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 Proposed Rulemaking ("*NPRM*") proceeding to address the Commission's possible use of the authority granted to it by Congress under Section 253 to preempt state and local rules and practices that significantly delay, deter or halt 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.

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[1] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, FCC 24-40, released June 26, 2026, published in the Federal Register, 91 FR 51121 (August 7, 2026).

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 services[3] – 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 *NPRM* 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, and the imposition of excessive costs can also deter or delay broadband deployment in nearby communities, thereby exacerbating the problem. WTA in its Comments in response to the Notice of Inquiry in this proceeding provided numerous examples of the unreasonable permitting delays experienced by its members in California.[4] WTA believes that the prevention or minimization of these delays could be effectuated by the

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[2] *E.g.*, *NPRM* at ¶¶ 7-9.

[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_.

[4] *See*, Comments of WTA in WC Docket No. 25-253, filed November 18, 2025, at pp. 6-7 and Attachment.

NPRM's proposal to implement a 120-day deadline as the point at which a delay by a state or local government to act on a required authorization would be so excessive that it can be presumed to constitute an effective prohibition that violates Section 253(a).[5] Thus, WTA supports the Commission's proposal to adopt such a presumption that would be used in a proceeding at the Commission under Section 253(d) seeking preemption of the state or local requirement.[6]

WTA also believes the Commission has the legal authority to adopt these proposals with regard to avoiding excessive delays that threaten broadband deployment. Congress delegated broad authority to the Commission in Sections 253(a) and (d):

> **(a) In general**
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> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.
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> * * * * *
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> **(d) Preemption**
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> If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

And the Court of Appeals acknowledged the broad authority granted to the Commission under Section 253:

> The City argues that the Moratoria Order preempts laws of general applicability, while Section 253 preempts only those that specifically target the provision of

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5 *NPRM* at ¶¶ 14-19.

6 *NPRM* at ¶ 30.

> telecommunications services. By its terms, however, Section 253(a) is not so limited. It looks to both the language and impact of local regulations. It preempts all "local statute[s] or regulation[s], or other ... legal requirement[s]" that prohibit or have the effect of prohibiting telecommunications services. 47 U.S.C. § 253(a).[7]

Given the broad grant of authority under Section 253(a) and (d), the Commission does not need to rely upon "Chevron deference" with regard to a statutory interpretation of the extent of its authority to adopt the presumption that taking more than 120 days to process an application is so excessive so as to constitute an effective prohibition.[8] Moreover, the proposed relief is relatively modest. The Commission declined in the *NPRM* to propose a "deemed granted" shot

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[7] *City of Portland v. US*, 969 F. 3d 1020, 1048 (9th Cir. 2020)(hereafter cited as "*City of Portland*"). *See also*, *ibid* at p. 1035:

> As a threshold issue, Local Government Petitioners argue that the FCC must demonstrate that an "actual prohibition" of services is occurring before preempting any municipal regulations, and that anything less than that showing is contrary to Section 253(a) and our decision in Sprint. We must reject this argument. The FCC's application of its standard in the Small Cell and Moratoria Orders is consistent with Sprint, which endorsed the material inhibition standard as a method of determining whether there has been an effective prohibition. The FCC here made factual findings, on the basis of the record before it, that certain municipal practices are materially inhibiting the deployment of 5G services. Nothing more is required of the FCC under Sprint.

[8] *Cf.*, Commissioner Gomez Separate Statement at p. 2. Moreover, *Loper Bright* still allows deference to an expert agency's assessment of factual matters, such as the expected impact of permitting delays on broadband deployment or the reasonableness of fees and charges. *See, e.g.*, *CBOE Global Markets, Inc. v. SEC*, 155 F. 4th 704 (DC Cir. 2025) at p. 722:

> Preliminarily, petitioners insist that we owe no deference to the SEC's line-drawing determinations after Loper Bright. Loper Bright, however, recognized that Congress can and does "confer discretionary authority on agencies," 603 U.S. at 404, 144 S.Ct. 2244, including the authority to draw lines when lines must be drawn. Indeed, the Supreme Court recently reiterated that courts should defer to an agency's reasonably explained line-drawing choices that "involve[ ] primarily issues of fact"—matters that an agency "is better equipped to assess ... than a court is." Seven Cnty. Infrastructure Coal. v. Eagle County, 605 U.S. 168, 145 S. Ct. 1497, 1512, 221 L.Ed.2d 820 (2025); see also Loper Bright, 603 U.S. at 392, 144 S.Ct. 2244 ("[The APA] does mandate that judicial review of agency policymaking and factfinding be deferential."). The question whether to cap access fees at 10 mils or 15 or some other number certainly fits that description.

clock rule, and the state or local government will have an opportunity to demonstrate that its actions were in fact reasonable before preemption occurs.

WTA in its Comments in response to the Notice of Inquiry in this proceeding also provided numerous examples of the unreasonable fees and charges assessed on its members in order to be able to deploy and provide broadband service.[9] As the Commission recognizes, such excessive fees deter broadband deployment within that jurisdiction, as well as in other areas served by that service provider.[10] WTA thus supports the proposal to limit the fees that state and local governments may charge for a wireline telecommunications authorization to a reasonable approximation of the government's actual, direct costs of managing the rights-of-way with respect to that authorization.[11] As the *NPRM* recognizes, courts have upheld the Commission's use of such a cost-based standard for analyzing the reasonableness of state and local charges.[12] Indeed, the Court of Appeals in *City of Portland* determined:

> We also conclude that the FCC's fee limitation does not violate Section 253(c) of the Act, which ensures that cities receive "fair and reasonable" compensation for use of their rights-of-way. The FCC explained that the calculation of actual, direct costs is a well-accepted method of determining reasonable compensation, and further, that a standard lacking a cost anchor would "have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments." Small Cell Order ¶ 74. 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. 47 U.S.C. § 253(c). The FCC's approach to fees is consistent with the language and intent of Section 253(c) and is reasonably explained.[13]

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[9] *See*, Comments of WTA in WC Docket No. 25-253, filed November 18, 2025, at pp. 5-6 and 11-16.

[10] *NPRM* at ¶ 43.

[11] *NPRM* at ¶¶ 38-43.

[12] *NPRM* at ¶¶ 38-39.

[13] *City of Portland*, 969 F. 3d at 1039.

Moreover, because the *NPRM* proposes to establish "safe harbors" rather than dictate specific caps,[14] the governments will have an opportunity to demonstrate that their proposed charges reflect their actual, reasonable direct costs.

The Commission's proposed limitation on the fees and charges a state or local government can charge is not only authorized by Section 253, it also maximizes the public interest. Government entities that attempt to use these fees as a "cash cow" not only miss out on the positive externalities that reliable, high speed broadband provides (including importantly for rural communities mobile service backhaul, precision agriculture, telehealth and remote education), but their decision to charge high fees also imposes negative externalities on other communities by retarding deployment elsewhere.[15] Thus, there is no merit to the claim that limiting the charges to actual, reasonable direct costs could be deemed inconsistent with the "savings clause" in Section 253(b) allowing states to protect the public welfare.[16]

The *NPRM* also seeks comment on the treatment under Section 253 of in-kind contributions as a condition of obtaining necessary permits or approvals.[17] WTA does not believe there should be any differences in the analysis based on the form of the compensation

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[14] *NPRM* at ¶¶ 51-54. In order to set the safe harbors, the *NPRM* also seeks input on "the direct costs that state and local governments incur when acting on applications to access and use public rights-of-way." *Ibid* at ¶ 53. However, because WTA and its members do not have access to information on the state and local governments' costs, we are unable to provide any such measures or estimates of their direct and reasonable costs.

[15] *Cf., NPRM* at ¶ 36 ("Accordingly, even if many state and local governments charge fees that are not excessive, the ones that do can cause prohibitive effects that reach beyond their jurisdictional boundaries.").

[16] *NPRM* at ¶ 57.

[17] *NPRM* at ¶¶ 63-67.

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, in-kind services or foregone revenues when the government demands "free" broadband services for its use.

As the *NPRM* recognizes, and as WTA can confirm, 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 adopt the proposed rules and procedures to establish policies and procedures to preempt these various state and local government impediments to wireline broadband deployment.

Respectfully submitted,

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