [67]

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64 *Conversational AI*, BANDWIDTH, https://www.bandwidth.com/products/conversational-ai/ (last visited Nov. 13, 2025).

65 *See* Flavius Floare, *Azure Operator Call Protection will scan phone calls in real time and will alert the user if the call is suspicious*, WINDOWSREPORT (Feb. 26, 2024, 5:14 PM), *available at* https://windowsreport.com/azure-operator-call-protection-will-scan-phone-calls-in-real-time-and-will-alert-the-user-if-the-call-is-suspicious/.

66 *See* Comments of Microsoft Corporation, CG Docket No. 23-362, 3 (filed Dec. 18, 2023), *available at* https://www.fcc.gov/ecfs/document/1219842001792/1.

67 2024 Cal. Stat. ch. 928 (SB 896), *available at* https://calmatters.digitaldemocracy.org/bills/ca_202320240sb896.

Similarly, Colorado's SB 24-205, enacted in 2024, mandates extensive documentation and transparency requirements for "high-risk AI systems" that make "consequential decisions," definitions broad enough to capture AI-supported voice or fraud-detection systems operated by telecommunications carriers.[68] The Texas House Bill 2060 (2023) established a state AI advisory council tasked with reviewing the use of AI in public and private systems,[69] while several municipalities, including New York City (Local Law 144 of 2021), have adopted AI-auditing and disclosure obligations that could extend to telecom providers' use of algorithmic tools for service delivery or workforce management.[70]

Although these laws are aimed primarily at AI accountability, state overregulation risks undermining the very consumer protections and service innovations they seek to promote. Excessive or inconsistent state-level restrictions could chill investment in improving telecommunications operations, like AI-driven network management, fraud prevention, and accessibility tools that enhance reliability, security, and inclusion in communications services. This overregulation is a direct restriction on deployment, but even if the Commission does not agree, the Commission has repeatedly found that even indirect or incidental restrictions that raise costs, delay deployment, or constrain network functionality can constitute effective prohibitions. A state law that prohibits, conditions, or delays the use of such AI tools could therefore "materially inhibit" a carrier's ability to provide telecommunications service, squarely

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[68] Colorado Artificial Intelligence Act, 2024 Colo. Sess. Laws ch. 325 (S.B. 24-205) (to be codified at Colo. Rev. Stat. §§ 6-1-1701 to 6-1-1706).

[69] Tex. H.B. 2060, 88th Leg., Reg. Sess. (2023) (codified at Tex. Gov't Code Ann. § 2054.383), *available at* https://legiscan.com/TX/bill/HB2060/2023.

[70] N.Y.C. Local Law No. 144 (2021) (codified at N.Y.C. Admin. Code §§ 20-870 to 20-876), *available at* https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page.

implicating Section 253(a). To preserve a consistent national framework that supports innovation and protects consumers, the FCC must assert its authority to preempt state laws that impede the lawful use of AI in telecommunications.

E. The Commission Should Solicit Targeted Comment on AI-Related Permitting Barriers and Establish Clear Timelines for State and Local Review

As AI becomes increasingly intertwined with data processing, network optimization, and digital infrastructure planning, it is possible that jurisdictions will begin attaching "AI-governance" or "AI-safety" conditions to facility permitting and environmental reviews. INCOMPAS therefore urges the Commission to request comment on specific examples of state or local laws or permitting regimes that incorporate or reference artificial intelligence requirements that are having the effect of prohibiting, or materially inhibiting, the deployment of wired telecommunications infrastructure under Section 253(a). While these measures may be intended to regulate data processing or the operation of AI systems, their practical effect in many cases will be to delay or burden the deployment of fiber and other telecommunications facilities that serve as the essential backbone of AI and data processing networks.

For example, local governments that require conditional use permits for facilities such as data centers or fiber huts that are deemed to "support AI activity," may trigger additional review processes under newly enacted AI-oversight ordinances. These reviews, when lacking clear statutory deadlines or objective criteria, can extend the permitting timeline by months or even years. In other instances, jurisdictions might require in-kind infrastructure contributions, such as mandatory conduit or fiber installation, as a condition of approval for projects associated with AI or data center development. While these requirements may be justified as promoting digital equity or transparency, they can impose non-cost-based and discriminatory conditions that effectively deter private investment in broadband and AI-enabling infrastructure. Finally, newly

enacted AI-related "certifications" or "risk reviews," in which local staff must confirm that proposed facilities comply with AI-safety, data-handling, or algorithmic-transparency standards before construction can proceed will create delays in rights-of-way approvals arising from these requirements.

To build a comprehensive record, INCOMPAS encourages the Commission to solicit specific examples from providers documenting delays, costs, or operational impacts caused by AI-related state or local requirements for fiber deployment to AI-enabling infrastructure. This information will allow the Commission to evaluate whether AI-related laws and policies that could delay the use of AI to facilitate the permitting function become *de facto* moratoria and to consider whether preemption is warranted under Section 253(d).

In parallel, the same minimum "shot-clocks" the Commission establishes for rights-of-way authorization, permit approvals, and other state or local actions affecting infrastructure deployment should apply where new facilities are driven by AI-related demand (for example, fiber huts, edge nodes, or interconnection points adjacent to AI or data centers). The *Small Cell Order* established the principle that predictable timelines for local review are necessary to avoid unreasonable delay and ensure timely network build-out.[71] The same reasoning applies here: as AI workloads increase, providers are accelerating the deployment of dense fiber networks to meet the exponential growth in data transport. Unchecked procedural delays at the state or local level could significantly hinder this national objective. Accordingly, the Commission should seek comment on the appropriate timeframes, enforcement mechanisms, and remedies for these approvals.

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71 *Small Cell Order* at paras. 103-115.

Finally, the Commission should reaffirm that while state and local governments retain legitimate interests in managing rights-of-way and ensuring public safety, those interests must be pursued through competitively neutral and non-discriminatory measures, consistent with Section 253(c). AI-related governance frameworks that selectively burden fiber or telecommunications facilities intended for AI-enabling infrastructure or impose obligations unrelated to traditional right-of-way management, exceed the scope of permissible local authority and should be preempted.

F. The Commission Should Reaffirm Section 253's Applicability to Commingled AI and Telecommunications Infrastructure

INCOMPAS urges the Commission to reaffirm that the "effective prohibition" standard under Section 253(a) applies equally to facilities and networks that provide commingled telecommunications and data services, including fiber deployments that serve both AI-driven applications and traditional telecommunications functions. Broadband infrastructure is converging with traditional telecommunications: the same fiber-based, all-IP networks that support high-capacity data transmission, including data-center interconnect, also underlie the provision of voice, broadband Internet access, and enterprise communication services.[72]

Accordingly, any state or local requirement that materially inhibits the deployment of this shared infrastructure, whether labeled as an "AI governance" measure or otherwise, implicates Section 253(a). As discussed in Section VI, the Commission's long-standing precedent confirms

[72] The FCC's Technology Advisory Council describes a transformation in telecommunications network infrastructure "driven by "a convergence of automation, digitization, softwarization…" *The Transformation of the Network: Impacts on the FCC, the Telecommunications Industry, and End-Users*, Report of the FCC's Technology Advisory Council Working Group on Artificial Intelligence, Machine Learning, Testing, and Softwarization, (August 5, 2025), *available at:*https://www.fcc.gov/sites/default/files/08-05-2025-AIWG-Final-report-for-August-5-TAC-Final.pdf.

that Section 253's protections are not confined to "pure" common carrier services but extend to infrastructure used in the provision of telecommunications service, even when such infrastructure also supports unregulated or enhanced data functions. In *Level 3 Communications v. City of St. Louis*, the Eighth Circuit stated that Section 253(a) prohibits state or local requirements that "materially inhibit" the ability of an entity to provide telecommunications service,[73] a standard the Commission has repeatedly reaffirmed in subsequent orders, including the *Small Cell Order*. Although *State of Tennessee v. FCC* addressed preemption under Section 706 rather than Section 253, the Sixth Circuit recognized the Commission's interpretive authority in addressing state laws that impede the deployment of communications infrastructure.[74] Together, these authorities support the Commission's power to preempt state and local measures that materially inhibit the deployment or use of telecommunications facilities, including facilities that deliver both regulated telecommunications services and co-mingled data or AI-enabled applications. INCOMPAS respectfully urges the Commission to reaffirm and, where necessary, clarify that Section 253(a)'s "effective prohibition" standard applies to all infrastructure essential to the provision of telecommunications services, regardless of whether such infrastructure also supports non-regulated functions. In today's AI-related context, this doctrine necessarily encompasses fiber infrastructure that underpins both AI and telecommunications services.

INCOMPAS urges the Commission to explicitly confirm that commingled-service AI-enabling fiber infrastructure deployments fall within the scope of Section 253(a) protection, and that AI-related state or local restrictions on the construction or operation of such facilities may constitute unlawful barriers to entry. This clarification would provide needed regulatory certainty

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73 *Level 3 Communications, LLC v. City of St. Louis*, 477 F.3d 528, 533 (8th Cir. 2007).

74 *State of Tennessee v. F.C.C.*, *832 F.3d 597* (6th Cir. 2016).

to network builders and ensure that states cannot sidestep Section 253(a) by recasting telecommunications deployment as AI-related activity.

VIII. CONCLUSION

For the foregoing reasons, INCOMPAS urges the Commission to adopt the proposals outlined above. The FCC should establish reasonable shot clocks for wireline deployment approvals, define cost-based fee safe harbors and prohibit fees or conditions that exceed those limits, and exercise its full authority under Section 253 (and ancillary authority, where needed) to preempt state and local requirements that materially inhibit wireline broadband deployment. Eliminating these barriers will accelerate investment in high-speed networks and bring more affordable, competitive broadband services to America's communities.

Respectfully submitted,

/s/ *Tamar Finn*

Staci Pies
Christopher L. Shipley
Taylor Abshire
INCOMPAS
1100 G Street NW
Suite 800
Washington, DC 20005
spies@incompas.org
cshipley@incompas.org
tabshire@incompas.org

Tamar Finn
Ronald W. Del Sesto
Brett P. Ferenchak
Cooley LLP
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, DC 20004
tfinn@cooley.com
rdelsesto@cooley.com
bferenchak@cooley.com

Counsel for INCOMPAS

Dated: November 18, 2025

ANNEX A

Examples of Unreasonable Delays or Processes

A. *De Facto* Moratoria

- The City of Albuquerque, NM has issued indefinite stop work letters to multiple fiber providers, without notice, a cure period, or hearing—in contravention of the City's agreements with the fiber providers—and has failed to provide an end date to such *de facto* moratoria. These moratoria lasted for multiple months in some cases, putting a halt to ongoing builds, and the threat of additional moratoria remains.
- In Fremont, CA, provider has had to abandon three separate deployment projects due to the city's outright and continued refusal to issue the necessary permits, without allowing provider the opportunity to address any issues the city had with the proposed deployments. Provider attempted to work with the city at all levels including the legal department, elected officials and CIO. City claims that they are an underground city only and all new entrants must place facilities underground despite incumbents not having been required to comply with that requirement and continue to update or expand aerial facilities.
- Another city in California has refused, since 2022, to issue permits required to deploy and has refused to offer guidance as to how a provider could properly obtain the requisite permits. City similarly claimed they are underground only despite aerial facilities existing throughout nearly the entire city.
- Service providers have reported multiple jurisdictions in Illinois that are *de facto* refusing to issue permits by being unresponsive and generally refusing to engage in any processes to issue the necessary permits/franchises.
    - A Chicago, IL suburb has recently refused to issue any permits until a franchise agreement is signed but has not provided a template, has engaged a new law firm, and has been largely unresponsive and uncooperative resulting in a customer threatening to cancel contract due to the delay.
    - Another Chicago, IL suburb has failed to renew or renegotiate in good faith an existing expired agreement, including their legal team being slow to respond, and are blocking construction until a new agreement is negotiated. The delay is affecting multiple projects.
- In Mahoning County, Ohio, provider 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, Mahoning County became unresponsive, and repeated inquiries from provider regarding permit review status were ignored for months at a time. 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 provider exclusively. Such demands included, but were not limited to: (1) requiring provider to hire professional surveyors to survey unrelated utility placements and provide maps to the County, essentially using provider's requests for permits as leverage to map the County's underground utilities for the County; (2) consulting with, and getting approval of, provider's deployment plans by third party utilities; (3) requiring provider 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 provider to have both a professional surveyor stamp and a professional engineer stamp, which required an additional $300,000 cost to provider. Although the provider agreed to many of the increasing and changing demands, it became apparent Mahoning County would continue to impose ever-increasing demands, and the provider would encounter ever increasing delays if it continued the broadband deployment project. As a result, provider's customers elected to abandon the remainder of the project in Mahoning County, impacting resiliency of existing networks and future broadband expansion.

B. Unreasonable Processing Times

- Numerous service providers have reported abandoning deployment projects due to their struggles in receiving the appropriate permits to access public ROWs and competing with incumbent providers that do not face the same regulatory hurdles imposed by local authorities.
- Delays in rights-of-way agreement negotiations or encroachment permits often will result in increased financial burdens beyond just the additional resources and time dedicated to receiving rights-of-way access or permits themselves—service providers frequently must pay to extend or renew attachment applications to the municipally owned or third-party utility-owned poles due to the delays in obtaining the ROW agreement and permits.
- Rights-of-way agreement negotiations can exceed 12 months, with some service providers reporting an average of around four months to complete, which is far longer than the 45-day timeline for pole owners to process applications.
- The two most populous states, California and Texas, have not established specific time frames to act on requests for access to the public ROWs for wireline deployments.
- The Los Angeles Department of Transportation takes, on average, nine months to issue a permit for rights-of-way access.
- In Inglewood, CA, a provider only obtained its first right-of-way permit in May 2025, almost three years after initiating negotiations with the city in June 2022.

C. Additional Complications

- Regulatory complexity disincentivizes deployment projects. Service providers regularly must obtain permits from multiple different agencies for a single deployment project, such as from municipalities, counties, state department of transportation, railroads, metropolitan transportation authorities, local or regional planning boards, and supervisory boards.
- Service providers typically have to navigate deliberately siloed and sequential contract negotiation structures, negotiating first with public works/utility departments, and only after the technical aspects are agreed on will service providers be contacted by the legal department to finalize the "legal" language of the right-of-way agreements, unnecessarily delaying agreement execution.
- In Fontana, CA, the city conditioned its right-of-way permit on the execution of an additional and unnecessary maintenance agreement requiring provider to comply with state law, but despite provider's efforts to execute the maintenance agreement

(including payment of $12,000 for the city's lawyers to actually draft the maintenance agreement), the city has yet to provide the agreement or sign the permit.

- Various jurisdictions in Michigan have short permit timeframes that require frequent renewals.
- The District of Columbia and Arlington, VA require two permits, construction permit and occupancy permit, and the permits are restricted to short distances, so one fiber build may require multiple permits. Further, permits are only open for a limited time.

ANNEX B

Examples of Unreasonable Fees or Costs

A. ROW/Permit Fees

- Service providers regularly encounter jurisdictions that deliberately obfuscate permit fee information and apply fees in a discriminatory manner vis-à-vis incumbents, where incumbents are not required to pay fees for the same public rights-of-way access. In addition, municipalities will impose increasingly burdensome "hidden" fees, such as inspection fees, drop fees, and financial security requirements.
- Certain Texas cities have demanded franchise agreements where service providers would be forced to pay fees based on gross revenues or on a per linear foot, despite a state law stating that providers should compensate the municipalities for use of the public rights-of-way through quarterly municipal access line fees based on the number of end user connections the provider has within the city limits.
- Service providers sometimes have to pay multiple fees to access the public rights-of-way for a particular project when there are overlapping jurisdictional agencies; for example, a provider had to install a network that traversed a state highway in California and thus had to pay permitting fees to both the local jurisdiction and to the California DOT for a single right-of-way.
- Some jurisdictions do not specify calculation of fees upfront:
  - State of New York: Charges a fee whenever a permit for the use and occupancy of rights-of-way is required, with the NYSDOT determining the rate for the specific occupancy.
  - Virginia: Virginia DOT requires providers to pay compensation for access to right of way as deemed proper by the Commissioner of Highways. Alternatively, the provider may enter into a shared resource agreement "as may be deemed proper by the Commissioner of Highways."
- Average costs to obtain encroachment permits in California is approximately $1,750, and fees are typically charged per activity as a flat fee.
- In Arizona and Oregon, service providers have stalled or abandoned deployment projects because of right-of-way fee structures reducing anticipated revenue to the point where the builds are not financially feasible:
  - Examples of Arizona jurisdictions and associated fees:
    - City of Phoenix: 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. The AMF is $6.00 per year for every residential unit passed by its fiber network.
    - City of Buckeye: $3.18/per linear foot;
    - City of Surprise: $0.89/per linear foot or 5% Annual Gross Revenue ("AGR"), whichever is less;
    - City of Mesa: $1.89/per linear foot or 2% AGR, whichever is less;
    - City of Glendale: $1.96/per linear foot;
    - Litchfield Park: $2.41/per linear foot;

        - City of Peoria: 3% AGR and Annual Minimum Fee based on the number of houses the fiber passes;
    - Example of Oregon jurisdictions and associated fees:
        - By statute,[1] municipalities in Oregon are permitted to impose a privilege tax of up to 7% AGR. Municipalities are only allowed to charge cable companies 5% AGR.
        - City of Lake Oswego: 5% AGR
        - City of Eugene: Utility Right-of-Way Use Permit Fees for a single facility range from $350 for 0-99 ft to $890 for 1,000-2,000 ft (greater than 2000ft charged the appropriate multiples equal to the length of activity). Also, it requires permit for every drop, which incumbents are not subject to.
        - City of Portland: The city imposes a 7% exchange access fee on incumbent carriers, while imposing a 5% gross revenue fee on competitive local exchange carriers.
- City of Albuquerque, New Mexico: The city charges a fee of 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.
- County of Bernalillo, New Mexico: Proposed fee of the greater of $1.00/linear foot installed or 3% of gross revenue.

B. Non-Cash Impositions

- Various jurisdictions in New Jersey require a police detail for any work with four hour minimum charge.
- Lincoln, NE has provided limited options to renting City's conduit at exorbitant cost resulting in cancellation of projects.
- Proposed city ordinance in Shady Cove, OR would require maintaining an office within the city or appointing a local person, acceptable to the administrator, as an agent for accepting service of process, notice, and/or demand.

C. Restoration/Inspection/Additional Fees

- A municipality in Florida has demanded that provider provide a $250,000 cash escrow for a fiber build of a mere 600 feet, which is an egregious financial burden considering the buildout is primarily for a single customer with a monthly revenue of under $400.
- In California, service providers have reported being forced to pay inspection fees based on inflated hourly rates (on average, $200 per hour) with 1-hour block charges despite the inspector not spending that time at a specific site, or spending a nominal amount of time (e.g., a "drive by" of the applicable site). The excessive inspection fees are unreasonable and can be unduly burdensome on service providers. For example, one provider paid over $300,000 in inspection fees alone in one California city.

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[1] *See* Ore. Rev. Stat. § 221.515(1). A telecommunications carrier paying the privilege tax authorized by this section shall not be required to pay any additional fee, compensation or consideration. Ore. Rev. Stat. § 221.515(3).

- Service providers have had to wrestle with municipalities imposing post-hoc fees once the providers have already heavily invested in and built out certain networks:
    - In Richmond, CA, despite a $6 million bond, provider had to post as a guarantee to remove its temporary poles in order to receive the required permits, a new inspector instigated a stop work order that resulted in a 6-month delay and additional drop fees and expenses that were discriminatorily imposed as AT&T was not required to pay the same fees and undergo the same processes.
    - In El Segundo, CA, while a provider had operated under an approved blanket permit to complete its network deployment and execute early phases of installation work to end users, a new public works team announced that all service drops for new installation and repair work for existing service had to be permitted, with each permit associated with unreasonably high fees, including charging for USA locate fees on short-duration aerial service drop installations that did not involve breaking ground. City did offer to allow permitting by city block but this would still involve hundreds of permits normally governed by the MUTCD and WATCH manual guidelines in CA for short duration work (work less than 60 minutes in the ROW with no breaking ground). With the network deployment fully built out but unable to commence service to many pending customers, provider has been left trapped and with no alternative but to potentially litigate the issue with the city adding additional time and expense to its deployment efforts and putting it at a competitive disadvantage with existing providers that historically have not been subject to the same permitting requirements.
- Certain municipalities will demand unreasonable restorative work or fees that oftentimes makes deployments financially infeasible:
    - At least one competitive broadband provider has had to walk away from a proposed deployment project in a Pennsylvania county because of the local authorities demanding excessive street restoration that would have added over $2 million to the construction costs.
    - The City of Upland, CA demanded that provider re-pave the entire side of the street where provider intended to install its network, despite the installation only requiring micro-trenching in a single lane, which would have added $3 million in project costs to a $1 million budget project, forcing provider to abandon the project.
    - The City of Los Angeles, CA assesses street restoration fees that vary based on type and the location of the trenching, which average permit costs for open trenching reaching $126 per foot.
    - The City of Seattle, WA requires full street restorations for essentially all trenching, which can impact project costs by up to $550 per foot of fiber installation.
    - The restoration demands of the City of Cambridge, MA, has caused at least one service provider to redesign networks, delaying deployments.
    - The City of Boston, MA has demanded exorbitant restoration fees, with some restoration fees reaching $100.82 per foot.
    - Harrisburg, PA and Wilmington, DE 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. Further, the restoration costs are high in comparison.

- Jurisdictions in Philadelphia, PA area have high dig permit costs of $14 per foot, which must be paid before permit is issued.