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

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

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INCOMPAS, by its undersigned counsel, respectfully submits these comments in response to the Federal Communication Commission's ("Commission") *Notice of Proposed Rulemaking* (*"NPRM"* or *"Notice"*) proposing rules that would eliminate state and local requirements that constrain the deployment of modern high-speed wireline infrastructure.[1]

I. INTRODUCTION AND SUMMARY

INCOMPAS, the Competitive Communications and AI Infrastructure Association, represents a broad coalition of competitive communications providers, broadband builders, and technology innovators working to expand access, deploy infrastructure, and advance competition in the nation's communications markets. INCOMPAS members are engaged in large-scale network builds nationwide—deployments that depend on timely, predictable, and reasonably priced access to public rights-of-way ("ROW"). The record developed in response to the Commission's 2025 *Notice of Inquiry*, and reaffirmed throughout this proceeding, demonstrates that state and local permitting practices continue to impose exactly the kind of excessive delays, above-cost fees, and burdensome conditions that Section 253 was enacted to prevent.

[1] *Build America: Eliminating Barriers to Wireline Deployments*, Notice of Proposed Rulemaking, WC Docket No. 25-253, FCC 26-40 (rel. June 26, 2026) (*"NPRM"*).

The Commission's proposed framework, including a presumptive deadline for state and local action, cost-based fee safe harbors, and a rule requiring that in-kind demands count toward those safe harbors, reflects the consensus industry has built in this docket and represents a substantial step toward eliminating these barriers. INCOMPAS strongly supports that framework and urges the Commission to adopt it, with the modifications set forth below, each grounded in the record already before the agency.

The Commission should adopt clear, administrable rules that create certainty before a project is delayed or abandoned. INCOMPAS recommends that the Commission:

- Adopt a 90-day presumptive deadline as an outside limit for substantial new wireline construction, while establishing shorter deadlines for categories of work that ordinarily require materially less governmental review. Additionally, the federal clock should begin at the first mandatory procedural step and should not create an entitlement to delay authorizations that can reasonably be processed more quickly.

- Require prompt and specific notice of any material application deficiency; allow only narrow tolling for identified deficiencies; and provide that the clock resumes, rather than restarts, when the deficiency is cured.

- Apply the deadline to batched applications, government-owned structures in public rights-of-way, authorizations needed for facilities outside public rights-of-way, and integrated fiber infrastructure that is used or may reasonably be expected to be used to provide telecommunications service.

- Limit compensation to objectively reasonable, actual, and direct costs caused by the provider's particular use of the right-of-way, with transparent documentation and public disclosure sufficient to verify cost causation.

- Treat mandatory in-kind contributions as compensation, make clear that demands unrelated to the provider's actual ROW use fall outside Section 253(c), and preempt such demands when they materially inhibit telecommunications service.

- Confirm that Section 253 protections apply when fiber facilities are designed to carry telecommunications and other services on a commingled basis, and prohibit additional authorization requirements, fees, or construction conditions imposed solely because the same facilities carry non-telecommunications services.

INCOMPAS members deploy and operate fiber-optic infrastructure that supports telecommunications and other communications services across numerous state and local jurisdictions. Because a single fiber project may cross multiple public rights-of-way and require approvals from multiple agencies, predictable permitting timelines and cost-based access terms are essential to timely investment and deployment. Even one jurisdiction on a multi-jurisdictional fiber route can disrupt construction sequencing, increase costs, strand capital, and affect the viability of deployment beyond that jurisdiction.[2] Section 253 was designed and intended to prevent state and local legal requirements from producing those prohibitory effects while preserving legitimate, nondiscriminatory management of public rights-of-way.[3] These rules would preserve legitimate local control over safety, traffic, restoration, and coordination while preventing ROW authority from becoming a bottleneck or revenue mechanism that materially inhibits wireline deployment.

II. THE COMMISSION SHOULD ADOPT DEADLINES FOR WIRELINE AUTHORIZATIONS

A. The Commission May Implement Section 253(a)'s Effective-Prohibition Standard Through a Rebuttable Deadline

The FCC should promulgate rules or issue a declaratory ruling under Sections 214(a) and 253 requiring state and local authorities and government-owned utilities to act on applications to install or modify wireline facilities in the ROW within a reasonable, uniform timeframe.

The FCC's shot clock for deployment of domestic lines is effectively zero days, requiring no application to the Commission. In contrast, the *NOI* record demonstrates that lengthy wait times for state or local construction permits remain a persistent problem. Absent deadlines for

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[2] *See NPRM* at paras. 11–18, 35–37.

[3] 47 U.S.C. § 253(a), (c).

wireline broadband permits—whether for ROW excavation or fiber installation in conduit—local jurisdictions have taken months or years to approve fiber builds, sometimes stalling projects through bureaucratic inertia or drawn-out reviews. These delays increase provider costs through idle crews and extended project timelines, slow customer connections, and directly contradict the FCC's grant of blanket authority to build lines carrying interstate communications without filing an application.

The impact on deployment would be substantial. With shot clocks, providers could plan construction crews and project sequencing with confidence that permits will be processed within a predictable window. Even reducing average permit time from six months to three months effectively doubles the annual rate of network deployment. Industry-wide, wireline shot clocks would particularly benefit smaller ISPs and new entrants who lack the leverage to prod slow municipalities, leveling the competitive field by preventing foot-dragging as a tactic to favor incumbents or municipal networks.

Section 253. Section 253(a)'s effective-prohibition standard supports identifying the point at which a state or local government's failure to act on a wireline authorization request presumptively has the effect of prohibiting telecommunications service. Section 253(a) bars any state or local statute, regulation, or other legal requirement that may "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[4]

Governmental delay in the application and permitting process can produce that prohibited effect. The Commission has recognized that "indefinite or unreasonable delays" in processing

[4] 47 U.S.C. § 253(a).

applications or issuing permits may constitute unlawful *de facto* moratoria under Section 253.[5] The *NPRM* also notes that regulatory delay may threaten the viability of financing arrangements for new entry or transactions for the purchase of existing facilities.[6] Courts likewise have held that sufficiently extensive delays in processing telecommunications authorizations can violate Section 253(a).[7]

The proposed deadline therefore need not rest on a freestanding requirement that every authorization be acted upon within an abstract "reasonable period of time." Rather, the Commission may identify, based on Section 253(a) and the wireline record, the point at which delay ordinarily becomes sufficiently burdensome that it can be presumed to have the effect Congress prohibited. The *NPRM* correctly frames the proposed deadline as "the point at which a delay presumptively constitutes an effective prohibition—not the amount of time that it reasonably should take a state or local government to process a particular type of authorization."[8]

The Commission's longstanding interpretation of Section 253(a) in *California Payphone* further supports that approach.[9] There, the Commission held that a state or local requirement has the effect of prohibiting service when it "materially inhibits or limits" the ability of a provider to

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[5] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7780–82 paras. 149–53 (2018) ("*Moratoria Order*").

[6] *NPRM* at para. 14, n.36.

[7] *See TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002).

[8] *NPRM* at para. 17.

[9] *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, CCB Pol 96-26, Memorandum Opinion and Order, 12 FCC Rcd 14191 (1997) ("*California Payphone*").

compete in a fair and balanced legal and regulatory environment.[10] The Commission reaffirmed that standard in the *Small Cell Order*, and the Ninth Circuit upheld the material inhibition standard in *City of Portland*.[11]

The *Small Cell Order* also provides a useful analogue for the form of the proposed rule. The Commission concluded that missing the wireless shot clocks presumptively constitutes an effective prohibition because governmental inaction can materially inhibit the introduction or improvement of services.[12] The Ninth Circuit upheld the shortened shot clocks and emphasized that they create rebuttable presumptions, leaving local officials free to demonstrate that additional time is necessary under the circumstances.[13] The Commission may use the same type of rebuttable framework here, based on the wireline-specific record developed in this proceeding.

B. The Commission Should Establish a 90-Day Outside Limit for Substantial New Construction and Shorter Deadlines for Less Complex Authorizations

The appropriate deadline should reflect the nature and scope of the authorization under review. INCOMPAS urges the Commission to adopt a 90-day period as an outside limit for substantial new wireline construction, where review may involve excavation, engineering, traffic management, restoration, and coordination with existing facilities. The Commission should adopt shorter deadlines, however, for routine or materially less complex authorizations that ordinarily require substantially less governmental review. Where a state or local government

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[10] *Id.* at 14206 para. 31.

[11] *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, 9102–05 paras. 35–37 (2018) ("*Small Cell Order*"); *City of Portland v. United States*, 969 F.3d 1020, 1035 (9th Cir. 2020) ("*City of Portland*").

[12] *Small Cell Order*, 33 FCC Rcd at 9148–49 paras. 118–19.

[13] *City of Portland*, 969 F.3d at 1048–49.

requires multiple authorizations for the same deployment, the applicable deadline should be determined by the nature of the underlying work, and all required authorizations should be completed within that single period rather than receiving separate, cumulative review periods.

The record already demonstrates that delays well short of the Commission's proposed 120-day deadline routinely cross the threshold into effective prohibition. Commenters describe project abandonment and cost escalation setting in at the "few months" mark, not at 120 days specifically. Specifically, stakeholders have reported that delays of this length are "unacceptable" and can "fundamentally harm a company's ability to compete,"[14] that in the worst cases members "walk away from planned deployment projects and redirect their limited capital elsewhere,"[15] and that even delays that stop short of outright abandonment still force providers to scale back projects or decline additional deployment once capital is exhausted.[16] Nothing in this evidence suggests that the harm materializes specifically at the 120-day mark rather than considerably earlier; if anything, the record indicates that the injury accrues continuously from the point a delay becomes unpredictable, well before it reaches the Commission's proposed threshold. A 120-day standard therefore risks calibrating the rule to the outer edge of tolerable delay rather than to the point the record actually identifies as prohibitive.

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[14] Crown Castle Fiber LLC Comments, WC Docket No. 25-253, at 12 (filed Nov. 18, 2025) ("As a result, delays of a few months, much less years, are unacceptable and can fundamentally harm a company's ability to compete and succeed in the long term.").

[15] Comments of ACA Connects—America's Communications Association, WC Docket No. 25-253, at 16 (filed Nov. 18, 2025) ("In the worst cases of excessive delays, our Members will walk away from planned deployment projects and redirect their limited capital elsewhere.").

[16] Comments of NTCA—The Rural Broadband Association, WC Docket No. 25-253, at 9-10 (filed Nov. 18, 2025) ("[E]ven delays of several months that do not result in project abandonment can have a negative impact on deployment costs. . . . The resulting increased costs can in some cases leave providers with little choice but to scale back the overall project or decline to undertake additional deployment because capital has been exhausted.").

The comparative timeline evidence in the record confirms that 90 days is not merely defensible but generous. Numerous states have already codified deadlines far shorter than 120 days for the same category of permitting decisions. Michigan requires action within 45 days,[17] Ohio and Hawaii within 60,[18] North Carolina and Tennessee within 30,[19] and Wisconsin within 60.[20] The jurisdictions operating under these shorter windows report no resulting compromise to safety review, utility coordination, or inspection quality.[21] Some jurisdictions perform far better still: San Luis Obispo, operating under a comprehensive statewide franchise system, processes encroachment and excavation permits in an average of 15 working days.[22] If state and local governments can and do complete the full scope of Section 253(b) and (c) review, including safety inspections, utility-locate checks, engineering review, coordination with other rights-of-

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[17] Mich. Comp. Laws § 484.3115(3) (requiring municipalities to approve or deny wireline right-of-way authorization applications within 45 days).

[18] Ohio Rev. Code § 4939.03(c)(2) (establishing a 60-day right-of-way permit review period); Haw. Rev. Stat. § 27-45(c) (establishing a 60-day review period for broadband permits).

[19] N.C. Gen. Stat. § 160D-934(a) (establishing a 30-day municipal review limit); Tenn. Code Ann. § 4-3-709 (requiring political subdivisions to approve or deny applications within 30 business days).

[20] Wis. Stat. § 196.504 (requiring political subdivisions to process authorizations within 60 days).

[21] Reply Comments of INCOMPAS, WC Docket No. 25-253, at 37-42 (filed Dec. 18, 2025) (arguing that local governments "present no evidence that a 30–60 day review period would compromise their ability to conduct utility-locate checks, review engineering drawings, impose restoration conditions, conduct safety inspections, or coordinate with other utility owners" and that "[n]umerous state, federal, and local agencies operate under statutory timelines for far more complex permitting activities").

[22] Reply Comments of the City of San Luis Obispo, WC Docket No. 25-253, at 1 ("Encroachment and excavation permits are processed within an average of 15 working days, fees are cost-based and nondiscriminatory, and our published standards and guidelines provide consistency for all applicants.").

way users, within 30 to 60 days as a matter of routine practice, a 120-day federal backstop does not target only the jurisdictions engaged in genuinely prohibitive conduct; it simply accommodates delay well beyond what the record shows is necessary. A 90-day deadline, by contrast, preserves a substantial buffer above even the longest of these state-mandated timeframes while still drawing the line at the point the record supports. This figure is also consistent with the Commission's own closest analogous precedents: the *Small Cell Order's* 60- and 90-day shot clocks for wireless facility siting, and the 90- and 180-day deadlines governing competitive cable franchise applications under Section 621.[23] A 90-day standard aligns the wireline shot clock with the Commission's existing regulatory family; a 120-day standard would instead stand as an outlier among the benchmarks the Commission itself has found appropriate in comparable contexts.

The Commission's wireless precedent also supports differentiated deadlines. In the *Small Cell Order*, the Commission concluded that less burdensome applications could be reviewed more quickly and adopted shorter clocks for categories requiring less governmental review.[24] That principle applies with particular force to wireline permitting, where the scope of work can vary substantially from substantial new construction to pulling additional fiber to enable new services within existing infrastructure.

Differentiated deadlines are necessary to avoid making the proposed 120-day outside limit the *de facto* processing period for authorizations that today are routinely completed much more quickly. The *NPRM* recognizes existing state and local processes that resolve wireline

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[23] *Small Cell Order,* 33 FCC Rcd at 9094, 9147, paras. 13, 105; 47 CFR § 76.41 (establishing 90- and 180-day deadlines for franchising authority action on competitive cable franchise applications).

[24] *Id.* at 9142–46 paras. 105–11; *see also NPRM* at para. 17 & n.51.

authorizations in 10, 30, or 60 days, and one locality reporting an average of 15 working days.[25] A uniform 120-day period could reduce incentives for prompt action and give jurisdictions additional time and leverage even where the nature of the work does not justify additional review. For a linear fiber route spanning multiple jurisdictions, delay in even a routine authorization can disrupt construction sequencing, strand crews and equipment, and force resources to be redirected to projects that can proceed on a predictable schedule. This effect compounds on multi-jurisdiction fiber routes, where work in one jurisdiction often cannot be finalized—and permit applications for adjoining segments cannot be completed—until construction in a preceding jurisdiction is complete or nearly so. A 120-day period repeated across five or six sequential jurisdictions can add a year or more to a single route, and the risk is compounded further if a revised or supplemental submission necessitated by such a sequencing is treated as a new application that restarts the clock rather than as a follow-on filing subject to the 30-day period the Commission should adopt for routine modification as described below in Section II.C. The Commission should not address excessive delay in complex construction by adopting a rule that could lengthen the practical review period for work that can and should be approved substantially more quickly.

INCOMPAS members' experience confirms the need for an enforceable outside limit. In one Midwestern county, changing and unpublished engineering requirements extended the authorization process for approximately 18 months and ultimately contributed to a member's abandonment of the remaining project. In another Midwestern jurisdiction, permits remained unresolved for more than a year before that member was forced to abandon its original plan, reroute the project, and absorb additional construction costs. These experiences are just a few of

[25] *NPRM* at para. 17 & n.51.

many that illustrate the practical consequence of an authorization process without a firm endpoint.

C. The Clock Should Begin at the First Mandatory Procedural Step, With Narrow Tolling for Material Deficiencies

INCOMPAS agrees with the Commission's proposed rule that the review period should begin when the provider submits its authorization request or, where a government requires a mandatory pre-application process, when the provider completes the first mandatory procedural step. INCOMPAS also agrees with the Commission's concern that conditioning commencement on a later governmental determination that an application is "complete" could undermine the deadline. The Commission's wireless precedent likewise begins the shot clock at submission rather than when an application is later deemed complete.[26]

INCOMPAS also submits that a reviewing authority should have 30 days after submission to provide written notice of a material deficiency.[27] The notice should identify the missing information, explain why it is material to review of the requested authorization, and identify the preexisting, publicly available requirement obligating the applicant to provide it. A generalized request for additional information, or a request unrelated to management of the proposed use of the ROW, should not toll the deadline.

Where a timely notice identifies a genuine material deficiency, the clock may be tolled while the provider supplies the identified information. Once the provider responds, however, the clock should resume from the point at which it was tolled rather than restart at day zero. Although the *Small Cell Order* permitted an initial reset after a timely incompleteness notice,

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[26] *Id.* at para. 19; *see Small Cell Order*, 33 FCC Rcd at 9161 paras.141–42.

[27] *See NPRM* at para. 19 & n.61.

that approach reflected the comparatively short wireless shot clocks and concern that ordinary tolling could leave too little time for substantive review.[28] A resume rule for the longer wireline period preserves the unused review time while preventing successive completeness determinations from extending the federal deadline indefinitely.

Later follow-up questions or information requests should not create additional tolling merely because they are labeled supplemental requests. If the provider materially changes the proposed deployment, additional time may be appropriate to review the changed portion; ordinary clarification requests or information that reasonably could have been identified during the initial completeness review should not restart or further toll the clock.

INCOMPAS also supports the Commission's proposal that all authorizations required by a state or local government for a particular use of a particular right-of-way be completed within a single federal period.[29] A jurisdiction should not be permitted to multiply the deadline by dividing one deployment among separate departments, boards, or approval stages. One INCOMPAS member has encountered this problem with a southwestern state department of transportation, where a permit moves sequentially among multiple internal groups and each group may add requirements before passing the application to the next. That process can extend for more than a year. Reviews that can proceed concurrently should do so, and internal governmental sequencing should not extend the federal deadline.

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[28] *Small Cell Order*, 33 FCC Rcd at 9162 para. 143.

[29] *NPRM* at para. 20.

D. The Deadline Should Apply to the Full Range of Authorizations Necessary for Wireline Deployment

Fiber construction commonly involves multiple, substantially similar permit requests within the same jurisdiction. The Commission should apply the applicable deadline to batched applications so that a jurisdiction cannot multiply the review period by requiring separate applications for each street, block, or segment of a coordinated project.[30] A government may require information needed to evaluate location-specific conditions, but substantially similar applications submitted as part of a single build should be reviewed on a coordinated timetable.

The deadline also should apply to access to government-owned poles, conduit, and other structures located in public rights-of-way. The Commission has proposed that result, and the Ninth Circuit has upheld application of Section 253 to government-owned property in public rights-of-way because governments act in a regulatory capacity when controlling access to those facilities.[31] Government ownership should not create a separate avenue for delay.

The applicable deadline likewise should not be limited to facilities physically located within public rights-of-way. Section 253(a) applies to state and local legal requirements that prohibit or have the effect of prohibiting the ability to provide telecommunications service; unlike Section 253(c), its scope is not limited to management or use of public rights-of-way.[32] Where a state or local authorization for facilities outside the ROW is necessary to complete a wireline deployment, delay in that authorization can inhibit deployment just as surely as delay in a ROW permit.

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[30] *NPRM* at para. 22; *see also Small Cell Order*, 33 FCC Rcd at 9147–48 paras. 113–15.

[31] *NPRM* at paras. 28–29; *City of Portland*, 969 F.3d at 1045–46.

[32] 47 U.S.C. § 253(a), (c); *see also NPRM* at para. 23.

Finally, the deadline should protect the integrated fiber infrastructure necessary to provide telecommunications service, including dark or spare fiber deployed as part of an integrated network. The Commission has recognized that Section 253 applies where infrastructure is used to provide telecommunications and other services on a commingled basis.[33] A state or locality should not be permitted to isolate individual strands and deny Section 253 protection merely because those strands are not lit at the moment an authorization is sought. The relevant question is whether the delayed authorization materially inhibits the provider's ability to deploy the facilities needed to provide telecommunications service.[34]

E. The Commission Should Establish an Expedited and Effective Enforcement Process

To give the wireline deadline practical effect, the Commission should permit a provider to file a streamlined Section 253(d) petition once the applicable deadline expires, promptly place the petition on public notice, provide abbreviated periods for response and reply, and absent extraordinary circumstances, resolve the petition within 30 days. Such a process should present a focused inquiry: when the federal clock began, whether permissible tolling occurred, whether the government acted, what state or local statute, regulation, procedure, or other legal requirement continues to prevent the provider from proceeding, and whether specific facts rebut the presumption that the delay materially inhibits deployment.

The Commission's existing treatment of deployment-related pole-attachment disputes supports expedited review. The agency created the Rapid Broadband Assessment Team to prioritize disputes that impede or delay active broadband deployment and permits suitable

[33] *Small Cell Order*, 33 FCC Rcd at 9103 para. 36 & n.84.

[34] *See Moratoria Order*, 33 FCC Rcd at 7781–82 paras. 150–52.

complaints to proceed on the Accelerated Docket, where proceedings must be concluded within 60 days.[35] A Section 253 deadline petition should ordinarily be narrower, and the provider already will have waited through the entire underlying authorization period before it can file. For a linear wireline deployment spanning multiple jurisdictions, another 60 days of federal review could disrupt construction sequencing, strand crews and capital, and materially diminish the deployment benefit of the Commission's rule. A 30-day review period is therefore necessary to give the deadline practical effect and advance timely wireline deployment.

If the permitting deadline expires without tolling and without a decision, the FCC should, at a minimum, find that missing the deadline constitutes a failure to act violating Section 253(a)'s prohibition standard, allowing providers to seek expedited relief. This reform would mirror the small cell shot clocks but be tailored to wireline authority, jurisdiction, and needs, and would encourage localities to make their permitting processes transparent and predictable. Relief under Section 253(d) should extend to preemption of the state or local legal requirement to the extent necessary to remove the barrier created by the unlawful delay.[36] Where the provider cannot proceed solely because the government has failed to issue an authorization after an unrebutted violation of the deadline, the Commission can preempt continued enforcement of the legal prerequisite without itself issuing the local permit. Legitimate safety, traffic-control, restoration, and other requirements that independently comply with Section 253 would remain applicable.

[35] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109, paras. 8–14 (2023) ("*Fourth Wireline Infrastructure Order*"); 47 C.F.R. § 1.736(a).

[36] 47 U.S.C. § 253(d).

A case-specific Commission order also would provide a concrete basis for judicial enforcement under Section 401(b), which authorizes an injured party to seek enforcement of a Commission order in federal district court through an injunction or other proper process. Courts have applied Section 401(b) to enforce FCC preemption orders against state regulatory commissions.[37] This is distinct from direct private enforcement of a generally applicable rule: Section 401(b) would operate after the Commission issues a case-specific order.

The Commission therefore need not resolve in this rulemaking whether it may deem a local authorization granted. The *NPRM* has declined to propose that remedy at this time.[38] An expedited Section 253(d) process, followed, if necessary, by enforcement of a case-specific Commission order under Section 401(b), would provide meaningful relief without requiring the Commission itself to issue a local permit. The Commission's authority to adopt both the generally applicable deadline in this Section and the enforcement mechanism described above is addressed in full in Section VII, *infra*.

III. STATE AND LOCAL FEES SHOULD BE LIMITED TO OBJECTIVELY REASONABLE, ACTUAL, AND DIRECT COSTS

INCOMPAS supports the Commission's proposed interpretation of Sections 253(a) and (c) and its proposal to limit state and local compensation for wireline use of public ROW to objectively reasonable, actual, and direct costs. Furthermore, INCOMPAS agrees that the

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[37] 47 U.S.C. § 401(b); *see Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n*, 738 F.2d 901, 905-906 (8th Cir. 1984); *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 748 F.2d 879, 883-84 (4th Cir. 1984).

[38] *See NPRM* at para. 32.

Commission may adopt generally applicable standards to implement and enforce those statutory limitations.[39]

The cost to access ROW varies wildly across jurisdictions. Many cities impose franchise or rental fees for use of public streets that can be steep. Unlike the cable franchise fee (capped at 5% of revenue by federal law) or the small cell fee caps, there is no firm federal limit on fees for wireline ROW use. Some municipalities exploit this gap by charging fiber providers fees far exceeding cost—effectively treating rights-of-way access as a revenue source. The FCC has Section 201(b) authority to adopt rules implementing Section 253's compensation requirements, as more fully addressed in Section VII, *infra*. Section 253(c) preserves state and local authority to require *fair and reasonable* compensation from telecommunications providers, on a nondiscriminatory basis, for use of public ROW—provided the government *publicly* discloses the compensation required. Without FCC action to define these key terms, state and local actions threaten to undermine the federal objective of accelerating broadband deployment and supporting telecommunications services.

Public disclosure is an express statutory condition for fees to qualify under the Section 253(c) exception, and the Commission is entitled—indeed, arguably obligated—to define what disclosure satisfies that condition.[40] Without a clear FCC definition of "publicly disclosed," some local governments provide minimal disclosure that leaves competitors unable to access fee information on equal terms. The most natural reading of "publicly disclosed" requires that disclosure be (i) made in advance of imposition, (ii) sufficiently particular to permit evaluation

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[39] *See NPRM* at paras. 37–47, 74; 47 U.S.C. §§ 201(b), 253.

[40] *See* Section VII, *infra*, addressing the scope of the Commission's authority under Section 201(b) to define undefined statutory terms.

against the "fair and reasonable" and "competitively neutral and nondiscriminatory" requirements, and (iii) accessible to all carriers on equal terms. Localities failing any of these conditions lose the safe harbor for their claimed fee.

To that end, INCOMPAS supports the FCC adopting rules implementing the fair and reasonable compensation requirement for wireline deployment of telecommunications services. Many courts have defined "fair and reasonable compensation" to mean that fees charged must be related to actual costs.[41] Consistent with these decisions, the FCC should exercise its Section 201(b) authority to define "fair and reasonable compensation" as limited to the actual cost imposed by a provider's use of the ROW. Adopting such a definition is necessary to ensure that carriers building fiber to offer jurisdictionally mixed advanced telecommunications services are subject to competitively neutral and nondiscriminatory fees regardless of the jurisdiction in which they deploy.

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[41] *See City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), found that "The statute requires that compensation be 'fair and reasonable;' this does not mean that state and local governments should be permitted to make a profit by charging fees above costs."; *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 993-94 (E.D. Mo. 2003), held that municipal fees for rights-of-way access must "be directly related to the actual costs incurred by the municipality" because "a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry."; *Puerto Rico Telephone Co., Inc. v. Municipality of Guayanilla*, 450 F.3d 9 (1st Cir. 2006), held that a gross-revenue-based fee that is not tethered to a provider's use of the public rights-of-way fails Section 253(c)'s "fair and reasonable compensation" standard and is preempted under section 253(a).; *Qwest Corp. v. City of Santa Fe, N.M.*, 380 F.3d 1258 (10th Cir. 2004), concluded that an annual rental fee based on a fair market appraisal did not qualify as "fair and reasonable compensation" because fair market does not account for a provider's limited use of the rights-of-way.

A. Recoverable Costs Should Be Limited to Costs Caused by the Provider's Particular Use

INCOMPAS supports the Commission's proposed cost-causation approach of limiting recoverable amounts to documented costs that are objectively reasonable, actual, direct, and caused by the provider's particular application, construction, or continuing use of the right-of-way.[42] Our members' experience illustrates the importance of that limitation. In one Midwestern county, an INCOMPAS member was required, as a condition of obtaining permits for its fiber deployment, to hire professional surveyors to survey and map unrelated utility facilities in the county's rights-of-way. In another, a member had to replace substantial portions of a sidewalk unrelated to the disturbance caused by its project. Those costs, resulting in hundreds of thousands of dollars in expenses to members, were not caused by the member's proposed use of the ROW. Such excess requirements and costs should not be imposed on a telecommunications provider merely because it requires a permit to deploy its facilities.

If the Commission permits recovery of any allocation of joint or common costs, INCOMPAS supports requiring a transparent and documented allocation methodology that reflects cost causation and prevents telecommunications providers from subsidizing costs attributable to other right-of-way users or the public generally. A generalized overhead percentage should not substitute for evidence of actual cost. Our members also support requiring state and local governments to disclose in advance the monetary and in-kind charges applicable to a wireline authorization and the basis for those charges, and to document any project-specific amount that exceeds a published charge. Transparency is necessary both to permit providers to

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[42] *See* NPRM at paras. 49–50.

budget deployments and to allow meaningful review of whether compensation is limited to actual costs.[43]

B. Fee Methodologies Untethered to Actual Costs Should Be Presumptively Unlawful

Gross-revenue, fair-market-value, per-linear-foot, and recurring occupancy charges generally measure the value of the provider's business, the length of its network, or the perceived value of occupying public property rather than the government's actual costs caused by the particular deployment. INCOMPAS therefore supports a rule requiring a jurisdiction using any such methodology to demonstrate that the amount actually charged is no more than its objectively reasonable, actual, and direct costs.[44] In 2025, an INCOMPAS member company paid more than $1 million in franchise and per-linear-foot fees to several western and southwestern municipalities, illustrating the substantial deployment costs that can result from charges not tied to the government's cost of managing the provider's use of the right-of-way.

The defect lies not necessarily in the label or formula, but in the absence of cost causation. Gross-revenue charges increase with provider revenue even where governmental costs do not; per-linear-foot charges increase with network length whether or not management costs increase proportionately; and recurring occupancy charges may continue long after permitting, inspection, and restoration costs have been incurred. A jurisdiction should not be permitted to avoid Section 253(c)'s cost limitation by characterizing an above-cost payment as rent, a franchise fee, a license fee, or another form of compensation. The relevant inquiry is the

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[43] *Id.* at paras. 50, 56; 47 U.S.C. § 253(c).

[44] *Id.* at para. 58.

amount actually demanded and whether the jurisdiction can substantiate that amount through recoverable costs.

The same cost standard should apply to government-owned poles, conduit, and other infrastructure in public rights-of-way. Legitimate engineering, inspection, and other costs attributable to a particular attachment may be recovered, but government ownership does not permit charges untethered to actual cost. As discussed in Section VII, infra, Section 253's reach is independent of Section 224's exclusion of government-owned utilities from its pole attachment regime.[45]

IV. MANDATORY IN-KIND CONTRIBUTIONS SHOULD COUNT AS COMPENSATION, AND UNRELATED DEMANDS SHOULD FALL OUTSIDE SECTION 253(c)

INCOMPAS agrees with the Commission's tentative conclusion that mandatory in-kind contributions can have a prohibitory effect under Section 253(a) and must satisfy Section 253(c)'s cost-based limitation.[46] A provider experiences the same deployment burden whether a locality demands cash or requires facilities, labor, service, or other value.

For valuation, INCOMPAS recommends using the provider's reasonable, documented incremental cost of satisfying the requirement, including labor, materials, construction, engineering, contractor charges, and other directly attributable expenses. Provider cost best measures the burden the exaction places on the deployment and avoids disputes over hypothetical market value. Where a locality requires dedication of capacity or an asset with

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[45] *Id.* at paras. 59–60; *City of Portland*, 969 F.3d at 1045–46.

[46] *NPRM* at paras. 63–64.

continuing value or use rights, valuation should include the provider's reasonable cost of creating and dedicating that capacity.[47]

The government should bear the burden of showing that a mandatory in-kind requirement is legitimately related to management of the provider's particular use of the ROW and permissible under Section 253. The provider, in turn, should document the reasonable costs it actually incurs. Appropriate documentation may include invoices, contractor charges, material costs, engineering expenses, and ordinary-course labor or cost-accounting records.[48]

Work required as a condition of access should be treated as in-kind compensation to the extent it exceeds what is reasonably necessary to address burdens caused by the provider's actual use of the right-of-way, including reasonable restoration consistent with objective, preexisting safety and restoration standards. A locality should not use a limited street cut or sidewalk disturbance to require unrelated betterments, nor should it require additional facilities, capacity, or construction that is not reasonably necessary to address a demonstrated, project-specific right-of-way-management concern.[49]

An INCOMPAS member is confronting such a requirement in one city, where the permitting authority is requiring additional duct capacity for future placements even though the provider's proposed long-haul duct package will leave eight spare pathways after the initial construction. The requirement would add approximately \$2.5 million to the cost of the deployment. The member explained that its proposed design already provides substantial

[47] *Id.* at para. 64.

[48] *See id.* at para. 64.

[49] *See id.* at paras. 64, 66 & n.198; *see also Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1272–73 (10th Cir. 2004).

capacity for future placements without reopening the ROW, but the city declined to grant a variance without identifying an additional ROW-management benefit. Where a provider's proposed design already addresses the asserted ROW concern, additional mandated construction should not be permissible absent a demonstrated, project-specific need.

INCOMPAS also agrees with the Commission's tentative view that in-kind demands unrelated to a provider's use of the ROW may not be saved by Section 253(c) when they materially inhibit telecommunications service.[50] A requirement should be considered "related" only when it directly addresses or mitigates a physical or operational burden caused by the provider's construction, occupation, maintenance, or removal of facilities. Requirements to furnish spare conduit, dark fiber, telecommunications service, or other property for governmental or third-party use do not become legitimate ROW management merely because they are demanded during the authorization process.

If a government nevertheless requires facilities or capacity for its own use, the provider's reasonable, documented incremental cost of supplying that value should be treated as compensation and counted in determining whether the government's total compensation demand complies with Section 253. One INCOMPAS member is currently confronting such a demand from a western state department of transportation, which is withholding permits unless the provider agrees to provide additional fiber along routes of the agency's choosing. Conditioning authorization on the provision of fiber for governmental use is precisely the type of non-cash exaction that should be subject to Section 253's cost and relatedness requirements.[51]

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[50] *See NPRM* at para. 66 & n.198; *P.R. Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 22 (1st Cir. 2006); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1272–73 (10th Cir. 2004).

[51] *See NPRM* at paras. 64–65.

Infrastructure obtained through a mandatory in-kind requirement also should not be sold, leased, transferred, or made available for commercial use or to a competing communications provider.

Nor should an in-kind requirement escape review merely because it is described as "voluntarily negotiated." The governmental entity controls access to a corridor that may be necessary to complete the provider's route, and assent in an executed agreement does not establish voluntariness if refusal would delay or burden the authorization. An arrangement should be treated as voluntary only if the provider may decline it without delay, denial, additional fees, less favorable authorization terms, or another adverse consequence.[52] Genuinely voluntary coordination remains available where the arrangement is severable from the authorization—for example, where a locality pays the incremental cost of additional conduit installed while a trench is open or the parties exchange equivalent value.

V. SECTION 253 PROTECTIONS SHOULD APPLY FULLY TO COMMINGLED WIRELINE FACILITIES

INCOMPAS supports the Commission's proposed rule protecting wireline telecommunications infrastructure that also carries other services. The relevant ROW burden does not increase merely because the same fiber, conduit, handholes, or other facilities carry broadband or other non-telecommunications traffic in addition to telecommunications service. A state or locality therefore should not impose an additional authorization, fee, engineering requirement, or placement restriction solely because the same facilities carry or may carry non-telecommunications services.[53]

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[52] *See id.* at para. 66.

[53] *Small Cell Order,* 33 FCC Rcd at 9103 para. 36 & n.84.

The cable context is instructive. The Sixth Circuit upheld preemption of a separate broadband fee imposed for use of the same cable system on the same ROW, reasoning that the operator already had authority to use those facilities to provide the additional service.[54] Although that decision arose under Title VI, the same physical principle applies here: another service carried over existing infrastructure does not, without more, create another occupation of the right-of-way.

An INCOMPAS member has encountered this problem in a southwestern state, where municipalities have imposed per-linear-foot charges and in-kind requirements based on differing classifications of traffic carried over the same physical fiber network. Those disputes can delay deployment even though the facilities occupy the same right-of-way and impose the same physical burden regardless of the mix of services carried. The Commission should make clear that non-telecommunications traffic on facilities that also support telecommunications service does not create a separate compensable use of the ROW.

VI. ANY RULES CONCERNING UNUSED FACILITIES SHOULD BE NARROW, OBJECTIVE, AND NONDISCRIMINATORY

The *NPRM* seeks comment on old or unused wireline facilities and does not propose to disturb legitimate permit or land-use conditions governing such facilities.[55] INCOMPAS agrees that truly abandoned facilities may be subject to appropriate ROW management, but facilities should not be deemed "unused" merely because they are dark, spare, redundant, or not carrying traffic at a particular moment. Many fiber networks are built prospectively, and reserve capacity and redundant routes can serve legitimate future-demand, resiliency, and competitive purposes.

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[54] *City of Eugene v. FCC*, 998 F.3d 701, 715 (6th Cir. 2021); *see also* NPRM at para. 68 n.200.

[55] *NPRM* at para. 73.

Any removal requirement therefore should apply only where the provider has affirmatively abandoned the facilities or objective evidence shows that they are no longer part of existing or reasonably anticipated network operations and have no reasonably foreseeable use. Before requiring removal, a state or local government should provide notice and a meaningful opportunity for the provider to demonstrate planned use, reserve-capacity needs, redundancy, resiliency, or another legitimate network purpose. Any such requirement should be objective, technologically neutral, competitively neutral, and should not delay unrelated authorizations.

VII. THE COMMISSION HAS AUTHORITY TO ADOPT GENERALLY APPLICABLE SECTION 253 STANDARDS

A. Statutory Bases for Commission Action

The FCC should impose "shot clocks" and actual cost fee structures for wireline broadband permitting. These reforms would eliminate permitting delays and inconsistent local rules that impede fiber deployment and deny Americans access to telecommunications and broadband services. As the FCC recognized in the *Network Modernization Order*, it must "[cut] through the red tape that has . . . effectively prevented [providers] from investing in the modern infrastructure that Americans want and deserve."[56] Standardized criteria for wireline infrastructure deployment would ensure predictability for network builders, preempt prohibitive state and local barriers, and accelerate network deployment nationwide. Action under Section 253 to enable wireline deployment is a critical next step in the FCC's Build America Agenda.

To that end, the FCC may rely on Sections 201(b), 214(a), 253, and 706 to adopt rules governing the deployment of wireline facilities in local rights of way.

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[56] *Reducing Barriers to Network Improvements and Service Changes; Accelerating Network Modernization*, Report and Order, FCC 26-19, WC Docket Nos. 25-208, 25-209, para. 1 (rel. Mar. 27, 2026) ("*Network Modernization Order*").

Section 201(b) authorizes the FCC to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter," which includes Section 253.[57] Section 214(a) requires carriers to obtain FCC authority before constructing a new interstate line. Section 253 prohibits state and local jurisdictions from imposing rules that effectively prohibit the provision of intrastate or interstate telecommunications services, subject to the exceptions in Sections 253(b) and (c). *Verizon v. FCC* held that Section 706 "vests the [Commission] with affirmative authority to enact measures encouraging the deployment of broadband infrastructure,"[58] providing supporting authority for Commission actions that speed broadband deployment.

As the FCC recently found, "state requirements, to the degree they regulate services shown to be jurisdictionally mixed, are subject to preemption pursuant to both the impossibility exception and general principles of conflict preemption."[59] Fiber supports voice, data, and broadband services. The *Network Modernization Order* found that voice services are jurisdictionally mixed,[60] and the Commission's assertion of jurisdiction over dedicated circuits

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[57] 47 U.S.C. § 201(b). That authority extends to defining the undefined terms Section 253(c) uses to establish its safe harbor—including "fair and reasonable compensation" and "publicly disclosed"—because a state or local government can invoke the safe harbor only by satisfying conditions the Commission is best positioned to define with the specificity that the statute requires. Section III, *infra*, applies that authority to propose a definition of "fair and reasonable compensation" limited to actual cost and a three-part definition of "publicly disclosed" requiring advance, particularized, and equally accessible disclosure.

[58] *Verizon v. FCC*, 740 F.3d 623, 628 (D.C. Cir. 2014).

[59] *Network Modernization Order* at para. 114.

[60] *Network Modernization Order* at paras. 106-107.

used to provide both intrastate and interstate telecommunications services is longstanding.[61] Because fiber deployed in local jurisdictions can carry jurisdictionally mixed telecommunications services, the FCC has a direct federal interest in ensuring that state or local actions do not prevent its deployment.

The Commission's authority under Section 253 also reaches state and local ROW management involving government-owned infrastructure. Although Section 224 excludes government-owned utilities from its pole attachment regime, that exclusion does not limit the independent reach of Section 253, which applies to any state or local legal requirement—regardless of who owns the underlying property—that has the effect of prohibiting telecommunications services. The Ninth Circuit has upheld application of Section 253 to government-owned property in public ROW notwithstanding Section 224's exclusion.[62] Accordingly, the actual-cost implication on compensation discussed in Section III, *infra*, applies equally where a provider seeks access to government-owned poles, conduits, or other ROW infrastructure.

In 1999, the FCC granted all interstate carriers blanket authority to construct new domestic lines, finding that carriers may "construct, operate, or engage in transmission over lines of communication without filing an application with the Commission."[63] In effect, the FCC adopted a "shot clock" of zero days—promoting competition and innovation while retaining

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[61] *See, e.g., Federal-State Joint Bd. on Universal Service*, Order, DA 17-309, para. 3, 10 (WCB 2017).

[62] *NPRM* at paras. 59–60.

[63] *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11365-66, para. 2 (1999) ("*Domestic 214 Blanket Authority Order*").

enforcement authority to remedy any problems.[64] A state action that effectively prohibits a carrier from constructing an interstate line under its blanket Section 214 authority conflicts with federal law and is subject to preemption. The FCC therefore can rely on Section 214(a) to preempt any state or local requirement that effectively prohibits deployment of fiber used to offer jurisdictionally mixed voice and dedicated telecommunications services.

Congress and the FCC have launched major broadband funding programs—the Rural Digital Opportunity Fund ("RDOF") and the Broadband Equity, Access, and Deployment ("BEAD") program—that focus on extending high-speed internet to unserved areas via fiber, fixed wireless, or other means. These programs are performance-based and largely technology-neutral, prioritizing reliable high-bandwidth service. Indeed, the BEAD General Terms and Conditions adopted by the National Telecommunications and Information Administration ("NTIA") require that States

> will seek to minimize state and local permitting-related costs for broadband deployments and ensure (1) permitting fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly situated competitors in similar situations.[65]

The Colorado Broadband Office has interpreted this directive to mean that broadband-related permit applications should be approved or denied within 90 days.[66]

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[64] *Domestic 214 Blanket Authority Order* at 11365, para. 4 (providing that blanket authority allows the Commission to "retain[] the ability to stop extremely abusive practices against consumers by withdrawing the section 214 authorization that allows the abusive carrier to operate").

[65] *BEAD* General Terms and Conditions, Sec. 13.D.2.

[66] *BEAD* Grant Agreement Template 05.06.26_Public.docx - Google Docs, Exhibit B, Sec. 8.D.

Modernizing Section 253 to permit faster construction of fiber and fiber-wireless networks aligns with these policies by recognizing that universal service now means broadband. The FCC's transformation of high-cost support into the Connect America Fund acknowledged that mandating legacy TDM voice on copper is irrational when IP networks deliver voice and broadband together. By preempting local rules that effectively prohibit fiber deployment, the FCC would enable carriers to extend fiber deeper into rural and high-cost areas—precisely the outcome BEAD and RDOF seek to promote. Adopting Section 253 rules is consistent with, and would advance, the FCC's Build America Agenda of accelerating broadband deployment and closing the digital divide.

B. Section 253(d) Does Not Preclude Generally Applicable Rulemaking

The Wireline Competition Bureau has found that a legal requirement violates Section 253(a) where it imposes financial burdens that effectively prohibit a carrier from providing telecommunications services.[67] Section 253(b) preserves state authority "to impose, on a competitively neutral basis . . . requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Section 253(c) separately preserves state and local authority to manage public ROW and to require fair and reasonable compensation on a competitively neutral, nondiscriminatory, and publicly disclosed basis. State

[67] *Petition of Mo. Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC*, Declaratory Ruling, DA 20-1331, para. 2 (WCB rel. Nov. 9, 2020) (applying the *California Payphone* "material inhibition" standard and finding fee scheme that doubled rights-of-way costs imposed "a financial burden that effectively prohibits ("the carrier") from providing its services in violation of section 253(a)"). The *Bluebird* Order is a Wireline Competition Bureau ruling issued under delegated authority; the "material inhibition" standard originates with the full Commission in *California Payphone Ass'n Petition for Preemption of CCSF Ordinance No. 555-94, Memorandum Opinion and Order*, 12 FCC Rcd 14191, 14206, para. 31 (1997).

and local rules that effectively prohibit building the networks supporting voice and broadband services fall outside both safe harbors and deter, rather than advance, universal service.

Several state and local government commenters argue that Section 253(d) is the exclusive mechanism for FCC action under Section 253, limiting the Commission's preemption authority to case-by-case adjudication of specific state or local instruments rather than generally applicable rulemaking.[68] The California Public Utilities Commission ("CPUC") states the position most squarely: "[S]ection 253(d) only authorizes the Commission to preempt state and local rules through case-by-case adjudication and not categorical rulemaking."[69] Other commenters track the same framing: the Minnesota Local Franchising Authorities adopt "case-specific adjudication" as a section heading;[70] the League of Oregon Cities frames the argument as a procedural concern that "Congress intended the Commission to preempt local regulations only

[68] *See* Reply Comments of the League of Minnesota Cities et al. ("Minnesota LFAs") at 1, 3-5, 8-9, WC Docket No. 25-253 (filed Dec. 17, 2025) (advocating in Section III that "Section 253 Preserves Local Authority and the Commission's Preemption Authority Is Limited to Case-Specific Adjudication"); Reply Comments of the League of Oregon Cities at 7, 18, WC Docket No. 25-253 (filed Dec. 17, 2025); Comments of the League of Oregon Cities at 3-9, WC Docket No. 25-253 (filed Nov. 19, 2025); Reply Comments of the Local Community Coalition at 2-4, WC Docket No. 25-253 (filed Dec. 18, 2025); Reply Comments of the U.S. Conference of Mayors, NACo, NLC & NATOA at 8, WC Docket No. 25-253 (filed Dec. 18, 2025); Reply Comments of the Colorado Communications and Utility Alliance et al. at 10, WC Docket No. 25-253 (filed Dec. 18, 2025).

[69] Comments of the People of the State of California and the California Public Utilities Commission at 8, WC Docket No. 25-253 (filed Nov. 18, 2025) ("DoCPUC Comments") (noting that CPUC originally advanced this position in its 2017 comments on the proceeding that led to the *Moratoria Order*); *see also* Reply Comments of the Minnesota LFAs at 4 & n.18, WC Docket No. 25-253 (filed Dec. 17, 2025) (adopting the CPUC formulation).

[70] Reply Comments of the Minnesota LFAs at 3, WC Docket No. 25-253 (filed Dec. 17, 2025) (Section III heading).

through the Section 253(d) process";[71] and the Local Community Coalition argues that Section 253(d) "defines and confines" the Commission's preemption authority and that Section 253(c) is structurally insulated from it.[72]

The Commission considered and rejected this procedural-exclusivity reading in the *Moratoria Order*, distinguishing preemption of specific state or local instruments—the function Section 253(d) addresses—from generally applicable interpretation of Section 253(a)—the function Sections 201(b) and 303(r) authorize.[73] As the Commission explained, when it interprets Section 253(a) by general rule it is "not exercising [its] authority to enforce a substantive rule; rather, [it is] interpreting the scope of the substantive prohibition set forth in section 253(a)."[74] That bifurcation is the best reading of the statutory framework. Section 253(d) prescribes a procedure for preempting a specific identified instrument; it neither addresses nor displaces the Commission's general rulemaking authority under Section 201(b). Reading Section 253(d) as exclusive would render Section 201(b) a nullity in the Section 253 context—a result that conflicts with *AT&T Corp. v. Iowa Utilities Board,* which confirms the Commission's

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[71] Reply Comments of the League of Oregon Cities at 7, WC Docket No. 25-253 (filed Dec. 17, 2025).

[72] Reply Comments of the Local Community Coalition at 3, WC Docket No. 25-253 (filed Dec. 18, 2025) ("The Commission's preemption authority with respect to Section 253 is defined, and confined, by Section 253(d) . . . .").

[73] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7787-89, paras. 161-164 (2018) ("*Moratoria Order*"), *aff'd sub nom. City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

[74] *Id.* at para. 164 & n.598 (distinguishing *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120-21 (2005)).

rulemaking authority extends to all provisions of the Communications Act.[75] It would also produce an administratively unworkable result: as the Ninth Circuit observed in *City of Portland*, case-by-case analysis across "the 89,000 state and local governments under the [Commission's] jurisdiction" would be "a nearly impossible administrative undertaking."[76] The CPUC relies on *City of Portland* for the proposition that the *Moratoria Order* "does not specifically preempt or invalidate any particular state or local requirement."[77] That observation confirms the architecture the FCC defends: the Commission interpreted Section 253(a) under its general Sections 201(b) and 303(r) authority without exercising Section 253(d) preemption against any specific instrument, and the Ninth Circuit affirmed that approach. The Commission should maintain this architecture in its wireline rulemaking—adopting rules under Sections 201(b) and 303(r) that generally interpret Sections 253(a)–(c), with Section 253(d) preemption available as a separate mechanism to address specific state or local requirements.

This bifurcated architecture also confirms that Section 253(d) remains a meaningful, independently enforceable mechanism notwithstanding the Commission's exercise of generally applicable rulemaking authority under Section 201(b). As explained in Section II.E, *supra*, a provider that establishes an unrebutted violation of the Commission's wireline deadline may seek a case-specific Section 253(d) order preempting the state or local legal requirement that

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[75] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-78 (1999) (Section 201(b) authorizes FCC rulemaking to implement provisions added by the 1996 Act because those provisions were "inserted into the Communications Act of 1934").

[76] *City of Portland v. United States*, 969 F.3d 1020, 1038 (9th Cir. 2020).

[77] CPUC Comments at 8 & n.21 (citing *City of Portland v. United States*, 969 F.3d 1020, 1036, 1048, 1049 (9th Cir. 2020)) (quoting *id.* at 1036: "As with the *Small Cell Order*, the *Moratoria Order* does not specifically preempt or invalidate any particular state or local requirement.").

continues to prevent deployment. Because that order would address a specific instrument rather than announce a categorical rule, it falls squarely within the function Section 253(d) is designed to serve. And because the order is a Commission order, a provider may seek its enforcement in federal district court under Section 401(b), which authorizes an injured party to obtain an injunction or other proper process to compel compliance.[78] Courts have applied Section 401(b) to enforce Commission preemption orders against state regulatory bodies, confirming that Section 253(d) relief, once granted carries the same judicial enforcement mechanism available for any other Commission order. Section 253(d) therefore continues to perform real work under the Commission's proposed framework: it provides the case-specific remedy for the individual provider facing continued obstruction, while Section 201(b) and 303(r) supply the generally applicable interpretation of Section 253(a) that makes case-by-case adjudication of every recurring dispute unnecessary.

Commenters principally rely on *RadLAX Gateway Hotel, LLC v. Amalgamated Bank* for the proposition that where "a general authorization and a more limited, specific authorization exist side by side, the terms of the specific authorization must be complied with."[79] *City of Rancho Palos Verdes v. Abrams* is cited as supporting authority.[80] Neither case controls the

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[78] *See Southwestern Bell Tel. Co., supra* note 37.

[79] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (*quoting Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting), for the proposition that the canon applies with particular force where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions"; *citing D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932)); *see also* Comments of the League of Oregon Cities at 5-6 & n.12, WC Docket No. 25-253 (filed Nov. 19, 2025); Reply Comments of the Local Community Coalition at 3 & n.6, WC Docket No. 25-253 (filed Dec. 18, 2025).

[80] *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120-21 (2005) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001), and relying on the *Sea Clammers* / *Smith* line of authority

procedural-exclusivity question. The specific-governs-general canon *RadLAX* articulates resolves conflicts between two provisions addressing the same subject matter via alternative procedural paths within a comprehensive statutory scheme. The Court emphasized that the canon applies "particularly . . . where Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions."

RadLAX concerned two subsections of the same statutory provision—Section 1129(b)(2)(A) of the Bankruptcy Code—both governing confirmation of the same category of Chapter 11 reorganization plan. The Court held that the specific cramdown-by-sale procedure controlled over the general "indubitable equivalent" alternative. The illustrative example *RadLAX* invoked, *D. Ginsberg & Sons, Inc. v. Popkin*, reinforces the limitation: a specific Bankruptcy Act provision governing arrest of bankrupts about to flee the district controlled over a general provision authorizing courts to "make such orders . . . as may be necessary." But both provisions authorized the same action—issuing arrest orders—via alternative procedural paths. Section 253(d) and Section 201(b) of the Communications Act are inapposite.

Section 253(d) prescribes the procedure for preempting a specific state or local statute, regulation, or legal requirement that violates Section 253(a) or (b). Section 201(b) is a general grant of rulemaking authority "to carry out the provisions of this Act." The two provisions operate on different functions—preemption of a specific instrument versus interpretive rulemaking—and do not conflict. The specific-governs-general canon presupposes a conflict between alternative procedural paths to the same action; none exists here. The contention that a generally applicable Section 253(a) interpretive rule "swallows" Section 253(d) reverses the

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on alternative private remedies). The case is cited as supporting authority in Comments of the League of Oregon Cities at 6 n.14, WC Docket No. 25-253 (filed Nov. 19, 2025).

analysis: such a rule does not preempt any specific state or local requirement and therefore does not occupy the field Section 253(d) addresses. Section 253(d) preemption proceedings remain available; a generally applicable Section 253(a) interpretation does not displace that function but makes it more administrable.

Rancho Palos Verdes is further afield. The Court addressed whether Section 332(c)(7)(B)(v)'s express judicial remedy precluded a parallel Section 1983 action—a question about alternative *private* remedies, not agency authority. The "express provision of one method" principle the Court quoted was drawn from *Alexander v. Sandoval* and offered, in the Court's words, "in a different setting"—the *Sea Clammers* / *Smith* line of authority, which asks whether a private litigant with a statutory cause of action may also bring a Section 1983 action. That doctrine does not govern the relationship between a specific FCC preemption procedure and the Commission's general interpretive rulemaking authority.

The Ninth Circuit in *City of Portland v. United States* upheld the bulk of the FCC's small cell rules, affirming that the FCC acted within its authority to interpret Sections 253 and 332 to bar fees above cost and lengthy delays that effectively prevent service.[81] That precedent also reconciled the *California Payphone* "material inhibition" standard with the *Sprint Telephony* "actual or effective prohibition" formulation, confirming that they apply the same test.

City of Portland was decided under *Chevron*, which the Supreme Court has since overruled in *Loper Bright Enterprises v. Raimondo*. The substance of the Commission's

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[81] *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020). The court vacated a portion of the aesthetic criteria as insufficiently explained while sustaining the fee caps and shot clocks. *See also id.* at 1034-36 (reconciling the *California Payphone* "material inhibition" standard with the *Sprint Telephony* "actual or effective prohibition" formulation from *Sprint Tel. PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (*en banc*), and concluding that *Sprint Telephony* "endorsed the material inhibition standard as a method of determining whether there has been an effective prohibition").

interpretation, however, remains the best reading of Section 253(a): the "material inhibition" standard gives effect to the "have the effect of prohibiting" language Congress added separately from "prohibit." *Loper Bright* preserves longstanding, contemporaneous agency interpretations as entitled to *Skidmore* "great weight" and preserves the substantive holdings of prior cases as statutory *stare decisis*.[82] *McLaughlin Chiropractic Associates v. McKesson Corp.* has shifted district-court review of FCC orders in private Section 253(a) litigation, requiring courts to independently determine the statute's meaning while giving "appropriate respect" to FCC interpretations.[83] The response is to ground each Commission interpretation in robust textual, structural, and historical analysis—which the Commission can do in its rules. Where the Commission's authority rests on Section 214(a) blanket-authority preemption rather than solely on Section 253(a) interpretation, the post-*McLaughlin* concern is further mitigated, because conflict preemption under the Supremacy Clause does not depend on the durability of FCC interpretive choices.

C. The *Network Modernization Order* Provides a Doctrinal Template

The Network Modernization Order found that federal law "preempts state and local requirements to the extent they needlessly constrain the deployment of modern, next-generation IP-based networks by impeding providers' ability to discontinue providing interstate and jurisdictionally mixed legacy services and to retire outdated and deteriorating legacy networks."[84] Preempting state requirements that force carriers to continue offering legacy services is a sound first step. The Commission should now extend this doctrinal template.

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[82] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386-87, 400, 412 (2024).

[83] *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146 (2025).

[84] *Network Modernization Order* at para. 7.

Section 214(a) discontinuance authority and Section 214(a) blanket construction authority are parallel federal grants; the conflict-preemption analysis applies identically to both, and the impossibility-exception logic used for service discontinuance works the same way in the construction context. The FCC should adopt rules ensuring that providers can rely on their blanket Section 214 authority to construct the new lines needed to replace the legacy services the FCC permits them to discontinue. If a local jurisdiction's rule effectively prohibits deployment of fiber needed to support advanced, jurisdictionally mixed telecommunications services, it is an obstacle to (1) the FCC's grant of blanket Section 214 authority to construct the line, (2) the FCC's approval of a carrier's request to discontinue a legacy service, and (3) Section 706 and multiple FCC rules encouraging deployment of next-generation networks. Such a rule undermines the federal objective of promoting efficient network modernization—a classic case for conflict preemption.

VIII. CONCLUSION

For the foregoing reasons, the Commission should adopt clear and enforceable Section 253 rules that: (1) establish a 90-day outside limit for substantial new wireline construction and shorter deadlines for less complex authorizations, beginning at the first mandatory procedural step and subject only to narrow tolling for material deficiencies; (2) apply those deadlines to the full range of authorizations necessary for wireline deployment and provide a 30-day Commission process for petitions alleging deadline violations; (3) limit compensation to objectively reasonable, actual, and direct costs supported by transparent documentation and disclosure; (4) treat mandatory in-kind contributions as compensation and preempt unrelated exactions that materially inhibit deployment; (5) apply Section 253 protections fully to government-owned structures in public rights-of-way and commingled wireline facilities; and (6) ensure that rules governing unused facilities distinguish truly abandoned infrastructure from dark, spare, redundant, or other facilities serving a legitimate existing or reasonably anticipated network purpose. These rules will give providers and governments predictable ground rules, reduce unnecessary disputes, and advance timely wireline deployment.

Respectfully submitted,

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