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

Petition of Talkie Communications, Inc. for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934, as Amended	))))	Docket No.

REPLY COMMENTS OF INCOMPAS

Dated: March 24, 2026

I. INTRODUCTION AND INTEREST OF INCOMPAS

INCOMPAS submits these reply comments in response to the Petition for Preemption and Declaratory Ruling filed by Talkie Communications, Inc. ("Talkie").[1] INCOMPAS's interest in this proceeding goes beyond Talkie's individual situation: the Comments of Queen Anne's County Department of Planning and Zoning ("County"), opposing the Talkie Petition[2] rests on a reading of Section 253 that, if accepted, would expose competitive providers across the country to precisely the discriminatory, duplicative permitting burdens that statute was enacted to eliminate.

INCOMPAS represents a broad coalition of competitive communications providers, broadband builders, and technology innovators working to expand access, foster innovation, and

[1] *In the Matter of Petition of Talkie Communications, Inc. for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934, as Amended*, Public Notice, DA 26-129 (rel. Feb. 5, 2026).

[2] Comments of Queen Anne's County Department of Planning and Zoning, WC Docket No. 26-27 (filed Mar. 9, 2026) ("County").

increase competition in American communications markets. INCOMPAS members regularly encounter discriminatory zoning requirements, excessive fees, sequential permitting processes, and de facto moratoria that significantly hinder broadband deployment, as documented in INCOMPAS's comments filed in the Wireline Barriers Proceeding.[3]

The Commission has consistently preempted fees and requirements that disrupt deployment of advanced services over commingled facilities. The County's opposition asks the Commission to retreat from that settled position, and INCOMPAS urges the Commission to decline to do so. Because the outcome of this proceeding will affect every INCOMPAS member deploying modern multi-use networks, INCOMPAS presents in these reply comments the multi-use platform arguments it advanced in the Wireline Barriers Proceeding, where INCOMPAS explained how Section 253's protections apply to networks that carry both broadband data and telecommunications services over shared infrastructure. INCOMPAS urges the Commission to reaffirm that framework and preserve the full scope of Section 253's protections for commingled-facilities deployments.

II. SECTION 253'S PROTECTIONS FOR COMMINGLED-FACILITIES DEPLOYMENTS REMAIN VALID AND ARE GROUNDED IN THE STATUTE'S PLAIN TEXT

A. Section 253's Protections for Commingled-Facilities Deployments Are Grounded in the Statute's Text and Established Commission Precedent

The Commission's precedents on this point are clear and consistent. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* ("Moratoria Order"), the Commission expressly recognized its authority "over infrastructure that can be used for the provision of both telecommunications and other services on a commingled basis," and

[3] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (rel. Sept. 30, 2025) ("Wireline Barriers Proceeding"); INCOMPAS Comments (filed Nov. 18, 2025), Annexes A & B.

acknowledged that preempting deployment restrictions on commingled facilities promotes broadband deployment.[4] The Commission similarly found in the *Cable Franchising Order* that imposing duplicative requirements on commingled-service infrastructure "may deter investment in new infrastructure and services" and impede Congress's goal of accelerating the deployment of advanced telecommunications capabilities.[5] The County's opposition, if accepted, would contradict both of these holdings by permitting local governments to use the presence of broadband as a basis for imposing requirements that impede deployment of infrastructure that supports covered telecommunications services.

The statute's text confirms why. Section 253(a) protects "any entity" providing "any . . . telecommunications service" from requirements that "have the effect of prohibiting" that service. As the Commission recognized in the *Small Cell Order*, the protections apply "where the facilities are being used for the provisioning of services within the scope of the relevant statutory provisions,"[6] with no carve-out for infrastructure that also carries non-telecommunications services. The County's reading would transform that statutory protection into a trap: the more services a competitive provider offers over shared infrastructure, the more local regulatory exposure it faces. That is precisely the result Section 253 was enacted to prevent.

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[4] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, ¶ 167 (2018) ("Moratoria Order"), *aff'd*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

[5] *Implementation of Section 621(A)(1) of the Cable Communications Policy Act of 1984 As Amended by the Cable Television Consumer Protection Act of 1992*, Third Report and Order, 34 FCC Rcd 6844, ¶ 104 (2019) ("Cable Franchising Order"); *Moratoria Order* ¶ 167 (stating that "we have authority over infrastructure that can be used for the provision of both telecommunications and other services on a commingled basis" and that "our ruling today will promote broadband deployment").

[6] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, ¶ 36 n.84 (2018) ("Small Cell Order"), *aff'd in pertinent part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

B. Accepting the County's Opposition Would Produce Results Contrary to Section 253's Purpose

The County's reading would create a regulatory paradox with serious consequences for competitive providers. Under the County's approach, a provider offering only stand-alone circuit-switched local exchange service in a state highway right-of-way would be exempt from county zoning review, a point the County has effectively conceded. But a competitive provider offering that same service bundled with broadband would face additional months of zoning and permitting review. Simply put: the more complete and competitive a provider's service offering, the heavier its regulatory burden. A rule that penalizes competitive bundling conflicts with the purpose of Section 253. The real harm to broadband deployment is tangible. Providers across the country, including those serving rural and underserved areas, often bundle voice, broadband, and video to reach the take rates that make deployment financially feasible. A permitting process that views service bundling as grounds for extra regulatory scrutiny does not just inconvenience individual providers; it undermines the business model that makes competitive broadband deployment possible in the markets Congress has prioritized.

INCOMPAS members have encountered permitting delays and fee structures that rendered projects uneconomical, not because of any genuine local regulatory interest, but because of the sequential, duplicative, and discriminatory character of local permitting regimes.[7] The Commission should not issue a ruling that hands local governments yet another tool for entrenching these barriers: service classification ambiguity.

[7] INCOMPAS Comments, Wireline Barriers Proceeding, at 20, and Annexes A & B.

C. The Record in the Wireline Barriers Proceeding Confirms That Section 253 Protects Multi-Use Networks That Carry Telecommunications Services

The record developed in the Wireline Barriers Proceeding provides direct support for applying Section 253's protections for commingled facilities to the infrastructure at issue here. INCOMPAS's Comments confirm that Section 253 bars state and local governments from materially inhibiting deployment over commingled facilities.[8]

As INCOMPAS explained in that proceeding, most modern broadband networks are multi-use platforms: they carry broadband data services classified as information services, but they also carry telecommunications in various forms. If a provider uses its broadband infrastructure to offer any telecommunications service, including wholesale connectivity, business data services, traditional voice, or interconnected VoIP, then Section 253(a) is squarely implicated by local barriers to that infrastructure. A municipal restriction or fee that deters the installation of the fiber network necessarily inhibits the provision of the telecommunications service over that same facility. This remains true 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. Crown Castle filed comments in the Wireline Barriers Proceeding reaching the same conclusion, urging the Commission to confirm that Section 253 prohibits state and local governments from materially inhibiting deployment of service over commingled facilities, and that the presence of non-telecommunications services, such as broadband internet access service, carried over the same infrastructure does not free local governments to impose otherwise unlawful requirements or fees.[9]

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[8] *Id.*

[9] Comments of Crown Castle Fiber LLC, Wireline Barriers Proceeding, at 26 (filed Nov. 18, 2025).

INCOMPAS incorporates by reference Section VI.B of its Comments in the Wireline Barriers proceeding, which are reproduced below for ease of reference, in the current proceeding:

> 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.[10] Thus, at a minimum, any broadband network that also enables voice telephony or similar telecom offerings should receive Section 253's shield against unjustified barriers.
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> 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.[11] 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

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[10] *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., 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).

[11] *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").

> telecommunications," even absent a formal Title II classification.[12] 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 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.

The infrastructure at issue is the kind of multi-use platform that INCOMPAS described in the Wireline Barriers Proceeding: fiber capable of carrying both broadband and telecommunications services, subject to local permitting requirements that would impede deployment regardless of how any individual service component is classified. When a fiber deployment carries, or is reasonably foreseen to carry, telecommunications services, including stand-alone transport, special access, or VoIP-related transmission, the Commission must preempt local requirements that materially inhibit deployment of the physical network. This approach does not require reclassifying broadband internet access; it requires only recognition that the shared infrastructure supports covered services whose deployment Section 253 protects. The Commission should reaffirm that principle here.

III. CONCLUSION

For the foregoing reasons, INCOMPAS urges the Commission to exercise its full authority under Section 253 to preempt state and local requirements that materially inhibit wireline broadband deployment, whether the provider is providing other non-telecommunications services

[12] *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).

over those same facilities. Eliminating these barriers will accelerate investment in high-speed networks and bring more affordable, competitive broadband services to America's communities.

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