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

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

REPLY COMMENTS OF INCOMPAS

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INCOMPAS, by its undersigned counsel, submits these reply comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("*Notice*" or "*NPRM*") proposing necessary permitting reforms under Section 253 of the Communications Act, including a deadline for state and local action on wireline authorizations and a cost-based standard for state and local permitting fees.[1]

I. INTRODUCTION AND SUMMARY

Expanding broadband deployment is essential to the nation's economic competitiveness, and the Commission's Build America Agenda rightly recognizes that removing unnecessary barriers to infrastructure investment is central to closing the digital divide. INCOMPAS members, which include competitive fiber, broadband, and AI infrastructure providers, are committed to meeting the country's growing connectivity needs, particularly in unserved and underserved communities that have waited too long for high-speed service. The instant proceeding is critical to meeting this moment: with private capital and federal funding poised to support an unprecedented wave of network construction, timely and predictable access to the public rights-of-way will determine how quickly that investment reaches the communities that

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

need it. The opening comments confirm what INCOMPAS and its members have documented since the inquiry began: excessive delays, shifting and unpublished requirements, and above-cost fees continue to stall wireline deployment, and the Commission's proposals are a sound framework for addressing them.[2]

More than 50 local governments filed comments opposing a federal deadline and a cost-based fee standard. Those filings largely restate general objections to federal involvement in rights-of-way management. They largely do not show that permitting is timely in the jurisdictions where providers encounter delay, or that the fees providers pay track the costs of managing the rights-of-way. By contrast, providers of every size and type, from INCOMPAS members, like Sonic Telecom, to national associations representing cable, rural, wireless infrastructure, and incumbent providers, submitted concrete evidence of delay, shifting requirements, and above-cost fees, along with a new economic analysis quantifying how those practices make otherwise viable projects uneconomic.

Three principles should guide the Commission as it finalizes its rules. *First*, wireline permitting is a matter of interstate commerce, not a private business dispute between a provider and a single locality. Wireline networks cross dozens of jurisdictions and carry interstate traffic, and Section 253(a) protects the ability to provide "any interstate or intrastate telecommunications service."[3] A patchwork of local timelines and fees burdens interstate networks, and Section 253 answers that problem with a national baseline that preserves local authority to manage the rights-

[2] *See* Comments of INCOMPAS, WC Docket No. 25-253 (filed Nov. 18, 2025) ("INCOMPAS NOI Comments"); Reply Comments of INCOMPAS, WC Docket No. 25-253 (filed Dec. 18, 2025) ("INCOMPAS NOI Reply"); Comments of INCOMPAS, WC Docket No. 25-253 (filed Sept. 21, 2026) ("INCOMPAS NPRM Comments").

[3] 47 U.S.C. § 253(a).

of-way. *Second*, a safe harbor framework gives localities flexibility in exchange for transparency. Localities keep their own processes and fee structures so long as they act within the deadline, charge cost-based fees, and disclose how they do both. *Third*, local rules must be publicly available so that everyone can plan. Published application requirements, checklists, timelines, and fee schedules allow providers to submit complete applications the first time and allow localities to avoid incomplete filings. Applying those principles, INCOMPAS urges the Commission to:

- Adopt a 90-day presumptive outside deadline for substantial new construction, with shorter deadlines for less complex authorizations, recognizing that no commenter seeks more than 120 days and that INCOMPAS, Sonic, and USTelecom all support a shorter timeframe;
- Limit fees to actual, objectively reasonable costs, conclusively prohibit per-linear-foot and revenue-based fees, set specific safe harbor levels, and condition safe harbor protection on advance public disclosure;
- Ensure that enforcement reaches the full range of barriers providers face, including delays, shifting and unpublished requirements, duplicative authorizations, and post-approval changes, not only deadlines and fees; and
- Confirm its ample authority to adopt these rules under Sections 253, 201(b), 214(a), and 706 of the Act.

II. THE RECORD CONFIRMS THAT STATE AND LOCAL BARRIERS ARE A NATIONAL PROBLEM REQUIRING A NATIONAL BASELINE

A. Local Government Commenters Offer Generalized Objections, Not Evidence That Permitting Is Timely or That Fees Track Costs

The local government filings share a common theme: that federal standards are unnecessary because local processes already work. But the record shows that a significant number of jurisdictions continue to impose unreasonable delays and fees, and the local filings offer no evidence that those practices are isolated or justified. Many of their arguments repeat positions INCOMPAS and other industry commenters already answered at the inquiry stage, and the Commission found the record developed in response to the *NOI* sufficient to propose rules.[4]

Indeed, several local commenters describe their own processes as finishing well within 90 days.[5] That is evidence that a 90-day outside deadline is achievable, not that it is burdensome. The record from other commenters points the same way. Sonic's own permitting experience averages 45 to 60 days from start to finish.[6] Michigan, Tennessee, and Indiana require action on permits within 45 days, 30 business days, and 10 days, respectively, and one California jurisdiction averages 15 working days.[7] The economic analysis commissioned by the

[4] *See* NPRM at paras. 3, 11 (citing to *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (rel. Sept. 30, 2025) ("*NOI*")); INCOMPAS NOI Reply §§ II, VI.

[5] *See* NPRM at paras. 12, 17, 32.

[6] Comments of Sonic Telecom, LLC, WC Docket No. 25-253, at 4 (filed Sept. 21, 2026) ("Sonic Comments").

[7] Comments of USTelecom – The Broadband Association, WC Docket No. 25-253, at 9–11 (filed Sept. 21, 2026) ("USTelecom Comments").

Fiber Broadband Association ("FBA") likewise found that many jurisdictions process permits within 30 to 60 days.[8]

The jurisdictions that do not meet these benchmarks are the reason a national baseline is needed. Sonic's experience in one Los Angeles-area city illustrates the problem. Over three years, the city moved from requiring a master license agreement, to demanding a franchise, to asserting an unsupported "underground only" requirement, before finally approving Sonic's aerial permits in November 2025.[9] None of these requirements was published at the outset, and each shift restarted the process. The FBA study, drawing on more than 100 real-world permitting experiences, found that such practices are widespread and are not limited to any particular jurisdiction type or build type.[10] Other commenters documented delays and above-cost fees across urban, suburban, and rural markets.[11]

[8] Letter from Thomas Cohen and Jennifer Wainwright, Counsel to Fiber Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 25-253 (filed Sept. 30, 2026) ("FBA *Ex Parte*"), attaching Cartesian, *Wireline Telecommunications Permitting Challenges: Economic Impact of State and Local Permitting Practices* (2026) ("Cartesian Study"); *see* Cartesian Study at 32.

[9] Sonic Comments at 11–13.

[10] FBA *Ex Parte* at 2; Cartesian Study at 4.

[11] *See* USTelecom Comments at 3–8; Comments of America's Communications Association, WC Docket No. 25-253, at 7–11 (filed Sept. 21, 2026) ("ACA Connects Comments"); Comments of WTA – Advocates for Rural Broadband, WC Docket No. 25-253, at 2 (filed Sept. 21, 2026) ("WTA Comments"); Comments of the Wireless Infrastructure Association, WC Docket No. 25-253, at 3–4 (filed Sept. 21, 2026) ("WIA Comments"); *see also* INCOMPAS NOI Comments, Annexes A–B; INCOMPAS NOI Reply § II.

B. Rights-of-Way Access Is a Regulatory Function That Affects Interstate Networks

Several local commenters frame rights-of-way fees as compensation for the use of a proprietary asset, akin to rent negotiated between private parties.[12] The Ninth Circuit rejected that view, holding that localities "act in a regulatory capacity when they restrict access to the public rights-of-way because they are acting to fulfill regulatory objectives."[13] That holding matters here. Wireline networks are not local assets serving a single jurisdiction; they are interconnected networks that cross jurisdictional lines and carry interstate traffic. A delay affecting a single permit or route segment can block service to hundreds or thousands of homes across an engineered service area,[14] and excessive fees deter deployment not only in the jurisdiction that charges them but in neighboring communities the provider would otherwise serve.[15] Section 253 exists to prevent local requirements from fragmenting that national market.

C. A Transparent Safe Harbor Framework Respects Local Authority While Preventing Barriers to Entry

The Commission's proposals do not dictate how localities review applications or structure their fees but are instead meant to set outer bounds. INCOMPAS urges the Commission to make that design explicit through a safe harbor framework built on transparency. A locality that publishes its application requirements, timelines, and fee methodologies in advance, acts within the applicable deadline, and charges fees at or below the safe harbor level

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[12] *See, e.g.*, Comments of the City of Vacaville, WC Docket No. 25-253, 5 (filed Sept. 21, 2026); Comments of the League of Oregon Cities, WC Docket No. 25-253, 26 (filed Sept. 21, 2026).

[13] *City of Portland v. United States*, 969 F.3d 1020, 1045–46 (9th Cir. 2020); *see* NOI at para. 39 n.96; NPRM at para. 28.

[14] Sonic Comments at 2.

[15] WTA Comments at 2.

would be presumed to comply with Section 253. A locality that does not publish its requirements in advance would lose that protection.[16]

This approach serves both sides of the rights-of-way relationship. Published requirements let providers build complete applications the first time, which reduces the incomplete filings that local commenters cite as a source of delay. They let localities keep their own procedures and fee structures without case-by-case federal review and they give the Commission and the courts a clear benchmark for evaluating petitions. Section 253(c) already conditions a locality's authority to require compensation on public disclosure; the safe harbor framework simply gives that statutory requirement practical effect.[17] Commenters agree that requirements should be "predefined, clear, documented, and applied consistently," and that documentation can factor into the rebuttable presumption.[18]

III. A PRESUMPTIVE DEADLINE OF NO MORE THAN 90 DAYS IS REASONABLE, ACHIEVABLE, AND GROUNDED IN COMMISSION PRECEDENT

The *NPRM* proposes a 120-day deadline for state and local action on all wireline authorizations, after which a failure to act would be presumed an effective prohibition under Section 253(a).[19] As INCOMPAS explained in its opening comments, the Commission should

[16] *See* INCOMPAS NPRM Comments § III.

[17] 47 U.S.C. § 253(c); *see* NPRM at para. 56.

[18] FBA *Ex Parte* at 4 & n.9; *see also* Sonic Comments at 15–17.

[19] NPRM at paras. 12, 17.

instead adopt an outside limit of no more than 90-days for substantial new construction, with shorter deadlines for less complex authorizations.[20] The record strongly supports that approach.

A. The Record Shows That Delay Becomes Prohibitive Well Before 120 Days

The *NPRM* explains that its proposed deadline marks the point at which delay *becomes* prohibitive, not the amount of time review *should* take, and it finds that delays exceeding "several months" routinely have a prohibitive effect.[21] The record shows that the prohibitive point arrives at or before 90 days. An additional 30 or 60 days of review can force providers to re-sequence construction, idle crews, and cancel projects that would otherwise proceed[22] and a 120-day deadline risks becoming the *de facto* timeline even in jurisdictions that now act faster, lengthening rather than shortening the typical review period.[23] Local government commenters, for their part, have not identified evidence that shorter review periods compromise safety or prevent them from completing the engineering and restoration review they describe.[24]

The industry record is not divided over whether 120 days is too short; it is divided only over whether 120 days is too long. No commenter supporting a deadline asks for more than 120 days. In fact, several ask for less with Sonic proposing a 90-day outside limit for complex new construction and 45 days for simpler builds.[25] USTelecom proposes 60 days for standard

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[20] INCOMPAS NPRM Comments § II.B; *see also* INCOMPAS NOI Comments § III; INCOMPAS NOI Reply § IV.a.

[21] NPRM at para. 17.

[22] USTelecom Comments at 9–11.

[23] Sonic Comments at 4–5.

[24] INCOMPAS NOI Reply at 37–42.

[25] Sonic Comments at 3, 5–6.

applications and 90 days for complex ones.[26] ACA Connects proposes 45 days for simpler deployments[27] and WTA and WIA support a presumptive deadline as a necessary backstop.[28] The Commission should treat 120 days as the record's ceiling, not its consensus, and adopt the 90-day outside limit that the evidence supports.

The Commission has long used shorter deadlines in comparable contexts. The *Small Cell Order* established shot clocks of 60 and 90 days, and the Commission's competitive cable franchising rules require action within 90 or 180 days depending on whether the applicant already has access to the rights-of-way.[29] Most wireline authorizations are less complex than either. Sonic relies on the same two precedents in support of a two-tier structure.[30]

Furthermore, state experience and recent legislative decisions confirms the point. State deadlines range from 10 days to 45 days, and one jurisdiction's city right-of-way permits had a 73-day median processing time.[31] Hawaii, Ohio, Wisconsin, and Kansas have adopted 30- to 60-day clocks.[32] An outside limit of no more than 90 days is generous by comparison.

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[26] USTelecom Comments at 2, 8–11.

[27] ACA Connects Comments at 14–15.

[28] WTA Comments at 3; WIA Comments at 4–5.

[29] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9142–45, paras. 105–08 (2018) ("Small Cell Order"); 47 CFR § 76.41.

[30] Sonic Comments at 5.

[31] USTelecom Comments at 9–11; *see also* INCOMPAS NPRM Comments § II.B.

[32] Cartesian Study at 7.

B. A Tiered Structure Matches the Deadline to the Complexity of the Work

A single deadline for every authorization would give routine requests the same time as major new construction. The record broadly supports a tiered approach instead. Sonic proposes 90 days for complex construction and 45 days for simpler builds or work on existing infrastructure;[33] USTelecom proposes 60 and 90 days;[34] and FBA supports proportionately shorter clocks for smaller and less complex builds.[35] ACA Connects offers a workable definition of projects that warrant a shorter clock: builds of 20,000 linear feet or less, extensions from an existing network, and deployments that are primarily aerial or use existing conduit.[36] INCOMPAS supports an outside limit of no more than 90 days for substantial new construction and a 45-day deadline for projects meeting criteria of this kind.

C. Clear Clock Mechanics Address Local Resource Concerns Without Weakening the Deadline

Local commenters argue that staffing limits and incomplete applications make a firm deadline impractical. Well-designed clock mechanics answer those concerns. The clock should start at the first mandatory procedural step, including any pre-permit right-of-way, license, or encroachment agreement; localities should identify material deficiencies within 15 days in a single consolidated notice; tolling should resume where it stopped rather than restart; and

[33] Sonic Comments at 5–6.

[34] USTelecom Comments at 8–11.

[35] FBA *Ex Parte* at 4; Cartesian Study at 4, 7.

[36] ACA Connects Comments at 14–15.

batched applications should share a single clock.[37] Tolling should be narrow, objective, and limited to promptly identified deficiencies.[38]

Transparency is essential to these mechanics. The clock should run from a complete application measured against the locality's published requirements. Sonic proposes a baseline list of application contents, modeled on the Commission's competitive franchising rules, plus any additional requirements the locality publishes on a publicly accessible web site before filing, noting that requests for unpublished "additional" information routinely delay its applications.[39] INCOMPAS suggests that the clock may be tolled only for material failure to provide sufficient information in response to one or more requirements that were published on a publicly available website. The locality must provide a written notice to the applicant indicating all of the specific published requirements which comprised the basis for rejection, along with a clear description of what additional information is needed to meet the requirements. The locality must include all requirements that were not met in the notice. INCOMPAS recommends that any failures to meet requirements that are not included in the notice should be deemed waived. Tolling of the clock would not begin until the locality provides notice to the applicant and would end upon an applicant's response to the notice.

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[37] Sonic Comments at 6–10; INCOMPAS NPRM Comments § II.C; *see also* Cartesian Study at 7 (noting that Wisconsin requires completeness determinations within 10 days).

[38] USTelecom Comments at 12–13.

[39] Sonic Comments at 8 & n.12 (suggesting the following list of application contents: applicant's name, business address of the applicant; name and contact information of a designated contact for the applicant; a description of the infrastructure project, including types of deployment (buried or arial), use of existing or new conduit, poles, or other facilities needed to construct and install; project plans and spec drawings; time frame needed to start and complete the project; and any additional information required by applicable state or local laws that are disclosed by the permitting authority prior to the application submission); *see* 47 CFR § 76.41(b).

D. The Commission Should Prevent Evasion of the Deadline

A deadline is only as effective as the rules that keep it from being circumvented. The Commission should make clear that localities may not run out the clock through permit caps, footage limits, serial review by successive departments, or permit validity periods too short to complete construction.[40] Required approvals across departments should proceed in parallel, not in sequence.[41] Finally, the deadline should account for the federal funding timelines that now govern many wireline builds. BEAD and other federally funded projects face hard completion dates that months of delay put at risk,[42] and delays, right-of-way negotiations, and duplicative requirements already slow or halt rural fiber builds.[43]

IV. SECTION 253(c) REQUIRES FEES TIED TO ACTUAL AND OBJECTIVELY REASONABLE COSTS

The *NPRM* proposes to limit state and local fees to the actual and direct costs of managing the rights-of-way, where those costs are objectively reasonable, and to establish one or more safe harbors.[44] The record supports that proposal and shows that the Commission should go further in several respects.

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[40] USTelecom Comments at 13–15.

[41] FBA *Ex Parte* at 5.

[42] *See* NOI at para. 21.

[43] WTA Comments at 2.

[44] NPRM at paras. 38–40, 49, 51; *see* INCOMPAS NOI Comments § IV; INCOMPAS NOI Reply § IV.b.

A. A Cost-Based Standard Is the Settled Reading of Section 253(c)

Section 253(c) preserves a locality's authority to require "fair and reasonable compensation" for use of the rights-of-way.[45] That phrase refers to recovering the costs of managing the rights-of-way, not to raising general revenue. The Commission adopted that reading in the *Small Cell Order*, the Ninth Circuit upheld it, and courts applying Section 253 to wireline facilities have reached the same conclusion.[46] Commenters agree that a cost-based standard is the best interpretation of the statute,[47] that Section 253 protects reasonable management costs rather than rent extraction or general revenue,[48] and that fees should recover only the actual, direct costs caused by the provider.[49]

B. Per-Linear-Foot and Revenue-Based Fees Should Be Conclusively Prohibited

In its opening comments, INCOMPAS urged the Commission to treat fee methodologies untethered to actual costs as presumptively unlawful.[50] The record now confirms that per-linear-foot and revenue-based fees cannot be tied to cost, and INCOMPAS joins FBA in urging the Commission to prohibit them conclusively.[51] These fees scale with the length of a provider's network or the revenue it earns, not with any cost the locality incurs to manage the rights-of-way.

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[45] 47 U.S.C. § 253(c).

[46] *See* NPRM at paras. 38–39; *City of Portland*, 969 F.3d at 1039; WTA Comments at 5.

[47] WIA Comments at 6.

[48] USTelecom Comments at 18–19.

[49] Sonic Comments at 13–14.

[50] INCOMPAS NPRM Comments § III.B.

[51] *See* FBA *Ex Parte* at 3–4.

As the FBA's recently filed impact survey suggests, the economic consequences are severe. The FBA study modeled a representative project earning an 11 percent return against a 10 percent investment hurdle. A recurring per-foot fee drove the project's return to negative 13.7 percent, a one-time per-foot fee drove it to 5.0 percent, and a gross-revenue fee drove it to 8.4 percent. Each fee turned a viable project into one that would not be built.[52] The burden is not theoretical: one ACA Connects member pays more than $120,000 a year in per-foot fees across just 12 jurisdictions.[53] Other commenters likewise urge that fee methodologies untethered to cost be presumptively or categorically prohibited.[54]

C. The Commission Should Set Specific Safe Harbor Levels and Condition Them on Advance Disclosure

The *NPRM* asks commenters to propose specific safe harbor levels.[55] The FBA study provides a reasoned basis for doing so: a safe harbor of $200 per permit, capped at $5,000 per jurisdiction for large projects and inclusive of all reviews and inspections.[56] ACA Connects recommends that fees consist of a non-recurring charge to authorize access and a recurring charge only for post-deployment oversight.[57] Commenters also caution that safe harbors should not become mandatory charges[58] and that, properly implemented, they promote certainty and

[52] FBA *Ex Parte* at 3.

[53] ACA Connects Comments at 23.

[54] USTelecom Comments at 19–21.

[55] NPRM at paras. 54.

[56] FBA *Ex Parte* at 4; Cartesian Study at 4.

[57] ACA Connects Comments at 22–23.

[58] USTelecom Comments at 21.

reduce disputes.[59] Under the safe harbor framework described above, localities would remain free to choose their own fee structure. Fees at or below the safe harbor would need no cost justification, while fees above it would have to be shown to recover actual, reasonable costs.[60]

Safe harbor protection should depend on advance public disclosure of fee schedules and cost methodologies. A locality that fails to publish in advance should lose the safe harbor.[61] Sonic's experience shows why. After Sonic completed construction in one city, the city imposed a previously undisclosed per-drop encroachment fee that adds roughly $90,000 a year in unplanned costs, a fee that does not appear to apply to other wireline providers in the same city.[62] Requiring advance publication, with any changes applied prospectively only, would prevent exactly this kind of surprise.[63]

D. Recoverable Costs Must Be Objectively Reasonable, and In-Kind Demands Must Be Optional

A cost-based standard is meaningful only if the costs themselves are reasonable. Consultant and third-party review charges merit particular scrutiny,[64] and localities should be

[59] WIA Comments at 7.

[60] *See* NPRM at para. 51.

[61] INCOMPAS NPRM Comments § III; *see* NPRM at para. 56; INCOMPAS NOI Reply § IV.d.

[62] Sonic Comments at 15–16 & n.21.

[63] *Id.* at 15–17; *see also* USTelecom Comments at 22. Transparency should run in both directions. In addition to publishing the fees they charge, localities should publish the circumstances under which providers may recover costs from the locality, such as when a locality requires relocation of facilities for a public project or requests changes to an approved permit or construction plan, along with the process for seeking that recovery. Advance disclosure of both the costs a provider will bear and the costs it may recover allows providers to price projects accurately and reduces disputes after construction is complete.

[64] WIA Comments at 8.

required to satisfy every element of the cost-based framework rather than pass through inflated or discretionary expenses.[65]

Mandatory in-kind contributions, such as free conduit, dark fiber, or unrelated infrastructure improvements, should be prohibited. In-kind contributions do not always impact differently-sized carriers in the same way or to the same degree, creating a *de facto* discriminatory situation that can disadvantage smaller competitors. Moreover, some of the requirements, such as building conduits that may be used by other carriers, force a company to subsidize their competitor's entrance or expansion in a locality. This effectively punishes providers for expanding access in a community. If a locality wishes to include in-kind contributions then they must be optional, and any negotiations for such contributions must not toll the approval process. Moreover, approval of an application must not be contingent upon agreeing to negotiate for an in-kind contribution. Should the

In the alternative, should the Commission decline to prohibit mandatory in-kind contributions, it should, at a minimum, require that any in-kind contribution a locality demands be valued and counted toward the compensation limit, and find that demands unrelated to the provider's use of the rights-of-way fall outside Section 253(c) entirely.[66] Commenters agree that

[65] ACA Connects Comments at 17–22, 24.

[66] NPRM at paras. 63–64; INCOMPAS NPRM Comments § IV.

in-kind compensation should be quantified and counted against the cost-recovery limit,[67] should be treated as a fee,[68] and should be prohibited where unrelated to rights-of-way management.[69]

Fees must also be competitively neutral. Above-cost fees and in-kind demands fall hardest on new entrants, and fees charged to one provider may not be materially higher than those charged to a competitor for similar uses.[70] The fee standard should likewise reach government-owned poles and conduit in the rights-of-way, consistent with the Commission's proposal and *City of Portland*.[71]

E. Section 253 Protections Should Apply Fully to Commingled Facilities

Modern fiber carries telecommunications, broadband, and other services over the same facilities. The record strongly supports the NPRM's proposal to apply the deadline and fee standard to infrastructure capable of providing telecommunications service, even when it also carries broadband, cloud, enterprise, or AI-related traffic.[72] WIA rightly describes this as one of the NPRM's most consequential proposals and warns that a traffic-mix test would invite disputes.[73] INCOMPAS urges the Commission to adopt it.

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[67] FBA *Ex Parte* at 5.

[68] Comments of NCTA – The Internet & Television Association, WC Docket No. 25-253, at 7 (filed Sept. 21, 2026) ("NCTA Comments").

[69] USTelecom Comments at 23–25.

[70] NPRM at para. 55; INCOMPAS NOI Reply § IV.c.

[71] NPRM at paras. 28–29, 59; NCTA Comments at 7–8.

[72] NPRM at para. 68; INCOMPAS NPRM Comments § V; ACA Connects Comments at 24–28; WIA Comments at 9–11; NCTA Comments at 2–6; USTelecom Comments at 28–30.

[73] WIA Comments at 9–10.

V. ENFORCEMENT MUST REACH THE FULL RANGE OF BARRIERS, NOT ONLY DEADLINES AND FEES

The NPRM's proposals focus on two bright-line and essential standards: a deadline for action and a cost-based limit on fees. However, many of the barriers that most frustrate wireline deployment involve neither a missed deadline nor an excessive fee. They take the form of requirements that are unpublished, that shift after an application is filed, that duplicate authority a provider already holds, or that change after construction is approved. As INCOMPAS explained at the inquiry stage, "non-monetary conditions imposed by some jurisdictions can be equally prohibitive," from requiring ADA-compliant curb ramps at intersections far from the construction to demanding that a provider repave an entire lane after a narrow microtrench.[74] Sonic's three-year experience in one Los Angeles-area city turned not on fees but on a sequence of shifting demands, from a master license agreement, to a franchise, to an unsupported "underground only" requirement.[75] Providers have reported localities changing access requirements after permits were submitted, and even revoking approved permits after construction began because of changed deployment standards.[76] Others have encountered localities that delay new fiber deployment until a new franchise agreement is negotiated, even where the provider already holds one.[77]

Section 253(a) reaches any "State or local statute or regulation, or other State or local legal requirement" that prohibits or effectively prohibits the provision of telecommunications

[74] INCOMPAS NOI Comments at 17–18; *see also* INCOMPAS NOI Reply § II.c.

[75] Sonic Comments at 11–13.

[76] *See* NOI at para. 17 n.44 (citing ACA Connects June 27, 2025 *Ex Parte* at 2).

[77] *See* NOI at para. 12 n.39 (citing USTelecom July 31, 2025 *Ex Parte* at 3).

service, not only fees and processing delays.[78] A deadline and fee standard that can be satisfied on paper while these other barriers persist will not achieve the Commission's goals. The enforcement framework the Commission adopts should therefore reach the full range of requirements that materially inhibit deployment.

A. The Expedited Section 253(d) Process Should Be Available for Any Requirement That Materially Inhibits Deployment

In its opening comments, INCOMPAS proposed a streamlined Section 253(d) petition process for deadline violations: prompt public notice, abbreviated response and reply periods, and, absent extraordinary circumstances, a decision within 30 days.[79] That process should not be limited to deadlines. A provider facing an unpublished requirement, a post-approval change, or a duplicative authorization demand should be able to invoke the same expedited procedure, with a focused inquiry into what requirement is preventing the provider from proceeding, whether it was published in advance, and whether the locality can show that it is saved by Section 253(b) or (c).

The Commission already prioritizes deployment-related disputes in other contexts. Its Rapid Broadband Assessment Team expedites pole attachment disputes that impede active broadband deployment, and suitable complaints may proceed on an accelerated docket.[80] A similar approach is warranted here. The Commission should delegate authority to the Wireline

[78] 47 U.S.C. § 253(a); *see* NOI at para. 22 n.57 (Congress intended "other legal requirement" to be read broadly).

[79] INCOMPAS NPRM Comments § II.E.

[80] *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); 47 CFR § 1.736(a); INCOMPAS NPRM Comments at 14–15.

Competition Bureau to resolve Section 253(d) petitions, as the *NOI* contemplated, so that routine petitions do not await full Commission action.[81]

Other commenters support similar measures. ACA Connects asks for a preemption decision within 60 days, immediate informal dispute resolution, and an option to deploy under protest once a petition is filed.[82] FBA likewise asks for expeditious review and permission to proceed once a petition is filed, subject to a later true-up.[83] INCOMPAS supports allowing a provider that has submitted a complete application under a locality's published requirements to proceed while its petition is pending, subject to compliance with the locality's generally applicable safety, traffic-control, and restoration requirements. That approach keeps a contested requirement from becoming a *de facto* moratorium while the Commission reviews it.

B. The Commission Should Identify Categories of Non-Fee Requirements That Presumptively Violate Section 253

The Commission has authority to declare that categories of state and local requirements are inconsistent with Section 253(a), independent of case-by-case preemption.[84] It exercised that authority in the *Moratoria Order*, and it should do so again here for the recurring non-fee barriers the record documents. INCOMPAS urges the Commission to establish a rebuttable presumption that the following requirements materially inhibit deployment:

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[81] *See* NOI at para. 58.

[82] ACA Connects Comments at 28–29.

[83] FBA *Ex Parte* at 5.

[84] *See* NOI at para. 56; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7787–89, paras. 161–64 (2018) ("*Moratoria Order*").

- *Unpublished requirements.* Any requirement not published before an application is filed may not be used to deny an application, toll the deadline, or delay approval.
- *Retroactive changes.* Changes to application, construction, or fee requirements should apply prospectively only, and approved authorizations should not be revoked or conditioned on standards adopted after approval, absent a genuine safety emergency.[85]
- *Duplicative authorizations.* A locality should not condition a permit on a new franchise, master license, or right-of-way agreement where the provider already holds state authority or an existing local authorization covering the same facilities, or impose duplicative fees for the same use of the rights-of-way.[86]
- *Procedural devices that run out the clock.* Permit caps, footage limits, serial review by successive departments, and permit validity periods too short to complete construction should be presumed to violate Section 253.[87]
- *Unsupported construction-method mandates.* Requirements that dictate a construction method, such as undergrounding, should be presumed unlawful where they are not grounded in published, generally applicable standards or are applied to new entrants but not to similarly situated incumbents.[88]

Each presumption would be rebuttable. A locality could show that a particular requirement is necessary to protect public safety or to manage the rights-of-way within the

[85] *See* Sonic Comments at 15–17.

[86] *See* NOI at para. 12 n.39; Sonic Comments at 11–13; *Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC*, WC Docket No. 20-46, Declaratory Ruling, 35 FCC Rcd 12811, 12822, para. 26 (WCB 2020).

[87] USTelecom Comments at 13–15.

[88] *See* Sonic Comments at 11–13.

meaning of Sections 253(b) and (c), and is applied on a competitively neutral basis, but the burden would rest with the locality that imposed the requirement, not with the provider that encountered it.

Additionally, transparency is the foundation of the safe harbor framework, and it should be enforceable on its own terms. A locality that does not publish its requirements in advance should lose the safe harbor for both its timelines and its fees, and requirements that were not published should not count toward a complete application or support tolling of the deadline. Commenters agree that all requirements and fees should be published in advance, with changes applied prospectively.[89] When a locality denies an application, it should provide a written explanation tied to its published criteria, so that the provider can correct the deficiency or seek review.[90]

C. The Commission Should Confirm That Its Determinations Are Enforceable in Court and Through Section 401(b)

With respect to whether providers could enforce the Commission's deadline in court,[91] INCOMPAS believes this mechanism is critical. Judicial enforcement offers providers a path to timely relief when construction schedules and funding deadlines are at stake, encourages localities to comply in the first instance, and promotes consistent application of Section 253 across jurisdictions. Rules the Commission adopts interpreting Section 253(a), including its presumptions about when delays and other requirements effectively prohibit service, should govern in court proceedings seeking declaratory and injunctive relief on preemption grounds, not

[89] Sonic Comments at 15–17; USTelecom Comments at 22; FBA *Ex Parte* at 4 & n.9.

[90] USTelecom Comments at 15.

[91] NPRM at para. 31.

merely serve as persuasive authority. The Commission should say so expressly. Where the Commission issues a case-specific preemption order, Section 401(b) provides a further enforcement mechanism if a locality fails to comply.[92]

The Commission should also confirm, as the *NPRM* suggests, that its prior determination that *de facto* moratoria violate Section 253 remains fully enforceable alongside the new deadline.[93] A locality that repeatedly fails to act within the deadline, refuses to accept applications, or conditions acceptance on requirements that cannot be satisfied has imposed a *de facto* moratorium, and providers should be able to seek relief on that basis without first exhausting the deadline process for each individual application.

D. The Commission Need Not Impose New Obligations on Providers to Address Completion Concerns

Some local commenters suggest that providers do not always complete deployments after approvals issue, and the *NPRM* asks whether the Commission should take steps to encourage prompt completion.[94] Providers have every incentive to build once they have secured approval; capital, crews, and contractors are committed to a construction schedule, and delay increases cost. Where projects stall after approval, the cause is frequently another permitting barrier further along the route. Localities already have tools to address this concern through reasonable permit validity periods, so long as those periods are long enough to complete construction and

[92] 47 U.S.C. § 401(b); *see* INCOMPAS NPRM Comments § II.E.

[93] NPRM at para. 33; *Moratoria Order*, 33 FCC Rcd at 7780–82, paras. 149–53.

[94] NPRM at para. 34.

are not used to force serial reapplication.[95] New federal obligations on providers are unnecessary.

VI. THE COMMISSION HAS AMPLE AUTHORITY TO ADOPT THESE REFORMS

The *NPRM* tentatively concludes that the Commission has authority under Sections 253, 4(i), 201(b), and 303 of the Act to define what violates Section 253(a) and to adopt rules implementing Section 253(d), and that its authority is not limited to case-by-case preemption.[96] The record confirms that conclusion, and the local government arguments to the contrary do not withstand scrutiny.

A. Sections 253 and 201(b) Authorize Generally Applicable Rules and the Material-Inhibition Standard Captures the Barriers Documented in the Record

The Commission may define "effectively prohibit" and "fair and reasonable compensation" through generally applicable rules, and Section 253(d) is not the exclusive mechanism for giving those terms effect.[97] Commenters agree that the Commission may define Section 253's terms by rule,[98] that Section 253 directs the Commission to preempt requirements that violate Section 253(a) and are not saved by Sections 253(b) and (c),[99] and that Congress gave the Commission clear and sufficient authority to ensure predictable permitting nationally.[100]

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[95] *See* USTelecom Comments at 13–15.

[96] NPRM at para. 74.

[97] *See* NPRM ¶ 74; INCOMPAS NPRM Comments § VII.B.

[98] USTelecom Comments at 26–28.

[99] ACA Connects Comments at 4–7.

[100] WIA Comments at 2–3; *see also* WTA Comments at 3.

Sections 214(a) and 706 provide additional, independent support for removing barriers to wireline deployment.[101] And the Commission's Network Modernization Order provides a doctrinal template for this kind of rule.[102]

Under the Commission's long-standing interpretation, a state or local requirement effectively prohibits service when it materially inhibits a competitor's ability to compete in a fair and balanced legal and regulatory environment.[103] The Ninth Circuit upheld that standard against the "actual prohibition" argument that some local commenters continue to press.[104] The record now supplies the economic evidence the *NOI* requested on when delays and fees become prohibitive.[105] The FBA study applies a non-viability threshold that is more demanding than the legal standard, so its findings are, if anything, conservative.[106]

B. The Deadline Implements Section 253(a), Not Section 332

Local commenters argue that shot clocks are permissible only under Section 332, which requires action within a "reasonable period of time," and that Section 253 contains no comparable language.[107] That argument misunderstands the proposal. The deadline does not

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[101] INCOMPAS NPRM Comments § VII.A.

[102] *Id.* § VII.C.

[103] *California Payphone Ass'n*, Memorandum Opinion and Order, 12 FCC Rcd 14191, 14206, para. 31 (1997); *Small Cell Order*, 33 FCC Rcd at 9102, 9104–05, paras. 35, 37.

[104] *City of Portland*, 969 F.3d at 1035; WTA Comments at 4 & n.7; INCOMPAS NOI Reply § III.b; *cf. Level 3 Commc'ns, L.L.C. v. City of St. Louis*, 477 F.3d 528 (8th Cir. 2007).

[105] *See* NOI at paras. 20, 41.

[106] FBA *Ex Parte* at 4 & n.8.

[107] *See* NPRM at para. 16.

create a new statutory timeline; it implements Section 253(a)'s effective-prohibition standard by identifying the point at which delay presumptively materially inhibits deployment. The *Small Cell Order* applied the same effective-prohibition standard under both Section 253(a) and Section 332(c)(7), and the deadline here is a rebuttable presumption that a locality may overcome with a showing specific to the application.[108] ACA Connects responds to the remainder of the local governments' authority arguments in detail.[109]

C. *Loper Bright* Does Not Bar These Rules

Loper Bright requires courts to exercise independent judgment about what a statute means, but it does not disturb an agency's authority to implement a statute through reasonably explained rules.[110] The Commission's rules rest on the best reading of Section 253's text. Where the statute calls for line-drawing, such as identifying the point at which delay becomes prohibitive or the level at which a fee presumptively exceeds cost, courts continue to respect an agency's reasonably explained, fact-based judgments.[111] As WTA observes, the proposed relief is also relatively modest: the Commission has not proposed a "deemed granted" remedy,[112] and each presumption is rebuttable and preserves a locality's ability to justify its requirements under Sections 253(b) and (c).

[108] *Small Cell Order*, 33 FCC Rcd at 9103, para. 36, 9148, paras. 116–18.

[109] ACA Connects Comments at 29–35.

[110] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[111] WTA Comments at 4 & n.8; *see also* USTelecom Comments at 32–34.

[112] WTA Comments at 4.

D. Section 253(c) Preserves Rights-of-Way Management, Not Revenue Generation

Section 253(c) preserves state and local authority to *manage* the public rights-of-way and to require fair and reasonable compensation for their use. It does not authorize indefinite delay or the use of rights-of-way access as a revenue source.[113] A rebuttable deadline, a cost-based fee standard, and a transparency requirement leave that management authority fully intact. Localities remain free to set their own procedures, protect public safety, and recover their actual costs; they may not use those powers to inhibit the deployment of competitive telecommunications networks.

VII. CONCLUSION

The record confirms that state and local barriers to wireline deployment are national in scope and that the Commission's proposals are the right response. INCOMPAS urges the Commission to adopt a transparent safe harbor framework that gives localities flexibility over their processes and fees, provided they act within a 90-day outside deadline (with shorter deadlines for less complex authorizations), charge fees limited to actual and objectively reasonable costs, and publish their requirements, timelines, and fee methodologies in advance. The Commission should conclusively prohibit per-linear-foot and revenue-based fees, prohibit mandatory in-kind demands as compensation, protect commingled facilities, and adopt an expedited enforcement process that reaches the full range of barriers providers face. These rules will give providers and localities predictable ground rules and accelerate the deployment of competitive wireline networks.

[113] *See* INCOMPAS NOI Reply § VI.b; USTelecom Comments at 18–19.

Respectfully submitted,

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