

**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
	)	

Comments Of WTA – Advocates for Rural Broadband

WTA – Advocates for Rural Broadband (“WTA”) submits these comments in this Notice of Inquiry proceeding to address the Commission’s possible use of the authority granted to it by Congress under Section 253(d) to preempt state and local rules and practices that deter wireline deployments.¹ WTA is a national trade association representing approximately 400 small, rural local telecommunications carriers. The typical WTA member company serves fewer than 5,000 customers per service area and has fewer than 50 employees. WTA’s members provide voice, broadband and other communications-related services to some of the most remote, rugged, sparsely populated, and expensive-to-serve areas of the United States, and have been at the forefront of providing advanced services to these very difficult to serve territories. Given these challenging conditions, WTA appreciates the Commission’s efforts in this proceeding to begin to address the elimination of additional hurdles and delays to wireline deployment caused by burdensome state and local government permitting or right-of-way requirements, excessive fees, or unwarranted in-kind contribution demands.

¹ *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, FCC 25-66, released September 30, 2025 (hereafter cited as “*NOI*”). These Comments are timely in light of the government shutdown and the procedures adopted by the Commission as a result. <https://docs.fcc.gov/public/attachments/DA-25-937A1.pdf>

The Commission is not plowing new ground in this proceeding. The Commission addressed many of these issues in the context of establishing preemption principles while reviewing state and local wireless siting regulations and practices.² And ensuring that state and local policies do not deter investment in fiber optic facilities – which can be used to provide broadband and telecommunications services³ – is certainly no less critical than removing those barriers for wireless facilities. Indeed, in the rural areas served by WTA’s members, robust broadband capabilities provided over fiber are critical for remote education, telehealth, precision agriculture, backhaul for cellular service, public safety service and work from home.

As the *NOI* recognizes – and as WTA concurs -- deterrence of broadband deployment as a result of state and local officials’ actions can take several different forms. Delays in issuing permits, delays in negotiating right-of-way agreements or granting right-of-way authority, and duplication of state and local requirements can all slow down or in extreme cases halt broadband deployment projects. WTA believes that imposition of a “shot clock” could minimize these delays. Or at the very least, the Commission should adopt a presumption that any delays beyond a specified period (*e.g.*, 90 days) would create a presumption in favor of grant of a request for preemption in an expedited Commission procedure for reviewing specific petitions for preemption.

² E.g., *NOI* at ¶¶ 5-8.

³ Service providers like our members currently sell just the telecommunications component of Broadband Internet Access Service as a stand-alone telecommunications service offered under tariff. *E.g.*, NECA Tariff 5, Section 8, https://www.neca.org/docs/default-source/public---tariff-5/tariff-5e8926801-d881-403b-8f16-b7732f932dd8.pdf?sfvrsn=d1c57a3e_.

WTA also agrees with the Commission that excessive state and/or local charges – in the form of application fees, rights-of-way charges or franchise fees – can deter broadband deployment by making it uneconomical. WTA additionally believes that interpretations of Section 253 that specify limits on what would be reasonable charges with regard to small wireless facility siting should apply with equal force in the context of wireline broadband deployment:

The Commission observed that section 253(a) has a broad preemptive scope, and it construed section 253(c)'s "fair and reasonable compensation" provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by state and local governments, where the costs being passed on are themselves objectively reasonable." (citations omitted)⁴

In determining the reasonableness of any charges, WTA urges the Commission to put the burden on the state or local government to demonstrate that the fees/charges are "fair and reasonable." WTA believes it would be highly unlikely that "per foot" charges could be

⁴ *NOI* at ¶ 31 (citations omitted). See also, *NOI* at ¶¶ 32 and 42:

The Commission went on to find that, "while it might well be fair for providers to bear basic, reasonable costs of entry, the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level" The Commission thus concluded that "states and localities do not impose an unreasonable barrier to entry" in violation of section 253(a) "when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market," but that "fees that recover more than the state or local" costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry. (citations omitted) ...

Should the "fair and reasonable" compensation standard adopted for Small Wireless Facilities apply to wireline telecommunications infrastructure, *i.e.*, fees may recover a reasonable approximation of a state or local government's objectively reasonable costs of maintaining the rights-of-way, maintaining a structure within the rights-of-way, or processing an application or permit?

justified under these standards, and even more unlikely that fees set as a percentage of revenues could ever be justified.

The *NOI* also seeks comment on the treatment under Section 253 of in-kind contributions as a condition of obtaining necessary permits or approvals.⁵ WTA does not believe there should be any differences in the analysis based on the form of the compensation demanded. It certainly makes no difference to the broadband provider with respect to deterring broadband deployment if the added costs it must bear take the form of cash payments to the government entity, or added costs to the project in the form of other compensation or foregone revenues when the government demands free broadband services.

Finally, the *NOI* seeks examples of state or local government practices with regard to the approvals or compensation discussed above that have the effect of deterring broadband deployment.⁶ WTA offers some examples of practices and requirements that have the effect of deterring wireline broadband deployment based on its members experiences in three states – Wyoming, California and Kansas.⁷

⁵ *NOI* at ¶¶ 50-52.

⁶ *NOI* at ¶¶ 53-54.

⁷ WTA notes that its members also complained about the deterrent effect of a New York State requirement that broadband service providers offer service to qualifying households at a \$15 monthly rate for download speeds of 25 Mbps or more, or a plan for a monthly rate of no more than \$20 for service with download speeds of 200 Mbps or more (with both rates possibly eligible for an increase of no more than 2% per year). That law does provide that these qualifying household rates “shall not apply to any broadband service provider providing service to no more than twenty thousand households, if the public service commission determines that compliance with such requirements would result in unreasonable or unsustainable financial impact on the broadband service provider,” but the NYPSC has not yet acted on any of the small company requests for exclusion. An earlier challenge to these maximum rates for qualifying households based on federal preemption was rejected on appeal, but that appellate decision addressed only “field preemption,” and did not address the explicit statutory

Wyoming:

A number of state and local policies and requirements in Wyoming serve to needlessly delay and deter broadband deployment. Certain Jurisdictions charge high permitting rates to install within a public ROW. As an example, one of our members has been charged a ROW fee of \$1 per linear foot in certain Counties.

As another example, a company must obtain underlying landowner agreements in some counties, because those counties claim that the public right-of-way does not include the authority for utilities to operate within the county's the right-of-way boundary without a separate agreement. The obligation to negotiate with individual landowners creates significant delays and undue expense in order to deploy wireline broadband facilities.

Another problem faced by small companies deploying broadband in Wyoming results from the often-lengthy linear rights-of-way they must obtain, further complicated by the many "checkerboarded" federal parcels in the rural areas those companies are trying to serve. Even when the project is entirely within a public ROW, there can be additional requirements to obtain a Bureau of Land Management ("BLM") right-of-way, secure archaeological and cultural inventories, and go through the BLM permitting process, which typically adds years to timeline. This is true even when the project area is entirely "pre-disturbed" by earlier projects such as road building.

And despite the Commission's previous actions with regard to preemption of local governments' regulation of wireless facilities siting, our members still face hurdles and delays in deploying or upgrading wireless facilities (that can be used for both fixed and mobile

preemption authority of the Commission under Section 253, which had not been raised by the parties. *See, N.Y. State Telecomms. Ass'n v. James*, 101 F.4th 135 (2d Cir. 2024).

wireless services). These include the fact that a Building Permit requirement for additional equipment on existing towers will require applicants to provide stamped drawings even for equipment swaps. Some Counties require a planning review for equipment adds to existing structures. These various requirements can increase delays by a factor of six or more due to resource constraints within the local government offices. Our members have also observed over the last several years that rental and lease rates from County and City jurisdictions have skyrocketed when attempting to deploy sites owned by the jurisdictions. And even when deploying a site exempt from an FCC NEPA review, the companies must still procure a Planning and Zoning conditional use permit, because many Wireless telecommunication ordinances have yet to address Fixed Wireless Access or over the air Broadband Internet wireless deployments.

California:

One area of ongoing concern in California is the California Department of Transportation (“CalTrans”) permitting process, which is subject to significant delays and administrative hurdles, making it difficult for carriers, including small Local Exchange Carriers (“LECs”), to efficiently deploy wireline facilities and deliver telecommunications service, especially in rural areas where CalTrans rights-of-way are critical to reaching customers. As telephone corporations and public utilities under California law, the small LECs have statutory rights to access public rights-of-way, but they must still navigate a complex and burdensome encroachment permitting process when such rights-of-way are within or adjacent to California state highways.

CalTrans administers this process, which can take months or even years. These problems have been well documented in recent years, as CalTrans’ administrative delays have

created profound inefficiencies in executing on California’s state-sponsored “middle-mile broadband initiative,” which is being built in part by CVIN, LLC (dba. Vast Networks), a joint venture affiliated with several small LECs. Attached to these comments is a letter from CVIN to the California Department of Technology (“CDT”) detailing some of the endemic problems with the CalTrans permitting process. These problems include a location-specific review that necessitates extensive technical reports, including environmental, paleontological, water and air quality, hydraulic, and subsurface impact studies. CalTrans has also misinterpreted federal law by triggering an unnecessary layer of review under the National Environmental Policy Act (“NEPA”), a federal regulation that requires environmental review where there is an “alternative use” of a right-of-way alongside a federally-funded highway. *See* 23 C.F.R. § 710.405. Without any federal compulsion or corroborating interpretation, CalTrans is unilaterally applying NEPA to projects along California highways just because those highways have received federal support of one form or another. But this interpretation ignores the express exception under NEPA for “public utilities” whose facilities “cross or otherwise occupy” a “[f]ederal aid highway ROW.” *See* 23 C.F.R. § 710.405. CalTrans’ misapplication of NEPA and its own endemic delays have combined to create an untenable situation in which the small LECs and other telecommunications providers are thwarted in their efforts to efficiently deploy, upgrade, and expand telecommunications facilities and deliver service to rural parts of California.

The California Public Utilities Commission (“CPUC”) has also adopted policies that “materially inhibit or limit the ability of any competitor to compete in a fair and balanced legal and regulatory environment.” (*NOI* at ¶ 7) Small LECs are traditional public utilities that are subject to rate regulation by the CPUC, and the companies depend on efficient, reasonable

decisions from the CPUC to deploy telecommunications facilities and provide telecommunications services over those facilities. Despite numerous proposals from small LECs to streamline the ratemaking process, the Commission still requires a formal, litigation-style proceeding every time an small LEC needs to adjust its rates, seek approval for additional cost recovery, or pursue necessary support from the state high-cost fund, the California High Cost Fund A (“CHCF-A”).⁸ Under the CPUC’s “rate case plan,” rate cases are scheduled to take between 450-480 days (including mandatory pre-application activities), but in practice, these proceedings can take much longer, with some cases lasting two or three years.

The substance of the CPUC’s ratemaking rules also inject undue risk into the small LECs’ operations, creating an uneven playing field that triggers concerns under Section 253(a). Without CPUC approval for adjustments to their revenue requirements and rate designs, the small LECs cannot recover their costs of service or earn returns on their investments, yet recent CPUC decisions have put carriers in the position where they have to build facilities without any assurance of cost recovery, only to have the Commission retroactively review the investments for reasonableness more than a year after the fact. For example, in a 2021 proceeding involving Sierra Telephone, the company proposed to invest approximately \$40 million in modern, broadband-capable fiber infrastructure, using Rural Utilities Service (“RUS”) financing. Sierra proposed the investment in a 2021 application before the CPUC, and after adjudicating the case for more than a year, the CPUC reached a

⁸ See D.15-06-048, Appendix A (outlining formal rate case process through application), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M152/K904/152904301.PDF>; D.18-10-033 (rejecting proposal to use streamlined advice letter process in lieu of application procedure), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M237/K358/237358432.PDF>.

decision in January 2023.⁹ However, instead of approving the investment, the CPUC provisionally disallowed Sierra's request, but indicated that Sierra could choose to make the investments without any guarantee of cost recovery, and ask the CPUC for retrospective recovery through a separate process in 2024. Sierra did build significant portions of the anticipated fiber infrastructure, but the Commission did not approve the inclusion of these investments in rate base until the end of 2024. This procedure was replicated for another company -- Kerman Telephone -- who experienced a similar delay and had to make investments without any assurance of reasonable recovery.¹⁰ Absent efficient means of addressing ratemaking adjustments through the CPUC, the small LECs cannot reasonably deploy their facilities or efficiently deliver service to new customers or upgraded service to existing customers.

Small LECs also experienced the CPUC subjecting them to a ratemaking policy known as "broadband imputation," whereby the net retail broadband revenues of their non-regulated affiliate Internet Service Providers ("ISP") are "imputed" into intrastate regulated revenue calculations for the purpose of setting utility rates and establishing state high cost support.¹¹ The effect of this policy is to create dollar-for-dollar revenue shortfalls for any small LEC with a profitable ISP affiliate in exactly the amount of the ISP's profits. The CPUC has pursued this policy even though the Commission has expressly designated broadband

⁹ See D.23-01-004 at 44 9OP
7), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M501/K134/501134415.PDF>.

¹⁰ See D.24-01-030, at 43 (OP
7), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M524/K502/524502398.PDF>.

¹¹ See D.21-04-005 at 23-24 (OP
1), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M379/K540/379540703.PDF>.

service as a non-regulated information service under Title I of the Telecommunications Act. The ramifications of this broadband imputation policy have been to strip small LECs of capital that could otherwise be used for investment and to place them on an uneven playing field relative to all other telecommunications providers, whose revenues are not manipulated based on the profitability of non-regulated affiliate businesses.

In addition to these particular examples, the CPUC continues to create new regulations that increase the cost of operating in California, including new service quality rules adopted in 2025.¹² Similarly, the CPUC is currently examining whether to significantly expand its network resiliency rules, which could impose major increases in cost for backup power.¹³ Despite these continually-increasing regulatory burdens and associated compliance expenses, the small LECs are subject to strict expense caps in their intrastate cost recovery under CPUC rules that are uniquely applicable to the small LECs.¹⁴ This dynamic creates a failure of cost recovery and a variety of unfunded mandates that further deepen the restrictions and burdens on independent small LECs as they endeavor to build out their networks and deliver wireline telecommunications services. All of these California examples individually may implicate the preemption provisions of 47 C.F.R. Section 253, and, taken together, they paint a concerning picture that makes it difficult for small, rural telecommunications providers to advance their networks and improve their services, as the Commission intends

¹² See D.25-09-031, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M581/K594/581594362.PDF>.

¹³ See R.25-07-014, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M575/K209/575209768.PDF>.

¹⁴ See D.21-06-004 at 43 (OPs 6-7), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M387/K094/387094313.PDF>.

Kansas:

By way of background, under state law, local exchange carriers and video service providers have the right to construct, maintain and operate facilities along, across, upon and under any public right-of-way (“ROW”) in a city¹⁵ or county¹⁶ in Kansas. The statutory right applies to local exchange carriers that have been granted a Certificate Of Convenience And Authority by the Kansas Corporation Commission (“KCC”), and video service providers that have been granted a video service authorization by the KCC. Kansas laws also provide cities in Kansas with statutory authority to require telecommunications local exchange service providers to enter into a franchise agreement prior to offering service within city limits.¹⁷ Cities are authorized to charge a franchise fee based on access lines or gross receipts.¹⁸ Under the Kansas Video Competition Act, authorized video service providers must enter into a video service agreement (franchise agreement) with a city before providing service.¹⁹ The term “video service provider” means a cable operator or a competitive video service provider that provides a video service.²⁰ Cities may charge video service providers a franchise fee of no more than 5% of gross revenues.²¹

¹⁵ K.S.A §17-1902.

¹⁶ K.S.A. §17-1902a.

¹⁷ K.S.A. §12-2001(d).

¹⁸ K.S.A. §12-2001(j).

¹⁹ K.S.A. §12-2024(a).

²⁰ K.S.A. §12-2022(l).

²¹ K.S.A. §12-2024(c).

In addition, cities in Kansas may assess fees against local exchange service and video service providers to use and occupy the public right-of-way (ROW).²² The law also specifies that right-of-way fees must only reimburse a city for its reasonable, actual, and verifiable costs of managing the public ROW, and the fees must be imposed in a nondiscriminatory and competitively neutral manner.²³

Fees paid by service providers to cities for the use and occupancy of the public ROW are very different from franchise fees. In general, ROW fees are significantly less than franchise fees, because they reimburse a city for its actual costs of managing the public ROW. They also are paid when a network is initially constructed, or when a network is expanded. On the other hand, franchise fee amounts are set at no more than 5% of revenues by statute, and are paid on a regular basis while a franchise agreement is in effect.

Many cities in Kansas have been experiencing a decrease in the amount of franchise fees they receive from video service providers and local exchange carriers. First, many providers of traditional cable television service in Kansas have transitioned to providing a broadband-based streaming video service which is not subject to franchise fees.²⁴ Second, many providers of local exchange service have transitioned to VoIP service, which is not subject to franchise fees.²⁵ Cities in Kansas have taken differing actions in response to the decrease in fee revenues.

²² K.S.A. §17-1902.

²³ K.S.A. §17-1902(n).

²⁴ K.S.A. §12-2022(j)(3).

²⁵ K.S.A. §12-2001(c)(6).

There are instances of cities in Kansas successfully requiring broadband providers to enter into franchise agreements and pay franchise fees based on gross revenue from broadband service. Other Kansas cities have entered into ROW agreements with broadband providers that allow them to occupy and use the public ROW, but do not require the payment of any franchise fees. These latter cities understand that their residents' ability to receive fiber-based broadband services will provide many benefits to the citizens and the city – what the economists refer to as “positive externalities.”

As an example of a city that decided to impose a franchise-fee obligation, in 2024 the city of Lawrence, Kansas approved a contract franchise agreement with Google Fiber Kansas, LLC (Ordinance No. 10069). The agreement grants Google Fiber a non-exclusive right to use and occupy the public ROW in order to install, operate, and maintain a fiber network for the purposes of offering broadband and VoIP services to city residents and businesses. The contract franchise agreement states that the city of Lawrence is adopting the ordinance pursuant to the Kansas franchise statute and its home rule powers. Google Fiber is not a competitive local exchange carrier (“CLEC”), and thus does not have a statutory right to enter the public ROW in a city or county. Because Google Fiber is a new entrant in Lawrence, it must strike a deal with the city to build its fiber network.

Pursuant to the agreement, Google Fiber will pay a “Franchise Fee” to compensate the city for Google Fiber’s use and occupancy of the public ROW. The Franchise Fee is two percent (2%) of “Gross Revenues” for a calendar quarter, remitted within forty-five (45) days of the end of each calendar quarter. Under this agreement, Gross Revenues means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Google Fiber from customers for broadband

Internet services that are provided through network facilities located at least in part in the public ROW. Gross Revenues does not include, among other things, any revenue derived from advertising; any revenue derived from VOIP Services; and any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the broadband services. Google Fiber has entered into similar agreements with a few other cities in northeast Kansas. All of these agreements contain a 2% franchise fee based on gross revenue from broadband service.

Google Fiber's agreement with the city of Lawrence, and Google Fiber's agreements with other Kansas cities raise a number of issues. First, the legal authority cited by each city is the Kansas franchise statute and its home rule powers. The Kansas franchise statute does not specify broadband service in the activities for which a city may grant permission only by ordinance:

The governing body of any city may permit any person, firm or corporation to:

- (1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;
- (2) build street railways, to be operated over and along or under the streets and public grounds of such city;
- (3) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;
- (4) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;
- (5) lay pipes for the operation of a water plant for the distribution or furnishing of water over, under and along the streets and alleys of such city; or
- (6) use the streets in the carrying on of any business which is not prohibited by law.²⁶

²⁶

K.S.A. §12-2001(a).

There is a seventh activity, local exchange service, that falls under the Kansas franchise statute.²⁷

Broadband service is not included in the services for which a franchise agreement may be required. The only time broadband is mentioned in the franchise statute is to clarify that revenue from broadband is *not* included in the definition of gross receipts that applies to the local exchange franchise fee.²⁸ There is nothing in the Kansas franchise statute that empowers the city of Lawrence to require a franchise agreement for the provision of broadband service.

The city of Lawrence additionally cites its home rule powers. Kansas cities' home rule power is derived from the Kansas constitution. A city may use home rule power to enact an ordinance when there is no state law on the subject sought to be addressed by the local legislation. A city does not have home rule power to enact ordinances that conflict with state or federal law. Also, a city does not have home rule power when the Kansas legislature has preempted a city from acting. This is the case with respect to the city of Lawrence's broadband franchise agreement with Google Fiber. The city's franchise equates to oversight and regulation of broadband service. In K.S.A. §66-2017(a), the Kansas legislature prohibited cities from doing just that:

Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, shall be subject to the jurisdiction of, regulation by, supervision of or control by any state agency or political subdivision of the state.²⁹

²⁷ K.S.A. §12-2001(c)-(r).

²⁸ K.S.A. §12-2001(c)(6).

²⁹ K.S.A. §66-2017(a).

This language in the statute reflects a clear intent by the Kansas legislature to preempt cities from using home rule power to assess franchise fees on broadband and VoIP services or any other any IP-enabled services.

In addition, the 2% franchise fee is arbitrary. There is no evidencing explaining how the city or both parties determined why the fee should be 2%. There is no evidence showing the 2% fee is related to costs incurred by the city, as is required for ROW fees.

It's worth considering Google Fiber's agreement with the city of Lawrence in real world terms. Google Fiber is a new entrant to the city. It needs access to the public ROW to construct its network. It does not have a statutory right to access and occupy the public or county ROW, because it does not have a CLEC Certificate Of Convenience And Authority, nor does it have a video service authorization. Google Fiber must strike a deal with the city, even if that deal requires it to pay a franchise fee based on 2% of its broadband revenues. Google Fiber is owned by Alphabet Inc., one of the biggest and most valuable companies in the world. Google Fiber probably does not view a 2% broadband revenue franchise fee as prohibitive. Whereas, for other smaller providers, such a fee would effectively prohibit their ability to deploy telecommunications infrastructure and services. WTA's members are concerned that left unchecked, this precedent will lead other Kansas cities to impose broadband revenue franchise fees.

As all these examples demonstrate, state and local governments in multiple states are engaging in various actions and procedures that serve to delay or deter wireline broadband deployment. WTA thus urges the Commission to utilize its authority under Section 253 and

promptly initiate a rulemaking proceeding to establish rules and procedures to preempt these state and local government impediments to wireline broadband deployment.

Respectfully submitted,

WTA – ADVOCATES FOR RURAL BROADBAND

/s/ Derrick B. Owens
Derrick B. Owens
SVP of Government and Industry Affairs
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 548-0202

/s/ Stephen L. Goodman
Stephen L. Goodman
Regulatory Counsel
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 607-6756

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