

**FCC FACT SHEET\***  
**Build America: Eliminating Barriers to Wireline Deployments**  
Notice of Proposed Rulemaking – WC Docket No. 25-253

**Background:** This *Notice of Proposed Rulemaking* would advance the Commission’s Build America Agenda by proposing and seeking comment on rules that would prevent state and local statutes, regulations, and legal requirements from having the effect of prohibiting the provision of wireline telecommunications services in violation of Section 253 of the Communications Act (Act). In September 2025, the Commission released a *Notice of Inquiry* to examine the time that state and local governments take to process requests for right-of-way authorizations needed to provide wireline telecommunications services, the fees that state and local governments impose for such authorizations, and the additional forms of compensation that state and local governments demand for access to their public rights-of-way, and whether these and other state and local requirements have the effect of prohibiting the provision of wireline telecommunications services in violation of Section 253 of the Act. The resulting record shows that, while some state and local governments act on authorization applications on a timely basis, others take months or even years to issue approvals, resulting in the cancellation, postponement, and scaling back of wireline deployments. The record also shows that some state and local governments are charging authorization fees that are unrelated to their costs of managing public rights-of-way, resulting in financial burdens that require some providers to walk away from planned deployments and undermine investment in other deployments. The record shows that these delays and financial burdens are increased by state and local requirements that demand: (1) various forms of in-kind compensation on top of monetary fees; and (2) additional fees and reviews because infrastructure deployed to provide wireline telecommunications services may also be used to provide other services. This *Notice of Proposed Rulemaking* proposes to adopt presumptions that would limit the authorization processing timelines and fees that state and local governments may impose, consistent with the mandates set forth by Congress in Section 253 of the Act.

**What the Notice of Proposed Rulemaking Would Do:**

- Propose and seek comment on establishing a rebuttable presumption that state and local governments have effectively prohibited the provision of wireline telecommunications services if they fail to process applications for access and use of public rights-of-way within 120 days.
- Propose and seek comment on limiting 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 and establish safe harbor fee levels that presumptively comport with that standard.
- Propose and seek comment on requiring that the value of in-kind compensation demanded by state and local governments count toward any safe harbor fee levels adopted by the Commission.
- Propose and seek comment on prohibiting state and local governments from imposing additional requirements on wireline telecommunications infrastructure deployments on the grounds that the infrastructure may be used to provide other services.
- Invite comment on the Commission’s authority to enact these proposals.

---

\*This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 25-253, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

NOTICE OF PROPOSED RULEMAKING\*

Adopted: [] Released: []

Comment Date: [45 days after publication in the Federal Register]
Reply Comment Date: [90 days after publication in the Federal Register]

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 5
III. NOTICE OF PROPOSED RULEMAKING ..... 11
A. Establishing a Deadline for State and Local Governments to Act on Wireline
Telecommunications Authorization Requests ..... 12
B. Establishing a Standard for State and Local Fees That Complies with Section 253 ..... 12
C. Requiring In-Kind Contributions to Comply with Section 253 ..... 61
D. Applying the Deadline and Fee Standard to Commingled Facilities..... 66
E. Legal Authority..... 71
IV. PROCEDURAL MATTERS..... 73
V. ORDERING CLAUSES..... 81
APPENDIX A – INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. Today, we advance our Build America Agenda by proposing rules that would eliminate state and local requirements that constrain the deployment of modern high-speed wireline infrastructure by burying providers in red tape and excessive fees. To reach consumers, providers of wireline

\* This document has been circulated for tentative consideration by the Commission at its June open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

telecommunications services must obtain authorizations from state and local governments to access and use public rights-of-way. This process often involves protracted review of authorization applications that may undergo multiple levels of approval within a single state or local jurisdiction and require providers to remit significant fees and other forms of compensation as a condition of access. While some state and local governments strive to work with providers to expedite authorization reviews and assess reasonable fees, others impose requirements that excessively delay approvals and seek to extract exorbitant sums from providers, resulting in costs that render some deployments infeasible—either in the jurisdiction where the excessive requirements were imposed or due to the need to cancel, scale back, or postpone deployments in other jurisdictions in order to divert resources to cover unexpected and unbudgeted costs.<sup>1</sup>

2. Cognizant of the challenges that providers face in deploying telecommunications infrastructure, the Commission took steps in 2018 to streamline regulations impacting high-speed services.<sup>2</sup> Owing to these efforts, private industry made enormous capital investments in communications infrastructure, including a record-high \$94.7 billion in communications infrastructure in 2023 alone.<sup>3</sup> These investments in expanding and upgrading networks have enabled America’s transition to advanced communications technologies, including high-speed fiber-to-the-premises connections and IP-based voice services provisioned over broadband facilities, and away from slower copper-based services.<sup>4</sup>

3. Despite these efforts, providers have continued to advise the Commission that providers of wireline telecommunications services continue to face onerous state and local requirements when they seek authorizations to provide service and deploy wireline telecommunications infrastructure, to the point that some projects completely stall and are abandoned. In September 2025, the Commission released a Notice of Inquiry to examine these requirements and whether they effectively prohibit the provision of wireline telecommunications services in violation of Section 253 of the Communications Act (Act).<sup>5</sup> The record developed in response the *2025 Notice of Inquiry* supports that additional action by the Commission is needed to prevent excessive delays, fees, and other conditions imposed by state and local requirements from creating barriers to wireline telecommunications deployments.

4. Accordingly, in this Notice of Proposed Rulemaking, we propose and seek comment on actions that the Commission could take that would limit processing times and fees for state and local authorizations that constrain deployment of wireline infrastructure in violation of Section 253 of the Act.

---

<sup>1</sup> A recent study by the Fiber Broadband Association notes that providers “with higher permitting burdens reported longer than-usual delays in securing approvals, which pushed back timelines and increased costs. Permitting delays tend to have a domino effect on other project cost components, introducing uncertainty that further inflates planning costs and timelines.” Fiber Broadband Association, *Fiber Deployment Cost Annual Report*, at 24, 27 (2025) (noting that “unforeseen requirements and permitting delays [are] frequently cited as key factors resulting in higher deployment costs”).

<sup>2</sup> 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 (2018) (*Moratoria Order*), *aff’d* *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020) (*City of Portland*); *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 (2018) (*Small Cell Order*), *aff’d in pertinent part*, *City of Portland*, 969 F.3d 1020 (9th Cir. 2020).

<sup>3</sup> See USTelecom—The Broadband Association, 2023 Broadband Capex Report, <https://ustelecom.org/research/2023-ustelecom-broadband-capex-report/> (last visited Mar. 19, 2025).

<sup>4</sup> See *Communications Market Place Report*, GN Docket No. 24-119, 39 FCC Rcd 14116, 14126, 141233, paras. 16-17, 156 (2024); FCC, Office of Economics and Analytics, Voice Telephone Services: Status as of June 30, 2024 at 2-3 (May 2025), <https://docs.fcc.gov/public/attachments/DOC-411462A1.pdf>; FCC, Industry Analysis and Technology Division, Voice Telephone Services: Status as of June 30, 2016 at 2-3 (2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344500A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf).

<sup>5</sup> *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (Sept. 30, 2025) (*2025 Notice of Inquiry*).

Specifically, we seek comment on codifying rules that would: (1) establish a rebuttable presumption that state and local governments have effectively prohibited the provision of wireline telecommunications services if they fail to process all authorizations for use of public rights-of-way to provide wireline telecommunications services or to deploy wireline telecommunications infrastructure within 120 days; (2) 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 and establish safe harbor fee levels that presumptively comport with that standard; (3) require that the value of in-kind compensation demanded by state and local governments count toward any safe harbor fee levels adopted by the Commission; and (4) prohibit state and local governments from imposing additional requirements on wireline telecommunications infrastructure deployments on the grounds that the infrastructure may be used to provide other services. We also seek comment on the Commission's authority to enact the proposals set forth in this *Notice of Proposed Rulemaking*.

## II. BACKGROUND

5. Congress adopted the Telecommunications Act of 1996 “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>6</sup> To implement this national policy favoring local competition,<sup>7</sup> Congress enacted Section 253(a), which specifies that “[n]o 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.”<sup>8</sup> This statute establishes “a rule of preemption” that “articulates a reasonably broad limitation on state and local governments’ authority to regulate telecommunications providers,”<sup>9</sup> and prevents them “from standing in the way of Congress’s new free market vision.”<sup>10</sup>

6. A state or local statute, regulation, or legal requirement that violates Section 253(a) will be deemed lawful only if it qualifies for one of the exceptions contained in Sections 253(b) and (c) of the Act. Section 253(b) provides that statutes, regulations, and legal requirements are not preempted if they are competitively neutral and, consistent with Section 254 of the Act, “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of

---

<sup>6</sup> Telecommunications Act of 1996 (the Act), Pub. L. No. 104-104 pmb1., 110 Stat. 56, 56; *see also* S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Conference Report) (describing the purpose of the Telecommunications Act of 1996 as “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . .”).

<sup>7</sup> *See Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 638 (2002) (stating that the 1996 Act “created a new telecommunications regime designed to foster competition in local telephone markets”); *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 371 (1999) (stating that “[u]ntil the 1990’s, local phone service was thought to be a natural monopoly,” but then “[t]echnological advances . . . made competition among multiple providers of local service seem possible, and Congress recently ended the longstanding regime of state-sanctioned monopolies”); *Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 476 (2002) (stating that provisions of the Act were “intended to eliminate the monopolies enjoyed by the inheritors of AT&T’s local franchises; this objective was considered both an end in itself and an important step toward the Act’s other goals of boosting competition in broader markets and revising the mandate to provide universal telephone service”).

<sup>8</sup> 47 U.S.C. § 253(a).

<sup>9</sup> *Level 3 Commc’ns, L.L.C. v. City of St. Louis Mo.*, 477 F.3d 528, 531-32 (8th Cir. 2007).

<sup>10</sup> *Cablevision of Bos., Inc. v. Pub. Improvement Comm’n of City of Bos.*, 184 F.3d 88, 98 (1st Cir. 1999); *see also Sprint Telephony PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 576 (9th Cir. 2008) (stating that Section 253(a) “preempts state and local regulations that maintain the monopoly status of a telecommunications service provider”).

telecommunications services, and safeguard the rights of consumers.”<sup>11</sup> Section 253(c) provides that nothing in Section 253 “affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”<sup>12</sup> Section 253(d) requires the Commission, after notice and an opportunity for public comment, to preempt the enforcement of specific state or local requirements that violate Section 253(a) or (b) to “the extent necessary to correct such violation or inconsistency.”<sup>13</sup>

7. In August 2018, the Commission released the *Moratoria Order*, which declared that state or local statutes, regulations, or other written legal requirements that expressly prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities (i.e., express moratoria) are unlawful under Section 253.<sup>14</sup> The Commission also determined that *de facto* moratoria that are not formally codified by state or local governments as outright prohibitions, but that nonetheless prohibit or effectively prohibit the provision of telecommunications services through indefinite or unreasonable delays in the processing of applications or issuance of permits, are unlawful under Section 253.<sup>15</sup>

8. In September 2018, the Commission released the *Small Cell Order*, which, in pertinent part: (1) reaffirmed that state or local statutes, regulations, and legal requirements have the effect of prohibiting the provision of telecommunications services in violation of Section 253(a) when they materially inhibit or limit the ability of any competitor to compete in a fair and balanced legal and regulatory environment;<sup>16</sup> (2) extended that interpretation of “have the effect of prohibiting” to section

---

<sup>11</sup> 47 U.S.C. §§ 253(b), 254.

<sup>12</sup> 47 U.S.C. § 253(c).

<sup>13</sup> 47 U.S.C. § 253(d). The Commission has exercised the authority in Section 253(d) to preempt specific state and local statutes, regulations, and legal requirements that, for example, granted exclusive franchises and licenses to provide telecommunications services; imposed build-out obligations on certain providers that restricted the means or facilities through which a provider was permitted to provide service and imposed financial burdens that effectively prohibited service; protected rural incumbents from competition; and imposed duplicative fees for use of public rights-of-way. See *Classic Tel., Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13091-104, paras. 17-42 (1996); *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3466, para. 13 (1997) (*Public Utility Comm’n of Texas*); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15656-58, paras. 38, 42 (1997), *aff’d sub nom. RT Commc’ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000); *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5887-88, paras. 25-26 (2017); see also *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, 12821-26, paras. 25-26, 28, 31, 36 (WCB 2020) (*Bluebird Order*).

<sup>14</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket Not. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7777-80, 7782, paras. 145-48, 153 (2018) (*Moratoria Order*).

<sup>15</sup> See *Moratoria Order*, 33 FCC Rcd at 7780-82, paras. 149-53.

<sup>16</sup> *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, 9104-05, paras. 35, 37 (2018) (*Small Cell Order*), *aff’d in pertinent part, City of Portland*, 969 F.3d 1020 (9th Cir. 2020).

332(c)(7)(B)(i)(II) of the Act, which precludes state and local regulations for the placement, construction, and modification of personal wireless facilities that prohibit or have the effect of prohibiting the provision of personal wireless services;<sup>17</sup> and (3) established a standard for when fees charged by state and local governments to access rights-of-way or government-owned property in rights-of-way for Small Wireless Facility deployments have the effect of prohibiting the provision of service in violation of Section 253(a) and Section 332(c)(7)(B)(i)(II).<sup>18</sup> The Commission also updated the shot clocks that were originally established in 2009 to implement language in Section 332 requiring state and local governments to act on requests for authorization to “place, construct, or modify personal wireless service facilities within a reasonable period of time.”<sup>19</sup>

9. In August 2020, the U.S. Court of Appeals for the Ninth Circuit upheld the actions taken by the Commission in the *Moratoria Order* and the *Small Cell Order* as described above.<sup>20</sup>

10. In September 2025, the Commission released the *2025 Notice of Inquiry* to examine how it could further reduce red tape created by state and local regulations that continue to inhibit the provision of wireline telecommunications services and deployments. Specifically, the *2025 Notice of Inquiry* sought comment on: (1) the delays encountered by providers<sup>21</sup> seeking authorizations to access and use

---

<sup>17</sup> See *Small Cell Order*, 33 FCC Rcd at 9103, para. 36; 47 U.S.C. § 332(c)(7)(B)(i)(II) (“The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”).

<sup>18</sup> See *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50.

<sup>19</sup> *Id.* at 9142-47, paras. 105-12; 47 U.S.C. § 332(c)(7)(B)(ii). The Commission’s shot clocks establish a presumptively “reasonable period of time” for the government to act, after which state or local inaction on wireless infrastructure siting applications constitute a presumptive “failure to act” within the meaning of section 332. *Small Cell Order*, 33 FCC Rcd at 9094, para. 19. In the *Small Cell Order*, the Commission expanded the shot clocks to apply to all permitting decisions and updated them to allow 60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. *Id.* at 9142-45, paras. 105-08. State and local governments retain the ability to rebut a presumed statutory violation by showing that the authorization request legitimately required more processing time. *Id.* at 9145, para. 109. The Commission also determined that a failure to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods established by the shot clocks constitutes a presumptive prohibition of the provision of personal wireless services within the meaning of section 332(c)(7)(B)(i)(II) of the Act. *Id.* at 9148-49, paras. 116-19.

<sup>20</sup> *City of Portland v. United States*, 969 F.3d 1020, 1035, 1038-39, 1043-45, 1048-49, 1053 (9th Cir. 2020) (*City of Portland*). In the *Small Cell Order*, the Commission determined that aesthetic requirements applicable to Small Wireless Facilities are only permissible if they are: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance. *Small Cell Order*, 33 FCC Rcd at 9130-32, paras. 84-88. In *City of Portland*, the Ninth Circuit vacated the latter two criteria. *City of Portland*, 969 F.3d at 1041-43, 1053.

<sup>21</sup> Section 253 applies to “the ability of any entity” to provide telecommunications service. 47 U.S.C. § 253(a). Accordingly, we use the term “provider” to refer to any entities that provide telecommunications services directly to consumers as well as those that deploy infrastructure with the ability to provide telecommunications services. See *Crown Castle Fiber, L.L.C. v. City of Pasadena, Texas*, 76 F.4th 425, 436 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 820 (2024) (“It is evident that Crown Castle sells its services to the public by establishing the infrastructure to enable T-Mobile to provide wireless service and to transmit T-Mobile’s voice and data signals across its network. T-Mobile is undoubtedly a common carrier, and Crown Castle, through its network and infrastructure contract, fits neatly within the protective umbrella of § 253(a.)”); *Public Utility Comm’n of Texas*, 13 FCC Rcd at 3496, para. 74 (finding that “section 253(a) bars state or local requirements that restrict the means or facilities through which a party is permitted to provide service”); *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket No. 98-1, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21705, para. 14 (1999) (Minnesota Order) (applying Section 253 to a state’s agreement with an infrastructure developer because the

(continued....)

state and local public rights-of-way to provide wireline telecommunications services;<sup>22</sup> (2) the fees imposed by state and local governments when providers seek such authorizations;<sup>23</sup> (3) the in-kind compensation demanded by state and local governments as a condition of obtaining authorization approvals; and (4) whether the delays, fees, and in-kind compensation demands identified by commenters prohibit or have the effect of prohibiting the provision of wireline telecommunications services in violation of Section 253. The Commission also sought comment on requirements that state and local governments may impose on additional services provided over wireline telecommunications infrastructure on a commingled basis<sup>24</sup> and the Commission's legal authority to act under Section 253, including a tentative conclusion that the Commission possesses authority to adopt rules that codify standards for when requirements imposed by state and local governments presumptively violate Section 253.<sup>25</sup>

### III. NOTICE OF PROPOSED RULEMAKING

11. The record developed in response to the *2025 Notice of Inquiry* shows that while some state and local governments have implemented effective and efficient requirements for issuing the authorizations that providers need to access and use public rights-of-way to provide wireline telecommunications services, many others are imposing requirements that cause deployments to be scaled back or abandoned altogether due to excessive delays, fees, or other onerous conditions. The record is also clear that the barriers created by such state and local governments have a ripple effect, with excessive delays, fees, and conditions in one jurisdiction impacting a provider's ability to complete a deployment and provide services in other jurisdictions.<sup>26</sup> It is therefore essential that all state and local governments

(Continued from previous page) \_\_\_\_\_

operative inquiry is whether the state's action has an effect on the provision of telecommunications services); *Moratoria Order*, 33 FCC Rcd at 7777, para. 145 n.531.

<sup>22</sup> *2025 Notice of Inquiry* at 8-17, paras. 10-30. In this Notice of Proposed Rulemaking, we use the term "authorization" to refer to any type of authorization a state or local government may require for a provider to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure, including permits and right-of-way agreements. We use the term "right-of-way agreement" to refer to licenses, franchises, or any other contract that a state or local government may require providers to obtain to access and use public rights-of-way. Cable franchises regulated pursuant to Title VI of the Act are not the focus of this Notice of Proposed Rulemaking.

<sup>23</sup> *2025 Notice of Inquiry* at 17-25, paras. 31-49.

<sup>24</sup> *Id.* at 27, para. 55.

<sup>25</sup> *Id.* at 28, paras. 56-58. The Commission also invited broad comment on other types of state and local requirements that may violate Section 253, including any specific state and local statutes, regulations, or legal requirements that the Commission should review if we decide to commence a preemption proceeding *sua sponte*. *Id.* at 27, para. 54. We are evaluating allegations in the record concerning certain specific state and local government requirements to determine whether a *sua sponte* preemption proceeding under Section 253(d) would be appropriate.

<sup>26</sup> *See, e.g.*, Crown Castle Fiber LLC Comments at 17-18 ("For example, the Commission's recognition that high fees in one jurisdiction can prevent deployment in other jurisdictions is equally, if not more, true in the fiber network context. Fiber optic networks and services are not constrained to specific local government boundaries. They commonly extend across multiple cities and even regions. The fees and other requirements that one local government imposes will potentially impact deployment in untold surrounding localities."); INCOMPAS Comments at 14-15 ("Moreover, having predictable fee caps will greatly aid providers in planning multi-jurisdictional fiber builds, as it removes uncertainty and outlier costs that can derail project budgets."); NTCA Comments at 9-10 (discussing how delays cause, among other things, construction crews to sit idle and physical assets to be functionally lost, wasting resources that "could have otherwise been used to connect consumers elsewhere"); T-Mobile Comments at 10 ("But even when the company can proceed with the buildout, the per-foot fees introduce significant costs that materially inhibit deployment plans and can limit the ability to deploy in other areas."); USTelecom Comments at 14 (arguing that "[a] uniform timeline in the wireline context would reduce uncertainty, particularly for projects that span multiple jurisdictions"); INCOMPAS Reply at 9-10 (noting that "the harm [caused by delays] is often not limited to the immediate project").

take action to ensure that their statutes, regulations, and other legal requirements do not effectively prohibit the provision of wireline telecommunications services in violation of Congress's direction in Section 253. As the expert agency charged with administering the Communications Act and Section 253 specifically, we adopt this *Notice of Proposed Rulemaking* to propose and seek comment on rules that would establish standards for compliance with the statute. In particular, we propose and seek comment on rules that would require state and local governments to process applications to access and use public rights-of-way in a timely manner and to limit their fees and other demands as necessary to avoid prohibitive financial burdens.

**A. Establishing a Deadline for State and Local Governments to Act on Wireline Telecommunications Authorization Requests**

12. We propose to adopt a presumption that any failure by a state or local government to act by a specified deadline on all applications for authorizations to access and use public rights of way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure constitutes an effective prohibition that violates Section 253(a) and does not qualify for the savings clauses in Sections 253(b) and (c). While comments filed in response to the *2025 Notice of Inquiry* show that some state and local governments have established procedures to review and approve authorization applications in a timely manner,<sup>27</sup> others can often take months or even years to complete reviews.<sup>28</sup> This can result in wireline telecommunications deployments and service offerings being canceled, delayed, or scaled back. For example, Intrepid describes the difficulties it has experienced when seeking construction permits and other authorization approvals from localities in Illinois, Minnesota, Massachusetts, and Colorado, and it details how various local requirements have delayed its projects by months to years.<sup>29</sup> Crown Castle states that it has faced extensive delays in obtaining authorizations from the City of Los Angeles, California, "where the average time to receive a permit from the Department of Transportation for installation of underground fiber facilities is nine months."<sup>30</sup> It also describes enduring protracted processes for obtaining right-of-way agreements from localities, such as the Village of Itasca, Illinois, which offered to supply a model right-of-way agreement but did not do so, and then failed to communicate with Crown Castle about draft agreements that Crown Castle provided in an effort to expedite the process.<sup>31</sup> WISPA reports that it can take months or years to obtain authorizations, which

---

<sup>27</sup> See FBA Comments at 4 (stating that the City of Leawood, Kansas, "processes complete applications within one to two business days using digital tracking tools, exemplify[ing] how collaboration and well-structured processes can meaningfully accelerate deployment"); Colorado–Washington Coalition *et al.* Reply at 19-33; INCOMPAS Reply at 27 (asserting that "[t]he record demonstrates that many jurisdictions can act quickly when they choose to"); NTCA Reply at 8-10 (citing examples that "demonstrate that states and localities can effectively review wireline telecommunications providers' ROW and permitting applications within a reasonable, clearly identified timeframe"); Letter from Brian Hurley, Senior Vice President of Legal and Regulatory Affairs, ACA Connects, to Marlene H. Dortch, FCC, WC Docket Nos. 17-84, 25-253, at 3 (filed Mar. 9, 2026) (stating that "Members find that most state and local government agencies are responsive to their requests to obtain reasonable and timely access to public rights-of-way and public infrastructure").

<sup>28</sup> See, e.g., ACA Connects Comments at 15-16; Crown Castle Fiber LLC Comments at 12-13; INCOMPAS Comments at 5-6 & Appx. A; Intrepid Comments at 5-8; FBA Comments at 2-3; NCTA Comment at 12-13; Neptunomedia, Inc. Comments at 2-4; T-Mobile Comments at 7-9; USTelecom Comments at 4-8; WTA Comments at 5-9; AVX Networks LLC Reply at 1-4; NTCA Reply at 9-10; USTelecom Reply at 4-5; WISPA Reply at 3-5. *But see* California Public Utilities Commission Reply at 3-5; City of Ann Arbor Reply at 3-9; Colorado–Washington Coalition *et al.* Reply at 10-16; League of Oregon Cities Reply at 4-5; Minnesota LFAs Reply at 9.

<sup>29</sup> Intrepid Comments at 5-8. *But see* Minnesota LFAs Reply at 9 (arguing that Intrepid "failed to acknowledge that it took months for Intrepid to properly complete a permit application[] and that the City never stopped communicating with Intrepid").

<sup>30</sup> Crown Castle Fiber LLC Comments at 12.

<sup>31</sup> *Id.* at 13.

presents a particular challenge in localities such as Ottawa County, Ohio, where permits, when finally granted, remain valid for only 90 days.<sup>32</sup> WISPA explains that delays associated with authorization approvals makes it extremely difficult for providers to plan and schedule the work needed to complete a project within that 90-day timeframe.<sup>33</sup> T-Mobile describes a city in Ohio where fiber construction “requires 13 different departments with 70 different individuals to review a single application,” resulting in myriad delays that hinder deployments.<sup>34</sup>

13. Examples such as these illustrate how wireline telecommunications deployments can become mired in red tape for years when state and local governments fail to act on authorization requests in a timely manner, and how such delays can squander provider resources and constrain deployments across the nation.<sup>35</sup> We therefore believe it is necessary and appropriate for the Commission to propose and seek comment on rules that will place presumptive limits on the time that state and local governments may take to review and act on authorization requests. We base our proposal on the point that excessive delays presumptively constitute an effective prohibition that Congress has deemed unlawful under Section 253.

14. *Establishing a Presumptive Deadline to Act Under Section 253(a).* Courts and the Commission have recognized that excessive delays in processing and approving applications for authorizations can effectively prohibit the provision of telecommunications services in violation of Section 253(a).<sup>36</sup> Given the record evidence of excessive delays described above, the barriers they create to wireline telecommunications infrastructure and services, and the significant support in the record for addressing those barriers through the establishment of a deadline,<sup>37</sup> we propose to identify the point at which a delay by a state or local government to act on a required authorization is so excessive that it can be presumed to constitute an effective prohibition that violates Section 253(a). We seek comment on this approach.

15. Do commenters agree that the Commission’s authority under Section 253(a) allows the

---

<sup>32</sup> WISPA Comments at 3; *see also* USTelecom Comments at 4 (“ROW permits are typically granted for limited periods—between 90 and 365 days—and some include deadlines by which construction must begin[.]”).

<sup>33</sup> WISPA Comments at 3.

<sup>34</sup> T-Mobile Comments at 7-8.

<sup>35</sup> *See* ITIF Comments at 2-3.

<sup>36</sup> The Commission has stated that “in certain circumstances, a failure by a local government to process a franchise application in due course may ‘have the effect of prohibiting’ the ability of the applicant to provide telecommunications service, in contravention of section 253.” *Classic Tel., Inc., Petition for Emergency Relief, Sanctions and Investigation*, CCBPol 96-10, Memorandum Opinion and Order, 12 FCC Rcd 15619, 15635, para. 28 (1997) (“[R]egulatory delays may threaten the viability of financing arrangements for new entry or transactions for the purchase of existing facilities. Such results would seriously undermine the development of local competition, and run counter to Congress’ procompetitive goals in the 1996 Act.”). Some courts have also found that excessive delays in processing a franchise agreement can constitute an effective prohibition under Section 253. For instance, the Second Circuit found that “the extensive delays in processing TCG’s request for a franchise have prohibited TCG from providing service for the duration of the delays.” *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (*City of White Plains*). In that case, the delay “spann[ed] over seven years since TCG’s initial request in 1992, one [and] a half years since TCG’s first request after the promulgation of the Ordinance [at issue in the case] and more than half a year since TCG’s re-application in February 1999.” *TCG New York, Inc. v. City of White Plains, N.Y.*, 125 F. Supp. 2d 81, 89 (S.D.N.Y. 2000), *aff’d in part, rev’d in part sub nom. City of White Plains*.

<sup>37</sup> *See* ACA Connects Comments at 20-21; Crown Castle Fiber LLC Comments at 12-15; INCOMPAS Comments at 6; Midwest Energy & Communications Comments at 5-6; NCTA Comments at 8; NTCA Comments at 10-11; US Telecom Comments at 14-15; *see also* U.S. Chamber of Commerce Comments at 3; Free State Foundation Comments at 5; ITIF Comments at 3.

Commission to establish a deadline for when a failure to act by state and local governments can be presumed to effectively prohibit the provision of wireline telecommunications services? In the *Small Cell Order*, the Commission determined that violations of the shot clocks applicable to Small Wireless Facilities<sup>38</sup> presumptively constitute an effective prohibition under Section 332(c)(7)(B)(i)(II) of the Act, which uses similar language in the context of the placement, construction, and modification of commercial mobile services and facilities.<sup>39</sup> Several commenters responding to the *2025 Notice of Inquiry* argue that, given the comparable language and purposes of Section 253 and Section 332, it is appropriate to construe Section 253 to similarly authorize limits on the time that state and local governments may take to review and act on wireline telecommunications authorization requests.<sup>40</sup> Commenters also suggest that, in the absence of such limits, state and local governments can erect barriers to entry and restrain competition simply by delaying authorization reviews,<sup>41</sup> in direct contravention of Congress's intent when it enacted Section 253. Are these arguments consistent with the best reading of Section 253(a)? Are there additional arguments that would support the establishment of a deadline for when state and local governments' failures to act on wireline telecommunications authorization requests presumptively prohibit telecommunications service under Section 253(a)?

16. State and local government commenters that responded to the *2025 Notice of Inquiry* generally oppose the establishment of a deadline under Section 253(a).<sup>42</sup> In particular, they note that the shot clocks that the Commission established for Small Wireless Facilities implement language in Section 332 that does not exist in Section 253.<sup>43</sup> Specifically, Section 332 contains a requirement that state and local governments "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality[.]"<sup>44</sup> Some state and local government commenters argue that if Congress intended shot clocks to be established under an effective prohibition standard, which exists in both Section 253(a) and Section 332(c)(7)(B)(i)(II), it would not have enacted the separate requirement in Section 332(c)(7)(B)(ii) that state and local governments act "within a reasonable period of time," i.e., that establishing a deadline for state and local governments to act under Section 253(a) or Section 332(c)(7)(B)(i)(II) would render

---

<sup>38</sup> For the purposes of this Notice of Proposed Rulemaking, the term "Small Wireless Facilities" has the same meaning as the definition in section 1.6002(l) of the Commission's rules. 47 CFR § 1.6002(l).

<sup>39</sup> *Small Cell Order*, 33 FCC Rcd at 9148, paras. 116, 118 ("[W]e also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods . . . State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II)."); 47 U.S.C. § 332(c)(7)(B)(i)(II) ("The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.").

<sup>40</sup> See ACA Connects Comments at 21; ITIF Comments at 3; Crown Castle Fiber LLC Comments at 10.

<sup>41</sup> See Crown Castle Fiber LLC Reply at 6 ("There is troubling evidence in the record of local governments using delay to inhibit competition . . ."); AVX Networks LLC Reply at 5 ("Without enforceable deadlines, municipalities can effectively veto federal broadband policy through simple inaction.").

<sup>42</sup> See City of Ann Arbor Reply at 12; City of Arlington Comments at 4-5; City of Dallas Comments at 2; League of California Cities Comments at 3; Local Government Associations Comments at 6-7; NATaT Comments at 4; Pennsylvania State Associations of Township Supervisors Comments at 2. *But see* Village of Schaumburg Comments at 2 ("The Village supports reasonable processing timelines but urges the Commission to begin any timing benchmark only after an application is deemed complete.").

<sup>43</sup> See, e.g., NATaT Comments at 12; League of Oregon Cities Comments at 9; City of Ann Arbor Reply at 12; Local Community Coalition Reply at 6.

<sup>44</sup> 47 U.S.C. § 332(c)(7)(B)(ii).

Section 332(c)(7)(B)(ii) superfluous.<sup>45</sup> Do other commenters agree? Does the fact that Congress adopted a specific requirement in Section 332 for state and local governments to act within a reasonable period of time with respect to wireless siting applications suggest that it did not intend to subject state and local governments to a deadline if the requirements and procedures they impose result in prohibitive delays within the meaning of Section 253(a)? Could the “reasonable period of time” requirement in Section 332(c)(7)(B)(ii) simply impose a more specific standard for wireless siting applications than the effective prohibition standard in Section 253(a), which sweeps more broadly to reach all telecommunications services? Does the fact that we propose to establish a deadline based on the point at which delays in approving authorizations can be safely presumed to effectively prohibit the provision of wireline telecommunications services—not the “reasonable period of time” standard in Section 332—render the arguments presented by state and local governments concerning the textual differences between Section 253 and Section 332 moot? Are there any other arguments that the Commission should consider when determining whether to establish a deadline under the effective prohibition standard in Section 253(a)?<sup>46</sup>

17. *Timeframe.* We propose to establish 120 days from the date that an application for an authorization is submitted as the deadline by which state and local governments must ordinarily—subject to possible exceptions discussed below<sup>47</sup>—act on all applications for authorizations needed to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure. Comments that favor establishing a deadline propose timeframes ranging from 30 to 150 days, at times contingent on the type of authorization in question (e.g., a permit versus a right-of-way agreement) or the nature of the deployment.<sup>48</sup> As discussed above, our proposed standard is designed to guard against “effective prohibitions” as contemplated by Section 253(a). As such, the deadline we propose to choose is 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. The record does not show that the lower range of deadlines proposed by commenters would meet that standard. We tentatively conclude based on the existing record, however, that delays that exceed several months routinely have a prohibitive effect by increasing the costs of the deployments and generating uncertainty that requires providers to cancel, postpone, or scale back their investments in certain projects.<sup>49</sup> We thus believe that setting the deadline at 120 days—a

---

<sup>45</sup> See NATaT Comments at 9; City of Ann Arbor Reply at 11-13; League of Oregon Cities Reply at 24-25; Local Community Coalition Reply at 6-7.

<sup>46</sup> We seek comment on concerns expressed by state and local government commenters about the impacts of adopting a deadline below.

<sup>47</sup> See *infra* paras. 25-26.

<sup>48</sup> See, e.g., ACA Connects Comments at 20-21 (advocating for 60-day and 90-day shot clocks); Free State Foundation Comments at 5 (arguing for 120 days “as the period of time in which local governments should act on wireline permit applications involving rights-of-way,” or if opting “for a longer time period,” not more than 150 days); INCOMPAS Comments at 6 (“[T]he Commission should require that all applications and documentation related to a wireline deployment project be reviewed and approved or denied within 30 days of submission.”); Intrepid Comments at 14 (proposing a 150-day shot clock period for agreements and a 45-day shot clock for state and local review of permits); NCTA Comment at 8 (suggesting that the Commission provide a 150-day time limit for new infrastructure or 90 days for deployments on existing structures); NTCA Comments at 10-11 (arguing that applications should be processed within a maximum of 90 days); USTelecom Comments at 14-15 (contending that no more than 60 days should be presumed reasonable for standard broadband construction permits and 90 days for complex or multi-jurisdictional projects); WTA Comments at 2 (suggesting 90 days is sufficient); ExteNet Systems, LLC Reply at 4 (encouraging the Commission “to deem applications approved no more than 90 days after they are submitted”).

<sup>49</sup> See, e.g., ACA Connects Comments at 16 (“In the worst cases of excessive delays, our Members will walk away from planned deployment projects and redirect their limited capital elsewhere.”); Crown Castle Fiber LLC Comments at 12 (“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.”); NCTA Comments at 9-10 (“Moreover, even

(continued....)

deadline closer to the longer time periods proposed in the record—is consistent with Congress’s intent to preclude state and local requirements from having a prohibitive effect on the provision of telecommunications services.<sup>50</sup> Notably, the record indicates that a number of state and local governments are already striving to process applications for authorizations to access and use public rights-of-way in significantly less time than 120 days,<sup>51</sup> suggesting that our proposed deadline would appropriately target only those state and local governments engaging in review practices that have a presumptively prohibitive effect within the meaning of Section 253(a). We seek comment on our tentative findings concerning the prohibitive effect of delays longer than 120 days and on this proposed approach.<sup>52</sup>

18. Do commenters agree that the proposed 120-day deadline reflects the point at which a delay in acting on a request to access and use public rights-of-way to provide wireline telecommunications services can be presumed to have a prohibitive effect? Does this timeframe accurately reflect the point at which delays impede the ability of providers to invest in and complete deployments? Is a shorter or longer time period more appropriate? We seek detailed comment on when it becomes nonviable for a provider to wait for authorizations and how a provider makes such determinations. Given the extent of planning required to deploy wireline telecommunications infrastructure and the need to muster resources well in advance,<sup>53</sup> at what point does a provider need an

(Continued from previous page) \_\_\_\_\_

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.”); ExteNet Systems, LLC Reply at 4 (“Even when approval is finally granted, the damage of months- or years- long delays results in change in build projects and even project termination.”); INCOMPAS Reply at 9-10 (describing how “even when permits are eventually granted [after several months,] the delays and permitting barriers can cause projects to become financially unsustainable”).

<sup>50</sup> We note that franchising authorities must act on a competitive cable franchise application within 90 or 180 days, depending on whether the competitive applicant already has access to the right-of-way to provide a non-cable service. *See* 47 CFR § 76.41; *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5133-5140, paras. 65-81 (2007). The deadline is calculated from the date that the applicant files an application that includes information required by our regulation, and if a franchising authority fails to act within the allotted time, the franchising authority is deemed to have granted the application on an interim basis, under which the applicant may begin providing service. *Id.*

<sup>51</sup> *See infra* para. 23 & n.73; *see also* City of San Luis Obispo Reply at 1 (“[California] already operates under a comprehensive statewide franchise system (DIVCA) that grants providers streamlined access to the PROW, includes a 60-day permit timeline, and requires cities to apply rules equally to all carriers. . . . In San Luis Obispo, PROW permitting is efficient, transparent, and predictable. 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.”); USTelecom Comments at 17 (describing state programs in Wisconsin, Tennessee, and Indiana that require action to be taken on certain applications for authorizations within 10, 30, or 60 days).

<sup>52</sup> We seek comment on whether 120 days is sufficient for state and local governments to perform the responsibilities identified in sections 253(b) and (c) of the Act below.

<sup>53</sup> *See* NTCA Comments at 9-10 (“Abandoning a project after the engineering and design has taken place, necessary physical assets have been procured (fiber, etc) and agreements with contractors have been signed is an inarguable waste of capital. Moreover, even delays of several months that do not result in project abandonment can have a negative impact on deployment costs. Where delays result in the loss of a construction contractor, additional costs must be incurred to locate and retain a new one. Where delays result in in-house construction crews sitting idle, these are costs that yield no benefit in terms of network deployment. 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. In other words, a delay that leaves fewer consumers connected is

(continued....)

answer, including a possible denial, before it decides to forego or scale back a given project? How does the size of the provider or the extent of the project affect this analysis? We ask that commenters submit specific examples to the Commission of projects that have been canceled, postponed, or reduced in scope as a result of delays created by state and local requirements, with references to specific state and local requirements and the specific point in time that they made the decision to cancel, postpone, or reduce the project (e.g., 120 days, 365 days).<sup>54</sup> Was the decision to cancel, postpone, or reduce the project because of costs associated with the longer review? If so, what were those specific costs (e.g., lessened return on investment, penalties under contracts, lost funding from federal and state programs, customer churn)?<sup>55</sup>

19. We propose that the 120-day time period start when a provider submits a written application for an authorization, or, if a state or local government requires pre-application steps, when the provider takes the first mandatory procedural step. A number of commenters support such an approach.<sup>56</sup> Do other commenters agree? If commenters disagree, when should the period begin? For example, some state and local government commenters contend that the start of any such timeframe should be the point at which an application is deemed complete.<sup>57</sup> As discussed in more detail below, while some commenters favoring establishing a deadline argue that it should be extended upon discovery of application deficiencies or incompleteness, they further argue that calculating the deadline from the point at which a state or local government deems the application complete could render the deadline meaningless if a state or local government improperly delays that determination.<sup>58</sup> Do commenters agree that requiring completeness would enable gamesmanship by state and local governments to extend their review periods indefinitely, resulting in effective prohibitions? Would requiring completeness before the timeframe begins be inconsistent with the approach that the Commission took to establish shot clocks for Small Wireless Facilities, as Free State Foundation suggests,<sup>59</sup> and if so, what would the consequence of any such inconsistency be? If the Commission were to consider starting the 120-day timeframe on the date that a state or local government deems an application complete, how should the Commission define completeness?<sup>60</sup> Should the Commission consider adopting a rule that requires a state or local

(Continued from previous page) \_\_\_\_\_

every bit as problematic from the perspective of Section 253 as providers being ‘discouraged from filing applications.’”).

<sup>54</sup> See, e.g., ExteNet Systems, LLC Reply at 4 (alluding to how, even after approvals are granted, delays can “result[] in change[s] in build projects and even project termination”).

<sup>55</sup> See, e.g., CableSouth Comments at 7-8 (describing “a series of unconscionable permitting delays,” including a stop work order, that have “caused severe delays in CableSouth’s completion of its RDOF-funded buildout”); ITIF Comments at 2-3 (arguing that “lengthy ROW authorizations consume resources that could otherwise be spent on connectivity” and that these “barriers to cost-effective and timely wireline deployment are exacerbated for federal programs like BEAD and RDOF”); NTCA Reply at 3-4 (discussing how delays can result in providers “miss[ing] key deadlines for federal funding programs” and in construction crews and equipment sitting idle).

<sup>56</sup> See, e.g., Crown Castle Fiber LLC Comments at 15-16; Free State Foundation Comments at 5; USTelecom Comments at 14-15; ACA Connects Reply at 17; WISPA Reply at 5-6; see also Intrepid Comments at 14 (arguing that the period should “begin once the provider reaches out to obtain an agreement” or “once [a] permit is submitted”).

<sup>57</sup> See NATaT Comments at 12; Village of Schaumburg Comments at 2; but see Free State Foundation Comment at 5; USTelecom Reply at 12.

<sup>58</sup> See, e.g., Free State Foundation Comments at 5-6; INCOMPAS Reply at 29; see also Neptunomedia, Inc. Comments at 11-12; NTCA Comments at 10-11.

<sup>59</sup> See Free State Foundation Comments at 5.

<sup>60</sup> See *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 11-59, 13-32, Report and Order, 29 FCC Rcd. 12865, 12971, para. 261 (2014) (“Beyond these procedural requirements, we decline to enumerate what constitutes a ‘complete’ application. We find that . . . State and local governments are best suited to decide what information they need to process an application. Differences between

(continued....)

government to provide an applicant with written notice that their application is incomplete within a certain period of time, with a failure to do so eliminating incompleteness as a basis for rebutting a presumption that an effective prohibition has occurred?<sup>61</sup>

20. *Authorizations Subject to Deadline.* We propose that any and all authorizations that a state or local government may require for a particular use of a particular right-of-way must ordinarily be acted on within the 120-day period that commences when a provider of wireline telecommunications services submits its first application for a required authorization. For instance, if a local government requires that a provider obtain a right-of-way agreement, a construction permit, road closure permits, and additional types of authorizations for a single deployment of wireline telecommunications service infrastructure in a particular right-of-way, the standard we propose would—subject to the possible exceptions discussed below<sup>62</sup>—require that all such authorizations be approved within 120 days of the first request submitted. The record is clear that providers must have a sense of when they will obtain the authorizations needed for their builds to proceed in order to plan and budget for their deployments, as variables such as excessive state and local processing delays can render builds cost prohibitive and the risks of further investment too high.<sup>63</sup> Further, sequential authorization demands that drag out for months, if not years, may delay deployments well beyond the point that we may presume an effective prohibition to have occurred pursuant to the proposals herein.<sup>64</sup> We thus believe the goals of establishing a deadline for state and local governments to act on applications for authorizations that would avoid a presumption that they have violated Section 253 would be best achieved by applying it to all authorizations that the governments may require for a particular deployment in a particular right-of-way, and seek comment on that view.

21. Do commenters agree that the Commission should adopt a single deadline that applies to any and all authorizations that a state or local government may require a wireline telecommunications services provider to obtain for a particular use of a particular right-of-way? Do state and local governments identify all of the authorizations that a provider must obtain for a particular deployment early in the process, such that providers could organize and submit their applications in a manner that would work with the proposed 120-day period? Are there authorizations that must be processed sequentially and that require review periods that would make it impracticable for all authorizations to be reviewed within a single 120-day period? If so, should the 120-day period restart for certain types of

(Continued from previous page) \_\_\_\_\_  
jurisdictions make it impractical for the Commission to specify what information should be included in an application.”).

<sup>61</sup> See Free State Foundation Comments at 5 (“But the clock can be paused if the local government notifies the applicant within 30 days that its application is incomplete or deficient.”); INCOMPAS Reply at 29 (“If a genuine deficiency exists, the jurisdiction should identify it promptly and the clock should resume once the deficiency is cured, not restart from zero.”); USTelecom Reply at 11-12 (“Yet even incomplete applications, whatever their cause, need not materially inhibit deployment if states and localities quickly review applications and alert the applicant of the problem.”).

<sup>62</sup> See *infra* paras. 25-26.

<sup>63</sup> See, e.g., ACA Connects Comments at 16 (“When a reviewing authority fails to communicate any plan or timeline for reviewing an authorization or permitting request, or when the timeline keeps slipping or requirements keep changing, the applicant loses any semblance of certainty or control over its deployment plans. Scheduling work crews becomes a nightmare, and costs rise. There is no way for a provider to sync work efficiently when the locality does not process applications predictably and promptly.”); ExteNet Systems, LLC Reply at 4 (“Fiber deployment planning relies on moving quickly to meet current market demands with evolving technologies.”); see also NCTA Reply at 6-8 (echoing ACA Connects’ comments); Comments of Competitive Fiber Providers, WC Docket No. 17-84, WT Docket No. 17-79, at 6-7 (rec. June 15, 2017) (explaining how providers develop plans “intently focused . . . on the economics of any new broadband project, particularly the period of time before the carrier can be expected to recoup its initial investment” and that uncertainty thus jeopardizes build outs).

<sup>64</sup> See, e.g., USTelecom Reply at 4-5.

authorizations, or should sequential authorization processing be a basis for seeking an extension of the 120-day period?<sup>65</sup> To the extent governments require providers to obtain authorizations from multiple state or local agencies to deploy wireline telecommunications infrastructure within a particular right-of-way, is it feasible for those agencies to coordinate their work to comply with a single 120-day period? If not, why not? What else should the Commission consider when determining whether to require state and local governments to act on all authorizations required for a particular deployment in a particular right-of-way by a single deadline? If commenters propose that the Commission take a different approach, e.g., separate deadlines for different types of authorizations needed for a particular use of a particular right-of-way, we ask that commenters detail how their proposals would function and comport with the effective prohibition standard in Section 253(a).

22. We also seek comment on whether the 120-day period should apply to “batched” applications, i.e., requests for authorizations for multiple deployments within a single jurisdiction.<sup>66</sup> In the *Small Cell Order*, the Commission found that “the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area,” warranted applying the shot clocks applicable to such facilities to batched applications.<sup>67</sup> Do the same considerations apply in the context of deploying infrastructure to provide wireline telecommunications services? Is there sufficient uniformity between the applications for authorizations for multiple deployments within a single jurisdiction to enable state and local governments to efficiently review them all within a single 120-day period, or are there variances between the applications or the locations where the infrastructure is to be deployed that warrant separate review periods?<sup>68</sup> How do state and local governments require providers to structure their applications for authorizations in the wireline context? Are providers required to submit separate applications for each street, sidewalk, or other public right-of-way where they propose to install facilities within a single jurisdiction? Are they required to break their applications down even further (e.g., by city block)? Do any state or local governments allow providers to submit jurisdiction-wide applications? What challenges would state and local governments encounter if they were required to process batched applications within a single 120-day period?

23. *Section 253(b) and (c) Savings Clauses.* We tentatively conclude that 120 days ordinarily provides sufficient time to perform the tasks outlined in Section 253(b) and (c) and seek comment on that view.<sup>69</sup> We acknowledge the safety and other public welfare purposes of the permitting process and the role state and local governments have in managing public rights-of-way to address those concerns.<sup>70</sup>

---

<sup>65</sup> We seek comment on grounds for extending the 120-day period below.

<sup>66</sup> See INCOMPAS Comments at 8 (arguing that any deadline set by the Commission for wireline facilities should, for example, apply to all permit applications across a city for a single fiber project); U.S. Chamber of Commerce Comments at 3 (“Additionally, the Commission should require authorities to process batches of broadband-related franchise or permit applications for substantially similar projects by the same applicant or allow providers to follow an express process for substantially similar projects in adjacent areas after obtaining an initial franchise or permit.”).

<sup>67</sup> *Small Cell Order*, 33 FCC Rcd at 9147-48, paras. 113-15.

<sup>68</sup> *Id.* at 9147-48, para. 114.

<sup>69</sup> 47 U.S.C. § 253(b) (“Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, 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.”), (c) (“Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”).

<sup>70</sup> See League of Oregon Cities Comments at 14-17; Local Government Associations Comments at 3-5; NATaT Comments at 3, 7-10, 12-14; Pennsylvania State Associations of Township Supervisors Comments at 1-2; AWWA Reply at 1-2; Colorado–Washington Coalition *et al.* Reply at 39-41; City of Ann Arbor Reply at 10; City of Fort

(continued....)

Wireline telecommunications deployments can involve excavation, road closures, aerial attachments, and other types of work that impact the public and warrant review consistent with the purposes identified by Congress in Sections 253(b) and (c) of the Act.<sup>71</sup> Nevertheless, we believe that in most circumstances 120 days provides an adequate amount of time to complete that review, as evidenced by comments from both providers and governments stating that authorization requests are often processed in less than 120 days.<sup>72</sup> Indeed, some states that have adopted deadlines for their political subdivisions to process authorizations for wireline deployments have codified much shorter time periods, e.g., 60 days.<sup>73</sup> Further, our proposal to adopt a single deadline based on the point that an effective prohibition can be presumed to have occurred if the provider cannot proceed with its deployment—rather than structured deadlines for each type of authorization that may be required—would allow state and local governments to continue employing the management and review methods that they have deemed necessary for their jurisdictions.<sup>74</sup> That said, we believe it is important to set a definitive point at which the state and local review process must presumptively stop so as to give providers the certainty they need to plan, fund, and implement their deployments, and that our proposal would achieve that critical objective.

24. We seek comment on this approach. Do commenters agree that 120 days provides enough time for state and local governments to carry out the tasks set forth in Section 253(b) and (c)?<sup>75</sup> If not, what specific tasks would state and local governments not be able to complete within that timeframe (e.g., inspections, meetings, any required vote by a government body), and what deadline would allow sufficient time for those tasks to be completed? Is 120 days sufficient time for state and local governments to address the unique geographic, economic, or other regulatory considerations of their

(Continued from previous page)

Worth Reply at 1-2; City of San Luis Obispo Reply at 1; City of Tucson Reply at 2; Local Government Associations Reply at 2-5.

<sup>71</sup> See, e.g., CPUC Comment at 6-7; City of Tucson Comments at 15-16; NATaT Comments at 3, 8-10; Pennsylvania State Association of Township Supervisors Comments at 1; City of San Luis Obispo Reply at 1; Local Community Coalition Reply at 7-8 (“Wireline facility right-of-way applications subject to Section 253 . . . involve proposals to install sizable distances of permanent facilities over or within public property that is already occupied not only by other communications service providers and utilities, but also used by vehicular and pedestrian traffic.”).

<sup>72</sup> See, e.g., FBA Comments at 4; USTelecom Comments at 4; INCOMPAS Reply at 42; City of San Luis Obispo Reply at 1; Minnesota LFAs Reply at 8-9.

<sup>73</sup> See, e.g., Haw. Rev. Stat. § 27-45(c) (establishing a 60-day review period for broadband permits); Ohio Rev. Code § 4939.03(c)(2) (establishing a 60-day right-of-way permit review period); Mich. Comp. Laws § 484.3115(3) (45 days for permits). Some states have also established “Broadband Ready” initiatives that provide certifications to political subdivisions that demonstrate their ability to process applications within a period shorter than 120 days. See Ind. Code § 5-28-28.5-7 (10-day timeframe to approve or reject applications); Tenn. Code Ann. § 4-3-709 (requires political subdivisions to approve or deny all applications within 30 business days); Wis. Stat. § 196.504 (political subdivisions must process authorizations within 60 days); see also Ga. Code. § 50-40-41 (not establishing a specific period of time). Colorado has also established a broadband-ready program pursuant to Executive Order D 2022 023. See Colorado Broadband Office, Broadband Ready Community Program, <https://broadband.colorado.gov/resources/broadband-ready-community-program> (last visited Apr. 8, 2026).

<sup>74</sup> See League of Oregon Cities Comments at 24 (noting that differing community characteristics, such as different water tables and population densities, require different considerations); City of Dallas Comments at 2 (stating that a one-size-fit all deadline would not account for local conditions).

<sup>75</sup> See Crown Castle Fiber LLC Reply at 7-8 (highlighting how some jurisdictions require far less time despite needing to complete these same tasks); INCOMPAS Reply at 37-42 (arguing, among other things, 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”); USTelecom Reply at 11 (arguing that local governments fail to “overcome the substantial record evidence demonstrating that extended or repetitive review processes are unnecessary to ensure safety or proper construction oversight”).

jurisdictions?<sup>76</sup> If not, why not? Can state and local government commenters provide specific examples of applications that took longer than 120 days to review and detailed explanations for why that was the case (e.g., incomplete applications)? Are there measures that the Commission should consider adopting to address any impediments to completing application reviews within 120 days (e.g., requirements concerning the submission of complete applications)? Could any challenges identified by state and local governments be mitigated through more efficient procedures? For example, INCOMPAS points out that numerous federal, state, and local agencies complete complex permitting activities within mandatory timelines in other contexts.<sup>77</sup> Is there any reason that state and local governments could not develop standard processes that would allow them to complete the public welfare tasks identified in Sections 253(b) and (c) and comply with a deadline to act on wireline telecommunications authorization requests?<sup>78</sup> Would a failure to take such steps that could improve processing times support the conclusion that a state or local government's requirements effectively prohibit the ability of an entity to provide wireline telecommunications services? What else should the Commission consider to determine whether 120 days or another time period that reflects the point at which an effective prohibition has presumptively occurred under Section 253(a) also exceeds any timeframe necessary for a state or local government to perform the tasks identified in Section 253(b) and (c)?

25. *Bases for Rebutting the Presumption of a Section 253 Violation and Extending the Deadline.* We propose that state and local governments be permitted to rebut the presumption that an effective prohibition has occurred under Section 253(a) if they can demonstrate that they legitimately require more than 120 days to act on an authorization request. We seek comment on the factors that should be considered to determine whether the presumption has been rebutted and whether the Commission should consider adopting specific provisions for extending the deadline under certain circumstances. For instance, are there particular types of applications or projects that inherently require more time to review due to their complexity, scope, or other factors? If so, what specific aspects of the applications or projects trigger the need for more time (e.g., the terrain, need for third-party coordination, particular engineering issues)<sup>79</sup> and why could those factors not be addressed within a 120-day period? Are there any other factors that are relevant to rebutting the presumption that an effective prohibition has occurred if more time than any deadline adopted by the Commission is needed?

26. Should the Commission consider adopting specific extensions of the 120-day period when certain circumstances arise? For example, if—through no fault of the state or local government—a provider does not file an application needed for a particular deployment until late in the 120-day review period (e.g., the provider applied for a right-of-way agreement on Day 1 but does not submit an application for a separate excavation permit until Day 118), should the state and local government be able to take more time to review the late-filed application? If so, should the 120-day clock be restarted for the late-filed permit, or should the 120-day review period be extended for a shorter set period? Should the

---

<sup>76</sup> See, e.g., Colorado–Washington Coalition *et al.* Reply at 39-50.

<sup>77</sup> INCOMPAS Reply at 38-39 (“Environmental agencies issue Clean Water Act and Clean Air Act permits within specific timeframes. Departments of Transportation routinely process right-of-way encroachment permits within predictable periods. Historic preservation bodies review Section 106 applications within defined timelines. Local governments themselves impose strict processing timelines on private developers seeking building, zoning, and land-use approvals.”).

<sup>78</sup> See INCOMPAS Reply at 39-40 (arguing that examples of public safety incidents involving broadband deployments evince a failure to coordinate or standardize processes rather than a lack of time); see also Village of Schaumburg Comments at 3 (“The Commission can further support efficiency by encouraging voluntary best-practice sharing among local governments and providers, including standardized permit forms, checklists, and pre-application coordination meetings.”); USTelecom Comments at 16-17 (“[T]he Commission should encourage coordinated and streamlined permitting processes across jurisdictions while promoting best practices developed by cooperative state and local partners.”).

<sup>79</sup> See League of California Cities Comments at 2; Village of Schaumburg Comments at 2.

Commission consider a set extension for applications that are submitted but are incomplete? Should the review period be extended if a provider revises its deployment plan after its applications have been submitted?<sup>80</sup> Should providers and governments be able to extend the 120-day review period by mutual agreement? Should the 120-day period be paused while the parties negotiate a mutual agreement? And what process should take place if negotiations fail and no good-faith, mutual agreement is reached? If a state or local government approves an authorization during the 120-day review period, but then revokes it and requires the provider to reapply, should the 120-day period restart for the renewed application, or should the prior 120-day period still apply and be extended? Should an extension be prohibited if the revocation is due to the state or local government changing its requirements for an application after the provider submits it, or due to a mistake or omission by the government during the review process?<sup>81</sup> Are there any factors or circumstances that should be preemptively rejected as bases for extending the 120-day review period?

27. *Applicability to Government-Owned Structures.* The mandates of Section 253 apply not only to requests to access and use public rights-of-way to provide telecommunications services, but to requests to access and use government-owned property in public rights-of-way.<sup>82</sup> Indeed, in *City of Portland*, the Ninth Circuit agreed with the Commission's determination in the *Small Cell Order* that state and local governments do not act solely as market participants when they grant or deny access to government-owned structures in public rights of way, stating that "[t]he rights-of-way, and manner in which the municipalities exercise control over them, serve a public purpose, and they are regulated in the public interest, not in the financial interests of the cities."<sup>83</sup> Thus, the court upheld the Commission's application of its interpretations of Section 253 to government-owned property in public rights of way, concluding that governments "act in a regulatory capacity when they restrict access to the public rights-of-way because they are acting to fulfill regulatory objectives."<sup>84</sup> Further, the court noted that the Commission's determination was not novel, citing prior in-circuit precedent concluding that "cities operate in a regulatory capacity when they manage access to public rights-of-way *and property thereon*."<sup>85</sup>

28. Consistent with this precedent, we propose to apply the 120-day deadline for state and local governments to act on applications for authorizations to provide wireline telecommunications services and deploy wireline telecommunications infrastructure to requests to access and use government-owned property located in public rights-of-way, including, but not limited to, government-owned poles. We seek comment on this approach. Are there any factual or practical distinctions between requests to access public roadways, highways, streets, sidewalks, or similar property and requests to attach to different types of government-owned poles or structures that warrant taking a different approach? Is the proposed 120-day deadline sufficient to review applications to attach facilities to government-owned structures? If not, should the Commission consider a longer deadline that is inclusive of any type of authorization that a provider may seek from a jurisdiction, or should the Commission consider a separate

---

<sup>80</sup> See Village of Schaumburg Comments at 2.

<sup>81</sup> See ACA Connects Comment at 16 ("For instance, one Member was nearing completion of a multi-million dollar fiber network upgrade when a locality ordered it to halt deployment under its existing permit and seek a new permit under newly revised technical standards. The Member successfully challenged the decision in court and was able to get its project back on track, but only after months of delay and at considerable expense. In the end, the locality's approval and subsequent reversal imposed delays on the project that would have been comparable if the locality had prolonged its review of the initial authorization request by several months.")

<sup>82</sup> *Small Cell Order*, 33 FCC Rcd at 9134-38, paras. 92-97; *City of Portland*, 969 F.3d at 1045-46.

<sup>83</sup> *City of Portland*, 969 F.3d at 1045.

<sup>84</sup> *Id.*, 969 F.3d at 1045.

<sup>85</sup> *Id.*, 969 F.3d at 1045 (emphasis added) (citing *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 881 (9th Cir. 2006)).

deadline that applies solely to applications to access and use government-owned structures? What would be the impact of not applying the proposed deadline to government-owned structures? Would it disadvantage certain types of deployments or providers? Is applying the proposed deadline to government-owned structures necessary to ensure that state and local requirements are applied in a competitively neutral, nondiscriminatory manner, as required by Section 253? What else should the Commission consider when determining whether to apply the proposed deadline to government-owned structures in public rights-of-way?

29. *Enforcement.* We seek comment on how providers could seek enforcement of the proposed deadline. We expect that one method of enforcement would be action on petitions submitted to the Commission under Section 253(d) of the Act.<sup>86</sup> That provision directs the Commission to preempt the enforcement of any statute, regulation, or legal requirement “to the extent necessary to correct” a violation of, or inconsistency with, Section 253(a) after public notice and comment.<sup>87</sup> Accordingly, if the Commission were to adopt a presumption that a failure to comply with the proposed 120-day deadline constitutes an effective prohibition that violates Section 253, and a state or local government requires that providers comply with procedures for authorization reviews that exceed that timeframe, providers could petition the Commission for preemption of those procedures. At that point, as proposed above, the relevant state or local governments could respond with any arguments the Commission should consider to determine if the presumption of an effective prohibition has been rebutted and/or any additional arguments for why it believes the procedures should be saved from preemption under Section 253(b) or (c).<sup>88</sup> We seek comment on this approach. We observe that Section 253(d) does not expressly authorize the Commission to order injunctive relief, e.g., to require a state or local government to grant a permit or follow procedures specified by the Commission. In view of this, would preempting state and local requirements that allow review and approval of authorizations beyond the 120-day timeframe, without any further relief, sufficiently resolve an effective prohibition created by excessive delays? If not, can commenters identify any source of authority that would enable the Commission to require state and local governments to grant an authorization request or to provide other injunctive relief? Are there other forms of relief the Commission could order beyond preemption that would enable the provider to proceed with its project? Would a petition to the Commission under Section 253(d) be viable if the delay is based on inaction that is not rooted in a statute, regulation, or legal requirement?<sup>89</sup>

30. Would providers be able to seek enforcement of a deadline adopted by the Commission in court?<sup>90</sup> We expect that, at a minimum, the Commission’s determinations of what constitutes an

---

<sup>86</sup> 47 U.S.C. § 253(d).

<sup>87</sup> *Id.* § 253(d).

<sup>88</sup> *Id.* § 253(b), (c).

<sup>89</sup> See *Crown Castle Fiber LLC v. City of Charleston*, 448 F. Supp. 3d 532, 543 (D.S.C. 2020) (stating that “the court fails to understand how the City’s inaction, as opposed to an ordinance, regulation, or legal requirement, otherwise violates § 253(a)”).

<sup>90</sup> We note that Section 332(c)(7) of the Act authorizes providers to commence an action in court if a state or local government fails to act on an authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time, 47 U.S.C. § 332(c)(7)(b)(ii), (v), where they may seek injunctive relief. See *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999) (stating that the Act “does not specify a remedy for violations of the cellular siting subsection” but “the majority of district courts that have heard these cases have held that the appropriate remedy is injunctive relief in the form of an order to issue the relevant permits”); *Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Twp.*, 181 F.3d 403, 410 (3d Cir. 1999) (“Injunctions are proper forms of relief under § 332(c)(7)(B)(v).”). Courts are divided on whether providers can bring a judicial action to enforce Section 253(a). Compare *Superior Commc’ns v. City of Rearview*, 881 F.3d 432, 442-44 (6th Cir. 2018) (holding “that there is no private cause of action available under § 253(a)”); *Spectra Commc’ns Grp., LLC v. City of Cameron*, 806 F.3d 1113, 1118-20 (8th Cir. 2015) (concluding “that § 253 does not authorize a private right of action for damages under § 1983”); *Sprint Tel. PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 580-81 (9th Cir.

(continued....)

effective prohibition under Section 253, including any presumption adopted by the Commission on when excessive delays have a prohibitive effect, would be persuasive authority to courts. Would courts be legally bound to enforce rules adopted by the Commission that codify and implement the proposals discussed above?

31. Consistent with the incremental approach taken to establish shot clocks under section 332 in the *Small Cell Order*, we decline at this time to propose the “deemed granted” remedy requested by some commenters.<sup>91</sup> We expect that creating a standard that providers can use to challenge delays as effective prohibitions will be sufficient to address the consequences identified by providers in the record, particularly given that the record indicates that many jurisdictions currently process applications within the proposed deadline period.<sup>92</sup> However, we may revisit this decision if evidence submitted to the Commission suggests that a “deemed granted” remedy is needed and, as discussed above, commenters identify sources of authority that would allow the Commission to order state and local governments to grant authorization requests. We thus seek comment on our proposed incremental approach and any bases upon which the Commission could and should require state and local governments to grant requests for authorizations to provide wireline telecommunications services and deploy wireline telecommunications infrastructure.

32. We also seek comment on whether and how the Commission should enforce its prior determination that *de facto* moratoria violate Section 253 if we were to adopt the proposed deadline. In the *Moratoria Order*, the Commission determined that *de facto* moratoria prohibit or effectively prohibit the provision of telecommunications services through indefinite or unreasonable delays in the processing of applications or issuance of permits,<sup>93</sup> such as through blanket refusals to process applications, refusals to issue permits for a category of structures, and frequent and lengthy delays of months or even years in issuing permits and processing applications.<sup>94</sup> If the Commission were to codify a presumption that a state or local government has effectively prohibited the provision of wireline telecommunications services if it does not act on authorization applications by a set deadline, would that render the Commission’s prior ruling on *de facto* moratoria moot in the context of wireline services? Are there circumstances where *de facto* moratoria could still exist? If so, what are those circumstances? Should the Commission codify its declaratory rulings on moratoria?

#### **B. Establishing a Standard for State and Local Fees That Complies with Section 253**

33. The courts and the Commission have long applied Section 253 of the Act to limit fees

(Continued from previous page) \_\_\_\_\_  
2008) (en banc) (claims under 47 U.S.C. § 1983 “cannot be brought for violations of [Section] 253”), with *Crown Castle Fiber v. City of Pasadena*, 76 F.4th 425, 433-435 (5th Cir. 2024) (stating that “[e]ven though § 253 does not confer a private right, a plaintiff is not prevented from gaining equitable relief on preemption grounds”); *P.R. Tel. Co., Inc. v. Mun. of Guayanilla*, 450 F.3d 9, 14-15 (1st Cir. 2006) (permitting action for declaratory relief directly under the Supremacy Clause); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1266 (10th Cir. 2004) (*City of Santa Fe*) (stating that “[a] party may bring a claim under the Supremacy Clause that a local enactment is preempted even if the federal law at issue does not create a private right of action”); *NextG Networks of NY, Inc. v. City of New York*, 513 F.3d 49, 53–54 (2d Cir. 2008) (concluding that there is no private right of action for damages under Section 253, but reversing the dismissal of claims for declarative and injunctive relief).

<sup>91</sup> See, e.g., INCOMPAS Comments at 8-9; Intrepid Comments at 14; NCTA Comments at 8; Neptunomedia, Inc. Comments at 11-12; USTelecom Comments at 14-15; AVX Networks LLC Reply at 5.

<sup>92</sup> See NTCA Reply at 8-10.

<sup>93</sup> *Moratoria Order*, 33 FCC Rcd at 7780-82, paras. 149-53.

<sup>94</sup> *Id.* at 7780-81, para. 149. By contrast, express moratoria are created via state or local statutes, regulations, or other written legal requirements that expressly prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities, and also violate Section 253. *Id.* at 7777-80, 7782, paras. 145-48, 153.

charged by state and local governments that impose prohibitive financial burdens on the provision of wireline telecommunications services and the deployment of wireline telecommunications infrastructure.<sup>95</sup> Despite this precedent, the record developed in response to the *2025 Notice of Inquiry* shows that many state and local governments continue to assess fees against providers seeking authorizations to deploy and provide wireline telecommunications services as profit generators for their jurisdictions, rather than as compensation for costs incurred due to the provider's requested or actual use of the public rights-of-way. The record makes clear that state and local governments assess these fees without regard to the financial burden they create for the provider and its ability to provide service. For instance, Crown Castle reports that it is either stuck at an impasse or has been forced to walk away from projects planned for municipalities in Alabama, Washington, and Arizona due to excessively high fees that have "caused [the] projects to be uneconomical."<sup>96</sup> INCOMPAS similarly asserts that above-cost fee requirements set by cities in Arizona, Oregon, New Mexico, California, and New Mexico, including gross-revenue and per-linear-foot fees, have "led [its] members to abandon planned projects in those localities as uneconomic."<sup>97</sup> T-Mobile, meanwhile, claims that non-cost-based fees "can and have caused our fiber partners to abandon deployment projects," citing as examples a Minnesota city's "\$160 fee for any structure (i.e., handholds, vaults, terminal boxes, etc.) that the company install[s]" and an Ohio municipality's high per-linear-foot fees.<sup>98</sup> USTelecom also states that some of its members have abandoned or scaled back projects due to excessive fees, including one project for which a city in Minnesota sought close to \$30,000 in per-linear foot fees for a single block.<sup>99</sup>

34. While these and other examples in the record of providers canceling, delaying, or scaling back projects raise serious concerns about the fees being assessed by state and local governments for wireline telecommunications deployments, those concerns are amplified when considering the impact of excessive fees on a regional or national basis. As NCTA states, when "any given locality's unreasonable permitting fees and conditions sap a disproportionate share of a provider's available capital for a particular multi-jurisdictional deployment project, that locality may be effectively prohibiting the provider's ability to follow through on its plan to extend its network to other jurisdictions."<sup>100</sup> 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.<sup>101</sup>

---

<sup>95</sup> See *Public Utility Comm'n of Texas*, 13 FCC Rcd at 3466, para. 13; *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket No. 98-1, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21709, para. 22 (1999) (Minnesota Order); *City of White Plains*, 305 F.3d at 77-79; *Qwest Corp. v. City of Santa Fe*, 380 F.3d at 1270-73; *Puerto Rico Tel. Co. v. Municipality Of Guayanilla*, 450 F.3d 9, 18-19 (1st Cir. 2006) (*Municipality of Guayanilla*); see also *Bluebird Order*, 35 FCC Rcd at 12822, para. 26 ("We find . . . that the Cities' requirements imposing rights-of-way user fees on LMW that are duplicative of those Bluebird pays under its rights-of-way agreements covering the same Network effectively prohibit the provision of telecommunications services in violation of section 253(a)."); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 625 (6th Cir. 2000) (upholding fee after analyzing Section 253(a)).

<sup>96</sup> Crown Castle Fiber LLC Comments at 20-21 (describing fees assessed based on a percentage of Crown Castle's gross revenue or per-linear foot charges).

<sup>97</sup> INCOMPAS Comments at 11-14.

<sup>98</sup> T-Mobile Comments at 9-10.

<sup>99</sup> USTelecom Comments at 11-12.

<sup>100</sup> NCTA Comment at 12.

<sup>101</sup> See T-Mobile Comments at 10 ("But even when the company can proceed with the buildout, the per-foot fees introduce significant costs that materially inhibit deployment plans and can limit the ability to deploy in other areas."); WISPA Reply at 6-7 (noting that the "Commission also takes into account the aggregate effects on small wireless facility deployments, even if the costs do not appear to be prohibitive in isolation"); Free State Foundation Comments at 7 ("Excessive fees harm the business case for new wireline broadband facilities deployments and

(continued....)

35. To ensure that excessive fees do not effectively prohibit the provision of wireline telecommunications services in violation of Section 253 of the Act, either within the jurisdiction where they are charged or in the aggregate, we propose to adopt a rule that codifies a cost-based standard for the fees that state and local governments may collect in connection with authorizations to access and use public rights-of-way to provide such services and to deploy wireline telecommunications infrastructure.<sup>102</sup> Specifically, we propose that state and local fees be limited to a reasonable approximation of the government's actual and direct costs of managing its public rights-of-way in connection with a particular wireline telecommunications authorization, provided that those costs are objectively reasonable, competitively neutral, and nondiscriminatory.<sup>103</sup> We propose to codify a presumption that state and local fees do not impose financial burdens that violate Section 253(a) and constitute "fair and reasonable compensation" within the meaning of Section 253(c) when they comport with this standard. As we did in the context of Small Wireless Facilities, we propose to adopt safe harbor fee levels, with fees that fall within the safe harbor levels deemed presumptively compliant with our proposed fee standard. We propose and seek comment on additional measures to implement this fee standard below.

36. *Cost-Based Fee Standard.* In the *Small Cell Order*, the Commission established a cost-based standard for fees that state and local government may assess for authorizations to deploy Small Wireless Facilities.<sup>104</sup> In doing so, the Commission reviewed a line of judicial precedent that: (1) found excessive fees can violate Section 253(a); and (2) supported an interpretation of Section 253(c) that requires "fair and reasonable compensation" to be cost-based.<sup>105</sup> For instance, in *City of White Plains*, the Second Circuit examined an ordinance that charged providers a monthly fee of five percent of annual gross revenues.<sup>106</sup> Although the Second Circuit did not resolve whether the term "compensation" limited fees to costs,<sup>107</sup> the court observed that Section 253(c) "requires compensation to be reasonable essentially to prevent monopolistic pricing by towns," as "[w]ithout access to local government rights-of-way, provision of telecommunications service using land lines is generally infeasible, creating the danger that local governments will exact artificially high rates."<sup>108</sup> Similarly, in *Municipality of Guayanilla*, the First Circuit held that Section 253(a) preempted a municipal ordinance charging a monthly fee of five percent of annual gross revenues, concluding that the fees placed such a "significant burden" on providers that they impermissibly "strain[ed the] ability to provide telecommunications services."<sup>109</sup> It found that Section 253(c) did not save the fee requirement because the fees lacked a nexus with "the actual use of the rights of way, . . . an essential part of the equation" in determining whether the fees were "fair and reasonable compensation as opposed to monopolistic pricing."<sup>110</sup> Due to this case-specific finding, the

(Continued from previous page) \_\_\_\_\_  
network upgrades, draining the limited financial resources of providers and inhibiting consumer access to broadband.").

<sup>102</sup> 47 U.S.C. § 253(a), (c).

<sup>103</sup> We seek comment on what actual and direct costs would include in the context of wireline telecommunications services below.

<sup>104</sup> *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50.

<sup>105</sup> *Id.* at 9110-11, paras. 43-44.

<sup>106</sup> *City of White Plains*, 305 F.3d at 67.

<sup>107</sup> The court noted that "compensation is . . . sometimes used as a synonym for costs," but ultimately did not resolve whether fair and reasonable compensation is "limited to cost recovery, or whether it also extends to a reasonable rent," relying instead on the fact that "White Plains has not attempted to charge Verizon the fee that it seeks to charge TCG" to determine that the fee failed the "competitively neutral and nondiscriminatory" standard in Section 253(c). *Id.*, 305 F.3d at 77, 79.

<sup>108</sup> *Id.*, 305 F.3d at 80.

<sup>109</sup> *Municipality Of Guayanilla*, 450 F.3d at 18-19.

<sup>110</sup> *Id.*, 450 F.3d at 22.

First Circuit determined that it “need not decide whether fees imposed on telecommunications providers by state and local governments must be *limited* to cost recovery” to comply with the statute.<sup>111</sup> And in *City of Santa Fe*, the Tenth Circuit preempted an ordinance enabling the City of Santa Fe, New Mexico, to charge an annual rent of \$6,000 for a single 12’x18’ block of concrete, which it deemed to be a prohibitive financial burden.<sup>112</sup> The Tenth Circuit reasoned that it was “sufficient [under Section 253(a)] to show that the rental provisions [were] prohibitive because they create[d] a massive increase in cost” for the provider, and after noting that the city had conceded that its rent requirement was not cost based, concluded that the requirement did not constitute “fair and reasonable” compensation under Section 253(c) pursuant to the “totality of the circumstances” test adopted by some federal circuits.<sup>113</sup>

37. These cases—each of which interpreted Section 253 in the context of wireline telecommunications services—did not conclusively determine that Section 253(c) *requires* state and local fees to be cost-based.<sup>114</sup> They do, however, support a conclusion that the best reading of Sections 253(a) and (c) is that Congress intended to *limit* state and local fees to prevent governments from using their control over public rights-of-way to extract exorbitant sums from providers, thereby increasing providers’ costs, lowering their profitability, and effectively prohibiting their ability to provide and expand their telecommunications services. This is clear from the statutory text, which requires state and local fees to be limited to what is “fair and reasonable” for “use of public rights-of-way,” imposed on a “competitively neutral and nondiscriminatory” basis, and disclosed publicly.<sup>115</sup> This qualifying language expressly limits the fees that state and local governments may charge and thus stands in opposition to a reading of the statute that would entitle state and local governments to charge profit-driven fees.<sup>116</sup> The Ninth Circuit concurred with this reading of the statute in *City of Portland*, stating that Section 253(c) “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” where the Commission has reasonably determined that the aggregate effect of such fees is to effectively prohibit the provision of telecommunications services.<sup>117</sup> The Ninth Circuit thus upheld the Commission’s adoption of a cost-based approach for fees assessed in connection with authorizations to deploy Small Wireless Facilities, deeming the approach of the *Small Cell Order* “consistent with the language and intent of Section 253(c).”<sup>118</sup>

38. Consistent with this precedent, we tentatively conclude that: (1) a state or local government does not effectively prohibit the provision of wireline telecommunications services in violation of Section 253(a) if it merely requires a provider to bear the government’s actual and direct

---

<sup>111</sup> *Id.* The First Circuit also noted that the inquiry under Section 253 is not limited to the impact that a fee has on the deployment in the jurisdiction that imposes the fee, but the aggregate effect of fees when totaled across all relevant jurisdictions. *Id.*, 450 F.3d at 17 (looking at the aggregate cost of fees charged across jurisdictions given the interconnected nature of the service).

<sup>112</sup> *City of Santa Fe*, 380 F.3d at 1270-71.

<sup>113</sup> *Id.*, 380 F.3d at 1272-73.

<sup>114</sup> See League of Oregon Cities Comments at 27-28 (arguing that *Municipality of Guayanilla* and *City of White Plains* do not limit compensation to cost-based recovery, as they did not definitively conclude that non-cost-based fees are per se invalid under Section 253(c)). We acknowledge, too, that some courts have upheld gross-revenue fees. See generally *TCG Detroit v. City of Dearborn*, 206 F.3d 618 (6th Cir. 2000); *NMSurf v. Webber*, No. 22-2131, 2023 WL 5217859 (10th Cir. Aug. 15, 2023).

<sup>115</sup> 47 U.S.C. § 253(c).

<sup>116</sup> *Small Cell Order*, 33 FCC Rcd at 9113-17, paras. 52-56 (examining the text and structure of Section 253(a) and (c)).

<sup>117</sup> *City of Portland*, 969 F.3d at 1039.

<sup>118</sup> *Id.*

costs of authorizing the provider to use the public rights-of-way in its jurisdiction to provide service or deploy infrastructure; and (2) fees that recover more than such costs do not constitute “fair and reasonable compensation” under Section 253(c).<sup>119</sup> Consistent with these tentative conclusions, we propose to adopt a rule that limits state and local government fees for authorizations required to provide wireline telecommunications services and deploy wireline telecommunications infrastructure to those that are a reasonable approximation of the government’s costs of managing the public rights-of-way in connection with a particular authorization. We seek comment on this approach.

39. Do commenters agree that the interpretations of Section 253 set forth above are the best reading of the statute? If so, what additional authorities exist to support those interpretations? If not, what authorities support an argument that the best reading of “fair and reasonable compensation” under Section 253(c) is that state and local governments may extract profits in exchange for granting access to public rights-of-way to provide wireline telecommunications services?<sup>120</sup>

40. Do commenters agree that a cost-based fee standard is appropriate in the context of wireline telecommunications services? In the *Small Cell Order*, the Commission concluded that “infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure,”<sup>121</sup> and that “fees imposed by localities, above and beyond the recovery of localities’ reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere.”<sup>122</sup> The Commission further concluded that the “regulatory uncertainty created by such effectively prohibitive conduct creates an appreciable impact on resources that materially limits plans to deploy service.”<sup>123</sup> In reaching these conclusions, the Commission deemed it appropriate to consider “the aggregate effects of fees imposed by individual localities,” stating that it had to “consider the marketplace regionally and nationally and thus . . . consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve[d] or potentially would serve.”<sup>124</sup> Opting to proceed incrementally based on the record before it on 5G deployments,<sup>125</sup> which require the

<sup>119</sup> See *Cellco P’ship v. City of Rochester*, 623 F. Supp. 3d 184, 198 (W.D.N.Y. 2022) (“The Court agrees with Plaintiff that there is no basis for applying a different standard to fees charged for linear telecommunications facilities than for fees charged for small wireless facilities. While it was the increased need for small cell deployments that drove the FCC to consider the matter and ultimately issue the Small Cell Order, the statutory interpretation set forth therein is not limited to that context. In particular, there is no reason to conclude that the FCC’s interpretation of ‘the ambiguous phrase ‘fair and reasonable compensation’ . . . to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments’ actual and reasonable costs’ is limited to small wireless facilities.”). *But see NMSurf v. Webber*, 2023 WL 5217859, at \*2 (stating that the *Small Cell Order* “addresses small-scale wireless infrastructure, not the wired internet infrastructure at issue in this case. . . . Although NMSurf argues the FCC’s reasoning is broad enough to apply to this case, we decline to adopt the reasoning of the order under the circumstances presented here.”).

<sup>120</sup> See League of Oregon Cities Comments at 26 (contending that Supreme Court precedent predating the Act nevertheless enables state and local governments to charge non-cost-based fees that are “fair and reasonable”) (citing *St. Louis v. Western Union Tel. Co.*, 148 U.S. 92, 99 (1893)); see also *Small Cell Order*, 33 FCC Rcd at 9115, para. 55 & n.149 (observing that “there is precedent that ‘fair and reasonable’ compensation could mean not only cost-based charges but also market-based charges in certain circumstances”) (citing *NetCoalition v. SEC*, 615 F.3d 525, 533-37 (D.C. Cir. 2010) (finding that statute did not unambiguously require SEC to interpret “fair and reasonable” to mean cost-based and that the SEC’s reliance on market-based rates as “fair and reasonable” in light of competition in the market was a reasonable interpretation)).

<sup>121</sup> *Small Cell Order*, 33 FCC Rcd at 9118, para. 60.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 9118-19, para. 60.

<sup>124</sup> *Id.* at 9120, para. 62.

<sup>125</sup> *Id.* at 9118, para. 60 n.167 (“While the relevant language of Section 253(a) . . . is not limited just to Small Wireless Facilities, we proceed incrementally . . . and address the record before us, which indicated that our

(continued....)

installation of many closely spaced small cells to ensure reliable services,<sup>126</sup> the Commission determined that “fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service insulation, will have the effect of prohibiting wireless service when the aggregate effects are considered.”<sup>127</sup> Thus, the Commission concluded that Section 253 precludes non-cost-based fees for the deployment of Small Wireless Facilities because such fees can prohibitively increase the financial burdens of a single deployment and be prohibitive when the cumulative effect of state and local fees is considered on a national or regional basis.<sup>128</sup>

41. As noted above, the record developed in response to the *2025 Notice of Inquiry* indicates that excessive fees are also having a prohibitive effect on wireline telecommunications deployments in the jurisdiction where they are assessed and in the aggregate, when the financial burdens of deploying in one jurisdiction requires a provider to divert resources from planned deployments in another.<sup>129</sup> Do commenters agree with that tentative conclusion? If not, why not? And if commenters do agree that excessive fees are having a prohibitive effect, as indicated in the record developed in response to the *2025 Notice of Inquiry*, do commenters agree that the same rationales for adopting a cost-based standard in the *Small Cell Order* apply to wireline telecommunications deployments? Do commenters believe that limiting state and local governments to the recovery of their costs would remedy the prohibitive effects of excessive fees identified in the record?

42. We also seek comment on the effect of limiting fees to the recovery of costs on state and local governments. The record shows that some states, such as Missouri and Ohio, have already enacted statutes that limit the compensation that localities may collect for use of their public rights-of-way to actual costs.<sup>130</sup> Are there other states that have done so as well? If so, which states? Are there localities that have adopted cost-based fee schedules? If so, how many have done so and can commenters identify the regulations that establish the cost-based fees? We note that some local government commenters have indicated that they do not fundamentally oppose requiring fees to be cost-based; rather, their concern is primarily about whether and how those fees will be capped.<sup>131</sup> Does that reflect the view of other state and local governments? Stated differently, would more state and local governments support a cost-based fee standard if mechanisms were in place to ensure that they are able to recoup the actual costs they incur due to a particular authorization (e.g., safe harbors, the ability to rebut a presumption that a fee is excessive in a particular case)?

43. We seek comment on additional concerns raised by state and local commenters. For instance, some governments assert that a cost-based standard would disrupt local budgets.<sup>132</sup> Others, like the City of Dallas, argue that this may result in property tax increases for residents in order to recapture

(Continued from previous page) \_\_\_\_\_  
interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.”).

<sup>126</sup> *Id.* at 9122-23, para. 65.

<sup>127</sup> *Id.* at 9096, 9111-12, paras. 24, 47-48.

<sup>128</sup> *Id.* at 9120, 9122, paras. 62, 65 (“In some cases, the fees in a particular jurisdiction will lead to reduced or entirely foregone deployment of Small Wireless Facilities in the near term for that jurisdiction. In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or foregone near-term deployment of Small Wireless Facilities in other geographic areas.”).

<sup>129</sup> *See supra* paras. 11, 34 nn.26, 100-101.

<sup>130</sup> Mo. Rev. Stat. Ann. §§ 67.1830(5), 67.1832(2); Ohio Rev. Code Ann. § 4939.05(C).

<sup>131</sup> *See, e.g.*, NATaT Comments at 13; City of Tucson Reply at 3.

<sup>132</sup> *See, e.g.*, City of Arlington Comments at 3-4; NATaT Comments at 13; Physicians for Safe Technology Comments at 2.

lost revenue.<sup>133</sup> We believe that this argument is inconsistent with the text of Section 253(c), which, as explained above, contains language that limits state and local fees to fair and reasonable compensation for use of public rights-of-way, indicating an intent by Congress to prevent state and local governments from using their control over public rights-of-way as a profit generator that prohibitively increases the financial burdens of telecommunications deployments.<sup>134</sup> Accordingly, we believe that any adjustments to local budgets that may be needed as a result of limiting state and local fees as proposed herein would be a necessary consequence of complying with the mandates of the statute.<sup>135</sup> We seek comment on these views, and how much state and local fees might change if we were to adopt the proposed cost-based standard. Given that some state and local governments assert that limiting fees to cost-based recovery will have a significant economic impact on their jurisdictions, we assume that those governments have balance sheets, projections, and other financial reports that set forth how much they collect in authorization fees, the costs that those fees cover, the net revenue that is applied to other governmental purposes, what those purposes are, etc. Are these data points that state and local governments can submit to the Commission, both to assist our consideration of the economic-impact arguments asserted by commenters and to evaluate whether any fee safe harbors established by the Commission would sufficiently compensate state and local governments for their costs? Is the data available via public sources?

44. Some government commenters also argue that limiting fees to cost-based recovery would constitute a Fifth Amendment taking<sup>136</sup> and that “compensation” requires recovery of fair market value.<sup>137</sup> As an initial matter, we note that the Ninth Circuit rejected similar arguments when it upheld the cost-based fee standard adopted in the *Small Cell Order*, concluding that no regulatory taking within the meaning of the Fifth Amendment took place because the Commission’s standard allowed state and local governments to recover their actual costs of providing access to public rights-of-way pursuant to Section 253(c).<sup>138</sup> The court pointed to the U.S. Supreme Court’s decision in *FCC v. Florida Power Corp.*, which found that “it is . . . settled beyond dispute that the regulation of rates chargeable from the employment of private property devoted to public uses is constitutionally permissible” and that “[s]o long as the rates set are not confiscatory, the Fifth Amendment does not bar their imposition.”<sup>139</sup> Here, we do not even seek to set rates for right-of-way access, but merely to establish a standard that ensures such fees comply with Section 253 in the context of wireline telecommunications services. Further, the standard we seek to establish would expressly allow state and local governments to recover their actual costs. Accordingly, we do not believe our proposed standard implicates the Fifth Amendment. Even if it were otherwise, it remains unclear how “fair and reasonable” compensation under Section 253(c) could be based on “fair market value” given that public rights-of-way are not assets freely bought and sold in a “market,” but are more accurately described as subject to monopolistic control by state or local governments. In such circumstances, actual costs or other readily discernable amounts have been deemed reasonable proxies for

---

<sup>133</sup> City of Dallas Comments at 2.

<sup>134</sup> *Supra* para. 37.

<sup>135</sup> As detailed below, we propose to establish safe harbors for fees that would presumptively comply with a cost-based standard under Section 253 and seek comment on the data that the Commission should consider to set such safe harbors. It may be that, after considering that data, the Commission sets safe harbors that are consistent with the fees assessed by many jurisdictions for authorizations to access and use public rights-of-way to provide wireline telecommunications services. Accordingly, at this time, any argument that state and local governments may lose revenue due to a rule establishing a cost-based fee standard is speculative. We seek comment on these points below.

<sup>136</sup> U.S. Const. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

<sup>137</sup> See, e.g., League of Oregon Cities Comments at 26-27; Local Community Coalition Reply at 19, 24.

<sup>138</sup> *City of Portland*, 969 F.3d at 1049.

<sup>139</sup> *FCC v. Florida Power Corp.*, 480 U.S. 245, 253 (1987).

estimating just compensation.<sup>140</sup> We seek comment on these views. Do commenters agree that our proposed fee standard does not implicate the Fifth Amendment? If not, on what basis could state and local governments argue that an uncompensated taking will occur under the Fifth Amendment if they are limited to compensation for the costs they incur due to a provider's use of public rights-of-way?

45. Some government commenters also express concern that requiring fees collected in connection with the provision and deployment of wireline telecommunications services to be cost-based may lead to preferential treatment of telecommunications providers over other users of the public rights-of-way (e.g., electric and other utilities).<sup>141</sup> While it is not clear from the current record whether this is true, we note that Congress had a specific objective when it enacted Section 253: to remove state and local barriers to the deployment of telecommunications services and promote the rapid deployment of new telecommunications technologies.<sup>142</sup> Accordingly, any preference favoring telecommunications deployments that may be perceived pursuant to the implementation of the statute is one directed by Congress. Do commenters agree? Is there a legal basis for concluding that state and local fees for wireline telecommunications authorizations may not be limited to the recovery of costs under Section 253 if other users of public rights-of-way are charged above-cost fees? Do commenters agree that Congress may enact statutes that result in different users of state and local public rights-of-way being subject to different fees or other requirements?

46. *Objectively Reasonable Costs.* In addition to limiting fees for wireline telecommunications authorizations to a reasonable approximation of the costs incurred by a state or local government for managing their public rights-of-way in connection with a particular authorization, we propose to limit the costs that may be recovered to those that are objectively reasonable. We seek comment on the costs that should be included or excluded under this standard.

47. To start, we propose that state and local governments be limited to recovering the actual and direct costs that they incur to manage the public rights-of-way with respect to the provider's access and use of the right-of-way.<sup>143</sup> By "direct costs," we mean expenses that can be directly traced to a provider's application to access and use a public rights-of-way, and would not have been incurred but for the provider's access and use of the public right of way.<sup>144</sup> By "actual costs," we mean costs that can be substantiated by invoices or other documentation and are not hypothetical or speculative. We believe this approach is consistent with the text of the statute, which states that "fair and reasonable compensation" may be required "from telecommunications providers . . . for use of public rights-of-way on a nondiscriminatory basis."<sup>145</sup> We believe the best reading of that language is that Congress intended state

---

<sup>140</sup> See *United States v. 564.54 Acres of Land*, 441 U.S. 506, 513 (1979) (recognizing that alternative measures of compensation might be appropriate "with respect to public facilities such as roads or sewers").

<sup>141</sup> See, e.g., City of Arlington Comments at 4-5; City of Austin Comments at 7; City of Dallas Comments at 2; see also Local Community Coalition Reply at 23-24 ("Section 253 may be read in many ways, . . . one way it cannot reasonably be read is to grant telecommunications service providers preferential, as opposed to non-discriminatory and competitively neutral, pricing and other terms of access to the right-of-way.").

<sup>142</sup> The Act, 110 Stat. at 56; Conference Report at 1, 126; see also *Cablevision*, 184 F.3d at 98.

<sup>143</sup> This approach is similar to that taken in the *Small Cell Order* and upheld by the Ninth Circuit. See *Small Cell Order*, 33 FCC Rcd at 9125-28, paras. 71-76; *City of Portland*, 969 F.3d at 1039.

<sup>144</sup> See *Am. Cablesystems of Fla., Ltd., d/b/a Cont'l Cablevision of Broward Cnty., et al.*, CC Docket No. 95-95, Hearing Designation Order, 10 FCC Rcd, 10934, para. 2 (CCB 1995) (defining direct (or incremental) costs in the context of pole attachment rates as "costs that the utility would not have incurred 'but for' cable attachments"); *Rates for Interstate Inmate Calling Servs.*, WC Docket No. 12-375, Report and Order and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8519, para. 95 (2020) (noting that the Second Mandatory Data Collection required by the Inmate Calling Services proceeding defined "direct costs" as "those costs that are completely attributable to a specific service, such as inmate calling services").

<sup>145</sup> 47 U.S.C. § 253(c).

and local governments to recover the costs they actually incur due to the direct use of public rights-of-way by a particular provider, and not costs associated with management of the public rights-of-way generally or that were incurred due to uses of the public rights-of-way by other entities. We seek comment on this view. Do commenters agree that state and local governments would collect “fair and reasonable compensation” if they recover the actual and direct costs that they incur due to a provider’s specific use of a particular right-of-way? If so, what would those costs include? For instance, would they include the costs of processing the provider’s application to access the right-of-way,<sup>146</sup> and what do those costs include (e.g., labor hours)? Would they include costs associated with monitoring the provider’s deployment of facilities, and what do those costs include (e.g., inspections, surveys)?<sup>147</sup> Are there other actual and direct costs that should be included as objectively reasonable? Are there certain costs that are arguably incurred due to a provider’s specific use of a public right-of-way, but should be excluded from any measure of objectively reasonable costs because they are inherently excessive or unnecessary? For instance, should exorbitant fees charged by consultants retained by state and local governments be excluded?<sup>148</sup>

48. Some commenters suggest that state and local governments should be permitted to recover modest overhead costs under Section 253, such as joint and common costs for the administration and upkeep of public rights-of-ways or intergovernmental coordination when reviewing deployment projects.<sup>149</sup> Do other commenters agree? If the Commission were to allow for such recovery, what joint and common costs should be included and how should they be allocated among users of the public rights-of-way? For instance, how should joint and common costs be allocated if a local government conducts a routine inspection of a public right-of-way that contains wireline telecommunications, electric, and water main infrastructure? Should state and local governments be required to employ a particular allocation method for joint and common costs based on relative usage of the public rights-of-way or the degree to which a provider benefits from the cost-imposing activity to determine the portion of joint and common costs that can be recovered from each provider using the right-of-way? Would a recovery of joint and common costs be consistent with the best reading of Section 253?

49. *Safe Harbors.* We propose to establish one or more safe harbors, with state and local fees for wireline telecommunications authorizations set at or below the safe harbor level presumptively deemed compliant with Section 253(a) and “fair and reasonable compensation” under Section 253(c). Under this approach, the Commission would not automatically preempt any and all state and local fees that are not cost-based, but instead adopt a presumption that fees that fall within the safe harbors are “so clearly reasonable that justification [is] not necessary.”<sup>150</sup> Thus, state and local governments would not be required to establish the cost basis for each fee assessed for a wireline telecommunications authorization unless they seek to charge a fee that exceeds any applicable safe harbor limit. In such cases, the fee higher than the safe harbor limit would be deemed to violate Section 253 unless the state and local government can show that it only recovers the government’s actual and direct costs incurred due to the provider’s access and use of the public rights-of-way, and that those costs are objectively reasonable, competitively neutral, and nondiscriminatory.

50. We seek comment on this approach. Providers that responded to the *2025 Notice of Inquiry* generally support the establishment of safe harbors as a means of preventing excessive fees—bound by no limits—from curtailing and delaying deployments in violation of the statute while ensuring

---

<sup>146</sup> See NCTA Comments at 10; T-Mobile Comments at 9; USTelecom Comments at 8-9, 15; NTCA Reply at 2-3.

<sup>147</sup> See ACA Connects Comments at 17; USTelecom Comments at 15; NTCA Reply at 2-3.

<sup>148</sup> *Small Cell Order*, 33 FCC Rcd at 9116-17, para. 56; ACA Connects Comments at 11-12; Intrepid Comments at 9.

<sup>149</sup> See Free State Foundation Comments at 8; NATaT Comments at 13.

<sup>150</sup> *City of Portland*, 969 F.3d at 1039.

that state and local governments receive compensation for the actual and direct costs that they incur due to those deployments.<sup>151</sup> Do other commenters agree? Does the wireline context pose unique considerations that make safe harbors unsuitable, and if so, how?<sup>152</sup> Do safe harbors limit the flexibility of state and local governments to capture actual, objective costs?<sup>153</sup> Would establishing safe harbors help state and local governments avoid setting fees that could have a prohibitive effect in violation of Section 253? Would safe harbors deter unnecessary disputes and litigation?<sup>154</sup> Would safe harbors provide certainty for providers seeking to deploy wireline projects? Would failure to establish safe harbors in the wireline context place additional demands on state and local governments by requiring them to demonstrate the cost basis for all fees?

51. We seek comment on how the Commission should set fee safe harbors in the context of authorizations to provide wireline telecommunications services. In the *Small Cell Order*, the Commission established safe harbors after reviewing small cell legislation in twenty states, a sample of local legislation from municipalities in states that had not yet passed small cell legislation, the Commission's pole attachment rate formulas, and comments in the record, which included cost surveys and other analyses.<sup>155</sup> Some commenters responding to the *2025 Notice of Inquiry* advocated that the Commission take a similar approach to set safe harbors in the context of wireline telecommunications services,<sup>156</sup> but we did not receive the suggested data sets in comments or specific safe harbor proposals. Accordingly, we request such data and proposals now. If commenters argue that we should look to existing state and local fees for the provision of wireline telecommunications services to establish safe harbors that would

---

<sup>151</sup> ACA Connects Comments at 24-25 (“To implement this framework and best serve all stakeholders, the Commission should follow the approach of the *Small Cell Order* and provide clear guidance about permissible and non-permissible fees, including by creating a safe harbor for franchise fees and permitting fees above which it would presume the fee violates Section 253(a.)”); Crown Castle Fiber LLC Reply at 10-11 (“Establishing a ‘safe harbor’ level for fees, which some of the comments support, does not cap the fees a local government can provide. Rather, it creates a presumptively reasonable level at which fees may be set . . . .”); INCOMPAS Comments at 14-15 (“INCOMPAS urges the Commission to establish clear ‘safe harbor’ fee levels under Section 253. . . . Doing so will curb the temptation of all authorizing entities to treat right-of-way access as a general revenue raising opportunity. It will also benefit localities by reducing disputes and litigation—local governments would not have to justify fees on a case-by-case basis if they set them at or below the safe harbor, and providers would ‘almost never’ litigate fees at or below those levels. Moreover, having predictable fee caps will greatly aid providers in planning multi-jurisdictional fiber builds, as it removes uncertainty and outlier costs that can derail project budgets.”); ExteNet Systems, LLC Reply at 6 (“Extenet supports . . . reasonable safe harbor fee levels for wireline facilities, like what the Commission previously adopted in the *Small Cell Order*. This will remove the financial incentive for municipalities to raise revenue through infrastructure deployment and reduce opportunity for costly disputes. This presumed reasonableness, combined with clarifying that restoration conditions mean restoration only to the status quo, provides clarity and predictability that make deployments easier to forecast and execute without delay or cost overruns.”); WISPA Reply at 6-7 (“WISPA strongly supports the adoption of safe harbors to address the fees charged by state and local governments for wireline deployments in public rights-of-way.”); *see also* Free State Foundation Comments at 7 (“To facilitate determinations of objectively reasonable approximate costs, the agency should establish safe harbor amounts for all total fees charged to a provider for use of rights-of-ways, whereby all fees actually charged by a local government that are equal to the safe harbor amounts are presumptively fair and reasonable compensation, and all fees that exceed the safe harbor level are unfair and unreasonable.”).

<sup>152</sup> *See* League of California Cities Comments at 2 (arguing that the Commission should “avoid importing small cell fee ‘safe harbors’ devised for an entirely different technology and regulatory context”); *see also* League of Oregon Cities Reply at 13-14 (agreeing with the League of California Cities).

<sup>153</sup> League of California Cities Comments at 2.

<sup>154</sup> *See* INCOMPAS Comments at 14-15.

<sup>155</sup> *Small Cell Order*, 33 FCC Rcd at 9129, para. 79.

<sup>156</sup> *See, e.g.*, ACA Connects Comments at 24-25; Free State Foundation Comments at 7; INCOMPAS Comments at 14-15; ExteNet Systems, LLC Reply at 6; *see also* Crown Castle Fiber LLC Reply at 10-11; WISPA Reply at 7-9.

apply on a national scale, what specific state and local fees should we review? We request a complete set of citations for any and all state and local regulations, ordinances, fee schedules, or other sources of fee data that commenters believe we should consider. Given that fees are often memorialized in right-of-way agreements for wireline telecommunications services, we request that commenters submit copies of such agreements executed with state and local governments across the country together with a spreadsheet summarizing and comparing the relevant fee provisions. To the extent that commenters argue that certain fee demands by state and local governments are excessive and thus should not be considered when setting safe harbors, we ask that commenters specifically identify the source of those fees (e.g., the specific local ordinance or right-of-way agreement) and an explanation for why those fees fail to reflect the actual and direct costs incurred by the state and local government due to the provider's access and use of the public right-of-way. We ask that commenters submit cost surveys and other analyses demonstrating the actual and direct costs that state and local governments incur when acting on applications to access and use public rights-of-way to provide wireline telecommunications services, and explanations for why those costs may differ between different types of projects (e.g., based on the scope of the build, whether it involves trenching or aerial deployments), location (e.g., geography, topography, population density), or other factors. We ask that commenters propose how the Commission should take such variables into consideration when establishing safe harbor fee levels.

52. Taking into consideration any relevant data sources and the varying nature of wireline telecommunications deployments, we ask that commenters propose specific safe harbor fee levels for the Commission's consideration, including a structure for how any fee level should apply. For instance, should the Commission consider adopting one safe harbor that encompasses the sum of all actual and direct costs incurred by a state or local government in connection with a provider's use of their public rights-of-way to provide telecommunications services, irrespective of how such costs may be recovered through different fees, i.e., if a jurisdiction requires a right-of-way agreement fee, an excavation permit fee, and a road closure fee, they all presumptively comply with Section 253 provided that the total tally does not exceed an outer-bound fee level? Or should the Commission consider applying a structure similar to the one adopted in the *Small Cell Order*, with different safe harbors applying to different types of fees and facility deployments?<sup>157</sup> Would a different structure be more appropriate? For instance, should safe harbors differ by the type or size of jurisdiction? Should the safe harbors vary based on other factors? We ask that commenters identify the data that supports their safe harbor proposals.

53. *Competitively Neutral and Nondiscriminatory.* We tentatively conclude that to be competitively neutral and nondiscriminatory as required by Section 253(c), any fee charged to one provider of wireline telecommunications services may not be materially higher than those charged to other providers of wireline telecommunications services for similar uses of the public rights-of-way. We believe this tentative conclusion is consistent with determinations by both courts and the Commission that imposing requirements on one provider that are not imposed on similarly situated providers is inconsistent with the statutory text of Section 253(c),<sup>158</sup> and seek comment on that view. Do commenters

---

<sup>157</sup> The *Small Cell Order* established safe harbors of "\$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities" and "\$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW." *Small Cell Order*, 33 FCC Rcd at 9129, para. 79.

<sup>158</sup> *City of White Plains*, 305 F.3d at 80 ("But a municipality may not . . . impose a host of compensatory provisions on one service provider without placing any on another."); *City of Santa Fe*, 380 F.3d at 1273 (finding that excess conduit installation requirements were not competitively neutral "because they place[d] the risk on the party who first installs any conduit"); *Small Cell Order*, 33 FCC Rcd at 9116, 9128, paras. 55, 77 (explaining that state and local governments "may not impose fees on some providers that they do not impose on others"); *Bluebird Order*, 35 FCC Rcd at 12825, para. 35 (finding that duplicative fee requirements were not competitively neutral when imposed only on one service provider and not others).

agree with our interpretation of the statute?<sup>159</sup> Is a different interpretation a better reading of the statute? What are the real-world implications of applying this standard in the context of wireline telecommunications services? For instance, would it be easy to assess whether two different providers of wireline telecommunications services are being charged materially similar fees for deployments when their builds are of a different scope, utilize different deployment methods (e.g., aerial versus buried), or involve different technologies? Should fees be assessed in a technologically neutral manner to ensure they are not discriminatory,<sup>160</sup> or do different technologies result in state and local governments incurring different costs that would justify different fees? What other factors should the Commission evaluate to determine when fees are competitively neutral and nondiscriminatory?

54. Section 253(c) requires that fair and reasonable compensation collected by state and local governments be “publicly disclosed.”<sup>161</sup> Some commenters suggest that state and local governments are not complying with this statutory directive.<sup>162</sup> We seek comment on whether the Commission should ensure compliance by adopting a requirement that state and local governments publicly disclose any fees they collect in connection with an authorization to access and use public rights-of-way to provide wireline telecommunications services in a particular manner. Would the Commission have authority to adopt such a rule? If the Commission adopts such a rule, in what form should public disclosures take place? Is it sufficient if state and local governments post a table on their websites or another publicly accessible platform listing the fees they have collected in connection with approved authorizations? Is it sufficient if state and local governments maintain a list of all fees that they have collected and provide it to anyone from the public on request? Is there specific data that should be included in the disclosures? To the extent state and local governments are currently complying with this statutory requirement, how are the public disclosures being made?

55. *Section 253(b) Savings Clause.* We seek comment on whether our proposed fee standard is consistent with the best reading of the savings clause in Section 253(b), which preserves a state’s ability to “impose . . . 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.”<sup>163</sup> Would limiting the fees that state and local governments may recover to a reasonable approximation of their objectively reasonable costs impact a state’s ability to perform these tasks?<sup>164</sup> If so, how? Would commenters recommend any adjustments to our proposed fee standard to address any negative impacts? Is the question of Section 253(b)’s application to our proposed fee standard moot, given that we propose to adopt a presumption that state and local governments do not effectively prohibit the provision of wireline telecommunications services if they comply with it (i.e., if there is no prohibitive effect within the meaning of Section 253(a), the savings clause in Section 253(b) is irrelevant)? What else should the Commission consider when evaluating whether our proposed fee standard implicates the Section 253(b) savings clause?

---

<sup>159</sup> See Intrepid Comments at 2-3; USTelecom Comments at 15; City of Tucson Reply at 3; NCTA Reply at 2-3. *But see* League of Oregon Cities Comments at 9-10, 20, 24-25, 27-28 (“As with rights-of-way management, the question of whether a fee is ‘fair and reasonable compensation’ and ‘competitively neutral and nondiscriminatory’ will be fact-specific and is required to be left to the courts.”); Local Government Associations Reply at 8-9 (agreeing with League of Oregon Cities).

<sup>160</sup> See NCTA Comments at 10; INCOMPAS Reply at 15, 30; USTelecom Comments at 10, 15-16.

<sup>161</sup> 47 U.S.C. § 253(c).

<sup>162</sup> USTelecom Comments at 5; Crown Castle Fiber LLC Reply at 7-8; INCOMPAS Reply at 4-5.

<sup>163</sup> 47 U.S.C. § 253(b).

<sup>164</sup> See NTCA Comments at 5-6 (arguing that both “Sections 253(b) and (c) likewise support enactment of a cost-based fee standard”); INCOMPAS Reply at 40-41 (“Local commenters identify no decision, FCC-related or judicial, holding that Section 253(b) . . . authorizes revenue-generating fees. The Commission has also repeatedly rejected claims that broad public-safety justifications permit localities to impose requirements with a prohibitory effect.”).

56. *Prohibited Fee Types.* We seek comment on whether the Commission should adopt a rule that prohibits state and local governments from recovering certain types of fees that may not comport with the cost-based standard we propose above. For instance, some providers have suggested that it would be inconsistent with a cost-based fee standard for state and local governments to assess fees based on a provider's gross revenue, the asserted fair market value of public rights-of-way, the linear feet of a wired deployment, or to collect fees on a recurring versus one-time basis (e.g., recurring use fees in a right-of-way agreement).<sup>165</sup> Do other commenters agree? Are fees assessed based on gross revenue, a valuation of rights-of-way, or linear feet reflective of the costs that a state or local government incurs due to a providers' access and use of public rights-of-way to provide wireline telecommunications services? Or do such fee measures generate revenue for state and local governments irrespective of their costs? Are recurring right-of-way use fees charged to recover costs that state and local governments may incur due to a provider's access and use of public rights-of-way on an ongoing basis, i.e., does an annual use fee recover costs that the state or local government incurs during the year that it is charged, even after the deployment and installation of facilities is complete?<sup>166</sup> Or do state and local governments recover their costs via the initial collection of authorization fees, such that use fees collected after the deployment is complete are profit?<sup>167</sup> In the *Small Cell Order*, the Commission noted that gross revenue fees generally are not based on the costs associated with an entity's use of public rights-of-way,<sup>168</sup> but acknowledged that "a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein."<sup>169</sup> Accordingly, under the standard adopted in the *Small Cell Order*, "[i]f all these criteria are met, the fee would not be preempted."<sup>170</sup> Is the same true in the context of wireline telecommunications services? If so, should the Commission refrain from prohibiting the use of certain fee measurements provided that the fee collected ultimately complies with any cost-based standard and safe harbors adopted by the Commission?

<sup>165</sup> See WTA Comments at 3-4 ("[I]t would be highly unlikely that 'per foot' charges could be justified under [cost-based] standards, and even more unlikely that fees set as a percentage of revenues could ever be justified."); CableSouth Comments at 4 (arguing that "any annualized franchise fees should be considered inherently suspect and, at a minimum, subject to required cost support"); Intrepid Comments at 14 ("To start, the Commission should make clear that franchise fees based on gross revenue and in-kind contributions are preempted under Section 253 because they are prohibitive.").

<sup>166</sup> CableSouth Comments at 19-20 ("The reality is that once fiber optic lines are installed, there is little or no ongoing cost on the local government caused by those facilities" and that "realistically, the facilities have no recurring impact on the local government's costs."); USTelecom Comments at 8-9 ("Others impose recurring charges based on the length of fiber installed—often \$3.50 to \$5.00 per linear foot. All of these fee structures are untethered from any actual costs to the jurisdiction and can result in the locality 'double-charging' for the same right-of-way space even though the presence of more than one provider does not expand the physical use or encumbrance of the ROW.").

<sup>167</sup> See Local Communities Coalition Comments at i-ii (arguing that there "is no legal or factual basis for limiting . . . fees to incremental or direct costs" and that "considerable joint and common costs of acquiring, maintaining, managing and protecting the right-of-way would be borne by taxpayers and by other entities installing fixed facilities in the right-of-way (like the traditional utilities and their ratepayers) to which Section 253 does not apply."); see also NATaT Comments at 12-13 (asserting that recurring fees beyond cost-based attachment rents are rare).

<sup>168</sup> *Small Cell Order*, 33 FCC Rcd at 9124-25, para. 70 (stating that, where gross revenue fees are not based on the state or local government's costs, they would be preempted under Section 253(a)); see also *Municipality of Guayanilla*, 450 F.3d at 21; *City of Maryland Heights*, 256 F. Supp. 2d at 993-96; *Prince George's County*, 49 F. Supp. 2d at 818; *AT&T v. City of Dallas*, 8 F. Supp. 2d at 593.

<sup>169</sup> *Small Cell Order*, 33 FCC Rcd at 9124, para. 70 n.208

<sup>170</sup> *Id.* at 9124, para. 70 n.208.

57. *Application to Government-Owned Structures.* We seek comment on whether the fee standard we propose to adopt above should apply to applications to attach wireline telecommunications facilities to government-owned infrastructure in public rights-of-way or whether a different standard should apply.<sup>171</sup> The record developed in response to the *2025 Notice of Inquiry* suggests that providers of wireline telecommunications services pay excessively high fees when they seek to attach facilities to government-owned poles and conduit.<sup>172</sup> As discussed above, the mandates of Section 253 apply when providers seek to access and use government-owned infrastructure in public rights-of-way; thus, state and local governments may not charge fees that effectively prohibit the provision of wireline telecommunications services in violation of Section 253(a) and may only charge fair and reasonable compensation that is competitively neutral and nondiscriminatory, consistent with Section 253(c).<sup>173</sup> Accordingly, we tentatively conclude that any cost-based fee standard adopted by the Commission for authorizations to provide wireline telecommunications services should apply when a provider of wireline telecommunications services seeks to attach to government-owned infrastructure in public rights-of-way. We seek comment on that view and how the Commission should implement that approach.

58. For instance, some state and local government commenters argue that there are concerns specific to government-owned infrastructure that differ from other requests to access public rights-of-way, such as the need to conduct engineering reviews of poles.<sup>174</sup> These commenters argue that such differences weigh against limiting the fees that state and local governments can collect,<sup>175</sup> whether

---

<sup>171</sup> See *supra* paras. 27-28 (discussing the application of Section 253 to government-owned structures in public rights-of-way).

<sup>172</sup> Crown Castle Fiber LLC Comments at 25-26 (arguing that “municipalities have used their control over the right-of-way to demand exorbitant rates for use of the conduit system that they require new entrants to use”); NCTA Comments at 16-17 (argues that pole attachment rates for municipally owned poles and non-fee requirements to access them can have a prohibitive effect); WorldNet Telecommunications, LLC Comments at 1, 5, 9 (citing “prohibitively high per pole application fee for pole attachment requests”). *But see* APPA Reply at 2-3 (arguing that that the record generated by the *2025 Notice of Inquiry* shows that “fees and procedures required to attach to government-owned infrastructure, such as utility poles” do not effectively prohibit wireline telecommunications service).

<sup>173</sup> Some commenters argue that the Commission would impermissibly circumvent Section 224 by preempting a state or local law applicable to government-owned poles and conduit under Section 253. See, e.g., APPA Comments at 4 (arguing that Section 224 is “the only statute that expressly grants the Commission the power to regulate pole attachment rates and procedures” and that “Section 224 explicitly exempts government-owned electric utilities from the FCC’s pole attachment regulatory authority,” and that “[u]sing Section 253 to circumvent this clear Congressional intent would undermine multiple canons of statutory interpretation”). The Commission rejected this argument in the *Small Cell Order*, noting that “[s]ome have argued that Section 224 of the Communications Act’s exception of state-owned and cooperative-owned utilities from the definition of ‘utility’ . . . suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. . . . Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply.” *Small Cell Order*, 33 FCC Rcd at 9134, para. 92 n.253. As noted above, the Ninth Circuit upheld the Commission’s application of Section 253 to government-owned structures in public rights-of-way in *City of Portland*, 969 F.3d at 1046. Accordingly, we reiterate our prior conclusion that Congress’s choice to exclude government-owned poles and conduit from regulation under Section 224 does not indicate an intent to remove such infrastructure from the scope of Section 253, which expressly reaches any state or local statute, regulation, or legal requirement that has a prohibitive effect on the provision of telecommunications services.

<sup>174</sup> See, e.g., League of California Cities Comments at 2 (“The Commission should not impose caps on cost recovery for owners of publicly owned or managed poles, as well as avoid importing small cell fee ‘safe harbors’ devised for an entirely different technology and regulatory context. Local government fees must have the flexibility to reflect actual, objective local costs.”); City of Fort Worth Reply at 2 (arguing that pole attachment fees cover necessary costs such as for “inspection, engineering review, and safety-related costs, which vary by location and conditions” and that a “uniform federal limit would not reflect these differences”).

<sup>175</sup> League of California Cities Comments at 2; City of Fort Worth Reply at 2.

generally or in the same manner upheld by the Ninth Circuit in the context of Small Wireless Facilities.<sup>176</sup> Do other commenters agree? To the extent these concerns indicate that a state or local government incurs greater costs when a provider seeks to access poles or conduit in public rights-of-way, could those concerns be addressed by establishing safe harbor fee levels consistent with those higher costs? If so, we request that commenters submit data to the Commission demonstrating how the Commission should establish safe harbors for attachments to government-owned poles and conduit to ensure that they reflect a reasonable approximation of the actual and direct and objectively reasonable costs incurred by state and local governments when providers of wireline telecommunications services seek access. We request data demonstrating the actual and direct costs of, for example, conducting inspections and performing engineering reviews. To the extent variables such as location or geography can affect costs, we seek data highlighting their impact on costs and how state and local governments account for these differences in the fees they impose.<sup>177</sup> We request that commenters submit specific proposals for safe harbors that the Commission should consider adopting in this context.

59. *Enforcement.* We propose that any state and local government fees that exceed a fee standard adopted by the Commission for wireline telecommunications services be presumed to have a prohibitive effect that violates Section 253(a) and fail to constitute fair and reasonable compensation under Section 253(c). Under this approach, providers would be permitted to seek preemption of the fees through a petition to the Commission under Section 253(d), and state and local governments would be permitted to rebut the presumption by demonstrating that the fees recover the actual, direct, and objectively reasonable costs they incurred due to the provider's access and use of the public right-of-way to provide wireline telecommunications services and are competitively neutral and nondiscriminatory. We seek comment on our proposal. What would be the impact of the Commission preempting fees that do not comply with the proposed cost-based standard? Would the potential for preemption by the Commission incentivize providers to proactively adopt fees that comport with any safe harbor fee levels adopted by the Commission, thereby reducing the need for litigation in any forum? Are there any other benefits or consequences of this proposed approach?

60. We also seek comment on whether a fee standard adopted by the Commission for wireline telecommunications services under Section 253 could be enforced through actions initiated in court.<sup>178</sup> We expect that, at a minimum, any fee standard adopted by the Commission would act as persuasive authority for courts considering challenges under Section 253. Would federal district courts be bound to follow a fee standard adopted by the Commission?

### C. Requiring In-Kind Contributions to Comply with Section 253

61. The record developed in response to the *2025 Notice of Inquiry* shows that providers of wireline telecommunications services are often required to supply various forms of in-kind compensation to state and local governments as a condition for obtaining authorizations to access and use public rights-of-way.<sup>179</sup> The record demonstrates that these requirements often do not relate to or far exceed the costs

---

<sup>176</sup> *City of Portland*, 969 F.3d at 1046.

<sup>177</sup> City of Dallas Comments at 2 (“Providers regularly attach to municipal and cooperative poles under established, predictable processes. These fees cover inspection, engineering review, and safety-related costs, which vary by location and conditions.”).

<sup>178</sup> *See supra* para. 30 n.90.

<sup>179</sup> *See, e.g.*, Crown Castle Fiber LLC Comments at 25 (provider “asked to give exclusive use of six strands of fiber to the City of Piscataway, New Jersey—including the right to use any future overlashed fiber installed at a later date—as a condition of obtaining a permit for constructing fiber facilities to serve a single site”); INCOMPAS Comments at 17-18 (highlighting examples that include requirements to install ADA-compliant curb ramps at every intersection where fiber crossed, imposing street restoration requirements “beyond the area of actual disturbance,” and “[m]andating real-time video monitoring of construction crews via CCTV or similar means, with the provider required to fund the equipment and fees”); Intrepid Comments at 12-13 (pointing to requirement that provider offer

(continued....)

of a provider's actual use of the public rights-of-way.<sup>180</sup> Such required in-kind compensation can significantly increase the cost of wireline deployments in a manner that results in projects being delayed or even canceled.<sup>181</sup> We therefore tentatively conclude that in-kind compensation demands can have a prohibitive effect on the provision of wireline telecommunications services in violation of Section 253(a) and thus are subject to preemption unless they constitute objectively reasonable compensation under Section 253(c), consistent with the cost-based fee standard we propose above, and are imposed in a competitively neutral and nondiscriminatory manner. Under this approach, the cost or value of any in-kind compensation requirements imposed by state and local governments as a condition of issuing authorizations to access and use public rights-of-way to provide wireline telecommunications services must count toward any safe harbor fee levels adopted by the Commission to implement our proposed cost-based fee standard.<sup>182</sup> For example, if a municipality could collect \$3,000 in compensation for costs incurred due to a particular wireline project pursuant to safe harbor fee levels adopted by the Commission, and the municipality requires the provider to install additional conduit for municipal use at a cost of \$1,200 to the provider, then that \$1,200 of in-kind compensation would be deducted from the \$3,000 compensation limit. The municipality would be presumed to have complied with Section 253 provided that: (1) it collects no more than \$1,800 in fees from the provider; or (2) it can demonstrate that the actual and direct costs that it incurred due to the wireline project exceeded the \$1,200 in in-kind compensation received and the fees that it collected in excess of \$1,800.<sup>183</sup>

(Continued from previous page) \_\_\_\_\_

Internet "at no cost" to a municipality); NCTA Comments at 11-12 (citing requirements to replace ADA ramps, to locate city-owned water and sewer lines, and to pay for a metes-and-bounds survey of the city's right-of-way); NTCA Comments at 2, 8 (noting requirements to provide fiber strands); T-Mobile Comments at 12 ("For example, communities in Alabama, Arizona, Illinois, and Oregon have required our fiber partners to construct conduit, handholds, and manholes for the city's benefit and use. . . . One village in Illinois requires a fiber partner to provide a 50 percent discount on fiber services to the village for any location the city wants connected, while several cities in Alabama require the provision of dark fiber without any recurring charges to city-owned facilities. Furthermore, some locations in Illinois impose ongoing requirements to perform repairs in areas where a company has constructed . . . ."); USTelecom Comments at 11 ("One village in Illinois, for instance, includes in its License Agreement a requirement to provide a 50% discount on fiber services to the village for any locations the village wishes to connect. This requirement is not publicly disclosed before service providers begin working with the village and, once the requirement is disclosed in the agreement process, the cost to the provider is not readily apparent because it depends on how many locations the village wants to connect with fiber. Other examples include an Illinois city's requirement to install additional conduit or handholes for local governments and an Alabama locality's requirement to provide dark fiber at no cost."); ExteNet Systems, LLC Reply at 5 (listing as examples "[c]urb-to-curb road restoration substantially beyond the impact of the deployment," street redesign requirements, "[u]pgrading sidewalk layouts including by installing rumble strips," "[c]onstruct[ing] retaining walls adjacent to a wireline installation," and "[t]ree planting requirements beyond replacement of trees lost due to construction").

<sup>180</sup> See, e.g., INCOMPAS Comments at 17-18; NTCA Comments at 2, 8; Crown Castle Fiber LLC Reply at 11-12; ExteNet Systems, LLC Reply at 5; NTCA Reply at 5-6; INCOMPAS Reply at 18-19; NTCA Reply at 5-6.

<sup>181</sup> See Crown Castle Fiber LLC Comments at 25; INCOMPAS Comments at 17-18 & Annex B; Intrepid Comments at 12-13; NCTA Comments at 10-12; T-Mobile Comments at 12; USTelecom Comments at 11; INCOMPAS Reply at 5, 17-18, 19-20.

<sup>182</sup> The Commission has addressed in-kind compensation in the context of cable franchise fees, as defined by section 622(g) of the Act. 47 U.S.C. § 542(g). Specifically, the Commission has found that cable franchise fees "can encompass both monetary payments imposed by a franchising authority or other governmental entity on a cable operator, as well as 'in-kind' payments – i.e., payments consisting of something other than money, such as goods and services – that are so imposed," *Title VI Third Report and Order*, 34 FCC Rcd at 6850, para. 12, and determined that specific types of cable-related, in-kind contributions are franchise fees subject to the 5% statutory cap under section 622(b) of the Act. *Id.* at paras. 25-48.

<sup>183</sup> The dollar values in this example are for illustration purposes only. We seek comment above on how the Commission should structure and establish any safe harbor fee levels.

62. We seek comment on this proposal. We believe our tentative conclusion to be consistent with the findings of courts considering this issue.<sup>184</sup> Does other legal authority support our tentative conclusion? Does contrary precedent exist? Would our proposal sufficiently remedy the prohibitive effects that excessive in-kind contributions have on deployments? How should the Commission approach the valuation of in-kind compensation for the purposes of determining whether it has been appropriately applied toward the overall compensation collected by state and local governments? As suggested in the example above, should it be based on the actual costs incurred by the provider in supplying it (e.g., labor, materials)? Should it be based on any applicable market value (e.g., what the government would have had to pay to purchase equipment)? Is there another method of valuation we should consider? At what point does work such as street or curb restoration stop being a reasonable cost that a provider should incur for the work it performs in public rights-of-way and become in-kind compensation?<sup>185</sup> Does restoration have to be limited to exactly what existed before the provider commenced work? If an installation requires a limited street cut, does restoration of the road beyond that cut constitute in-kind compensation? Does requiring providers to do additional work to install curb ramps and other accessibility features or additional signage that did not previously exist constitute in-kind compensation?<sup>186</sup> What kind of documentation should be required to substantiate the value of in-kind compensation? Who should bear the burden of proof during a dispute of in-kind valuation? Should the Commission require public disclosure of in-kind contribution requirements, and in what manner?<sup>187</sup>

63. Are there types of in-kind compensation that impose costs on providers that cannot be easily assigned a value? For instance, some commenters express concerns about municipalities that effectively require providers to subsidize their competitors by requiring them to install infrastructure that the municipality then leases out to other providers.<sup>188</sup> How should such requirements be addressed? Could this be a basis for state and local governments to waive or significantly lower the fees they demand

---

<sup>184</sup> See *City of Sante Fe*, 380 F.3d at 1271 (finding that an ordinance that required any telecommunications company installing conduit to install double capacity and dedicate the conduit to a city, together with an appraisal-based rental fee requirement, substantially increased costs for a provider and had a prohibitive effect within the meaning of section 253(a)); see also *City of Portland, Or. v. Elec. Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1064-65 (D. Or. 2005) (preempting a provision of a franchise agreement that required a provider to provide telecommunications duct and cable for the city's use under section 253).

<sup>185</sup> See INCOMPAS Reply at 16-17 (noting that the "most common unreasonable condition involves street restoration requirements far exceeding what is necessary to return disturbed areas to pre-construction condition").

<sup>186</sup> See NATaT Comments at 14 ("NATaT supports the Commission's scrutiny of unrelated demands but cautions against misclassifying legitimate safety-related tasks as "in-kind compensation."); League of Oregon Cities Comments at 15-16 ("A project that will interfere with an ADA-required sidewalk ramp or sidewalk width may require accommodations not required of other projects."); City of Ann Arbor Reply at 15 ("Additionally, Ann Arbor supports the concern of NATaT that the Commission should be careful not to misclassify legitimate safety-related tasks as "in-kind compensation."); see also INCOMPAS Reply at 5, 17 (complaining of requirements to replace ADA-compliant ramps "at intersections nowhere near construction sites"); NCTA Comments at 11-12 (citing requirements to replace ADA ramps).

<sup>187</sup> See USTelecom Comments at 11 (explaining that a village in Illinois does not publicly disclose a requirement in the license agreement "to provide a 50% discount on fiber services to the village for any locations the village wishes to connect," and that "the cost to the provider is not readily apparent because it depends on how many locations the village wants to connect with fiber").

<sup>188</sup> See T-Mobile Comments at 12 ("For example, communities in Alabama, Arizona, Illinois, and Oregon have required our fiber partners to construct conduit, handholds, and manholes for the city's benefit and use. While the city is required to compensate the company for the buildout of this infrastructure, it becomes the city's property, often with no usage restrictions, creating situations where the companies end up indirectly subsidizing a competitor when the city subsequently leases use of the infrastructure to other providers."); NCTA Comments at 10 (describing requirements that providers install "shadow conduit" that may be used by the locality or its lessees to compete with the provider).

from providers? What would happen if a provider simply refused to install infrastructure that could or would be used by a competitor? Could state or local governments use the opportunity created by the provider's deployment to purchase and install additional facilities itself, rather than imposing the obligation on the provider? Do these requirements promote beneficial "dig once" policies, and if so, how should the Commission take that into account? Are there other forms of in-kind compensation that drive up costs for providers in a manner that implicates Section 253 but cannot be assigned a value? Are there types of in-kind contributions that are so onerous that they prohibit the provision of wireline telecommunications irrespective of whether their monetary costs would exceed our fee standard?

64. Some commenters request that we determine that in-kind requirements that have no bearing on a provider's use of public rights-of-way are prohibited by Section 253.<sup>189</sup> While we do not propose outright prohibitions on specific types of in-kind compensation at this time,<sup>190</sup> we reiterate that Section 253(c) only allows state and local governments to collect fair and reasonable compensation "for use of public rights-of-way."<sup>191</sup> For this reason, the Commission and courts have already recognized that demands for compensation that effectively prohibit the provision of telecommunications services in violation of Section 253(a) and are unrelated to a provider's use of public rights-of-way may not be saved from preemption by Section 253(c).<sup>192</sup> We therefore tentatively conclude that, if in-kind compensation demands are unrelated to a provider's use of public rights-of-way and increase the costs of deployment in a manner that effectively prohibits the provision of wireline telecommunications service within the meaning of Section 253(a), they are likely to be preempted if challenged before the Commission or in court. We seek comment on this view and whether commenters believe it is necessary for the Commission to codify a rule that memorializes these statutory standards. Are there in-kind compensation demands that are unrelated to a provider's use of public rights-of-way but are permissible under the statute because they do not effectively prohibit the provision of telecommunications services under Section 253(a)? Are the questions of whether an in-kind compensation demand is related to use of public rights-of-way so case specific that they should be resolved via individual adjudications versus a generally applicable rule? How should the Commission define what it means for an in-kind compensation demand to be "related" to a provider's use of the right-of-way? Does making spare conduit or dark fiber strands available "relate" to the use of the right-of-way in the same way mitigation measures like repaving roads or restoring curbs do, or do such demands more closely resemble requirements such as providing a municipality with free services or other donations? Are any of these examples more or less objectionable with respect to how they relate to a provider's use of the right-of-way? Should Commission establish an

---

<sup>189</sup> See, e.g., Crown Castle Fiber LLC Comments at 25; Crown Castle Fiber LLC Reply at 12-13; ExteNet Systems, LLC Reply at 5; ITIF Comments at 4; Intrepid Comments at 12-13; NTCA Reply at 5-6.

<sup>190</sup> ITF Comments at 4 (suggesting that the Commission preempt in-kind compensation outright because "it overcomplicates the authorization process and presents a less clear-cut method of cost recovery for state and local governments.").

<sup>191</sup> 47 U.S.C. § 253(c).

<sup>192</sup> *Municipality of Guayanilla*, 420 F.3d at 22 (fair and reasonable compensation under Section 253(c) requires that "fees should be, at the very least, *related* to the actual use of the rights of way"); *City of Santa Fe*, 380 F.3d at 1272 ("[P]rovisions granting the City broad discretion to deny a lease application cannot be saved from preemption by § 253(c). These provisions do not relate to activities ordinarily associated with the management of rights-of-way, such as control of excavation or the management of construction."); *AT&T Comm. of the Sw., Inc. v. City of Dallas, Tex.*, 52 F. Supp.2d 756, 761 (N.D. Tex. 1998) ("All of the legislative history surrounding the adoption of § 253(c), and the cases that have since been decided on the issue, have interpreted the provision to apply to *physical* occupation of a city's rights-of-way."); *Moratoria Order*, 33 FCC Rcd at 7786-87, para. 160 ("[S]ection 253(c) protects certain activities that involve the actual use of the right-of-way"); *Bluebird Order*, 35 FCC Rcd at 12823-24, paras. 32-33 (concluding that imposition of duplicative fees unrelated to the management of public rights-of-way "cannot be saved by section 253(c)").

exception for in-kind compensation that is voluntarily negotiated?<sup>193</sup>

65. We also seek comment on whether state and local governments demand in-kind compensation that has a prohibitive effect that violates Section 253(a) and would not qualify as “fair and reasonable compensation” under Section 253(c), but may nonetheless be saved from preemption under Section 253(b). If so, what types of in-kind compensation meet the criteria of Section 253(b) and how should the Commission consider Section 253(b) when evaluating the above proposal?

#### **D. Applying the Deadline and Fee Standard to Commingled Facilities**

66. We propose to adopt a rule that prohibits state and local governments from effectively prohibiting the provision of wireline telecommunications services by imposing additional requirements on wireline telecommunications infrastructure that can also be used to provide other services. Specifically, we propose to codify a presumption that a state or local government has violated Section 253 if it imposes requirements that exceed any limits on processing timelines and fees adopted by the Commission for wireline telecommunications authorizations on the grounds that the provider may provide other services over the same infrastructure on a commingled basis.<sup>194</sup> We seek comment on this proposal.

67. The record developed in response to the *2025 Notice of Inquiry* shows that in today’s marketplace, wireline telecommunications infrastructure commonly transports both telecommunications and non-telecommunications services.<sup>195</sup> As USTelecom observes, “[p]roviders build and operate integrated fiber networks that simultaneously carry both telecommunications traffic and broadband traffic.”<sup>196</sup> It is axiomatic that wireline telecommunications infrastructure does not cease to be such simply because it is used to carry other types of traffic, and we thus tentatively conclude that the infrastructure remains subject to the protections of Section 253 irrespective of whether the buildout is

---

<sup>193</sup> City of Ann Arbor Reply at 15.

<sup>194</sup> We note that the Commission clarified in 2019 that the Act prohibits franchising authorities from charging cable operators duplicative fees—for example, a cable franchise fee and a “broadband access fee”—for use of public rights of way. Section 622(a) of Title VI the Act states that any cable operator may be required under the terms of any franchise agreement to pay a franchise fee. 47 U.S.C. § 542(a). Section 622(b) provides that “[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator’s gross revenues derived in such period from the operation of the cable system to provide cable services.” 47 U.S.C. § 542(a). In 2019, the Commission observed that “Title VI does not permit franchising authorities to extract fees or impose franchise or other requirements on cable operators insofar as they are providing services other than cable services” and preempted “(1) any imposition of fees on a franchised cable operator or any affiliate using the same facilities franchised to the cable operator that exceeds the formula set forth in section 622(b) of the Act . . . whether styled as a ‘franchise’ fee, ‘right-of-access’ fee, or a fee on non-cable (e.g., telecommunications or broadband) services, and (2) any requirement that a cable operator with a Title VI franchise secure an additional franchise or other authorization to provide non-cable services via its cable system.” *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable TV Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Third Report and Order, 34 FCC Rcd 6844, 6889, para. 80 (2019), *aff’d in pertinent part City of Eugene, Oregon v. FCC*, 998 F.3d 701, 715 (6th Cir. 2021). It did so under the express preemption authority in Title VI, not under section 253 of the Act. *Id.* at 6890-91, paras. 81-82.

<sup>195</sup> As noted above, Section 253 applies to the deployment of infrastructure that can be used to provide telecommunications services, even if the entity deploying the infrastructure is not offering telecommunications services to end users. *See supra* para. 10 n.21.

<sup>196</sup> USTelecom Reply at 3 (“Providers build and operate integrated fiber networks that simultaneously carry both telecommunications traffic and broadband traffic.”); *see also* INCOMPAS Comments at 20 (“[M]ost modern broadband networks are multi-use platforms—they carry broadband data services . . . but can also carry telecommunications in various forms.”); ACA Connects Comments at 9-10 (“[P]roviders typically offer a bundle of telecommunications, video, and broadband internet access and other information services using the same network facilities.”).

required solely to provide telecommunications services or to provide non-telecommunications services, as well. This is a principle that has been recognized by the Commission for almost twenty years, dating back to when the Commission concluded that “Section 332(c)(7)(B) would continue to apply to wireless broadband Internet access service that is classified as an ‘information service’ where a wireless service provider uses the same infrastructure to provide its ‘personal wireless services’ and wireless broadband Internet access service.”<sup>197</sup> As the Commission observed then, “classifying wireless broadband Internet access services as ‘information services’ will not exclude these services from the section 332(c)(7) framework when a wireless provider’s infrastructure is used to provide such services commingled with ‘personal wireless service.’ Commingling services does not change the fact that the facilities are being used for the provisioning of personal wireless services.”<sup>198</sup> These conclusions were similar to the view taken by the U.S. Supreme Court in *National Cable & Telecommunications Ass’n v. Gulf Power Co.*, which concluded that a pole attachment by a cable operator does not cease to be such for the purposes of Section 224 of the Act if it is someday also used to provide high-speed Internet access.<sup>199</sup> Indeed, any other approach would seem in tension with the express text of the statute, which provides that “[n]o 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.”<sup>200</sup> Accordingly, if a provider seeks to deploy infrastructure that enables the *ability* to provide telecommunications services, no state or local requirement may prohibit or have the effect of prohibiting it, regardless of whether the provider offers other services on a commingled basis.<sup>201</sup> We seek comment on these tentative conclusions.

68. The record indicates that some state and local governments impose additional or more onerous requirements on providers seeking authorizations to deploy wireline telecommunications infrastructure when that infrastructure may be used to provide other services on a commingled basis.<sup>202</sup> The record further suggests that these additional or more onerous requirements frustrate the ability of providers to offer wireline telecommunications services, with deployments facing delays or

---

<sup>197</sup> *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5924, para. 65 (2007) (“2007 Declaratory Ruling”); see also *Moratoria Order*, 33 FCC Rcd at 7787, para. 161 (concluding that that the effective prohibition standard in section 253 applies to infrastructure that is “used for the provision of both telecommunications and other services on a commingled basis.”).

<sup>198</sup> 2007 Declaratory Ruling, 22 FCC Rcd at 5924, para. 65.

<sup>199</sup> *Nat’l Cable & Telecomms. Ass’n v. Gulf Power Co.*, 534 U.S. 327, 333 (2002) (“This is our own, best reading of the statute, which we find unambiguous.”). *But see* League of Oregon Cities Comments at 11-12 (arguing that the D.C. Circuit Court of Appeals “rejected the Commission’s reasoning that ‘commingled facilities’ are subject to Commission jurisdiction if those facilities are used only for broadband services, finding that the ‘statute textually forecloses’ application to broadband-only networks because they do not provide telecommunications service”) (citing *Mozilla Corp. v. FCC*, 940 F.3d 1, 67 (D.C. Cir. 2019); City of Ann Arbor Reply at 16 (agreeing with League of Oregon Cities).

<sup>200</sup> 47 U.S.C. § 253(a) (emphasis added).

<sup>201</sup> NCTA Reply at 3; ACA Connects Comments at 13-14; Connect AI Comments at 24; INCOMPAS Comments at 19.

<sup>202</sup> See ACA Connects Comments at 9-10, 14-15 (citing duplicative fees imposed by localities when members offer a combination of broadband and telecommunications services on cable networks); NCTA Comments at 18-19 (describing requirement that obligates broadband providers to secure their own easements, necessitating that “each broadband provider knock on hundreds or thousands of doors”); USTelecom Reply at 4-5 (noting that broadband-specific restrictions, such as engineering mandates, network design constraints, or facility-placement rules, constrain the ability of providers to offer telecommunications services).

cancellation.<sup>203</sup> In view of this, we propose to adopt a presumption that a state or local government violates Section 253 if it imposes requirements that exceed any limits on processing timelines and fees adopted by the Commission for wireline telecommunications authorizations on the basis that the wireline telecommunications infrastructure may be used to provide other services. We seek comment on this proposal and these views.

69. How common is it for state and local governments to impose additional review or fee requirements on wireline telecommunications authorization requests because the provider may also offer broadband or other services? Can providers offer additional examples of the prohibitive effect of these additional requirements, e.g., examples of specific deployments that have been postponed, scaled back, or canceled, whether in the jurisdiction where the additional requirements are applied or because additional requirements imposed in one jurisdiction precludes a build from proceeding in another? Are there legitimate reasons for a state or local government to require more time to review an authorization request if additional services are offered over the wireline telecommunications infrastructure? Do the actual and direct costs incurred by a state or local government increase if wireline telecommunications infrastructure is also used to provide other services?

70. What would be the practical effect of adopting the proposed rule? For instance, to the extent state and local governments have enacted specific procedures and fees applicable to the deployment of broadband infrastructure, would those requirements be deemed compliant with Section 253 provided that they are no more onerous than the requirements applicable to wireline telecommunications services? What types of additional regulatory restrictions on broadband deployments (e.g., engineering requirements or facility-placement rules) would be preempted if the Commission adopted its proposed rule? What else should the Commission consider while evaluating this proposal?

#### **E. Legal Authority**

71. We tentatively conclude that the Commission possesses authority under Sections 253, 154(i), 201(b), and 303 of the Act<sup>204</sup> to make findings concerning what constitutes a violation of Section 253(a) and what qualifies for the Section 253(b) or (c) exceptions, and to adopt regulations that enable the Commission to better effectuate its authority under Section 253(d) to preempt statutes, regulations, or legal requirements that violate Sections 253(a) or (b).<sup>205</sup> We tentatively conclude that the Commission's authority to address effective prohibitions as described in Section 253(a) is not limited to case-by-case

---

<sup>203</sup> See ACA Connects Comments at 10 (“Because broadband is the tentpole offering for many providers, the profitability of broadband often drives decisions about whether to deploy telecommunications network facilities that can be used to provide these bundled services. Thus, a State or local government requirement that makes it infeasible for a provider to offer broadband service on a competitive basis (e.g., state rate regulation of broadband) could cause that provider to forgo a telecommunications network deployment altogether.”); USTelecom Reply at 4-5 (“Third, commenters show that rules nominally directed at broadband deployment often materially inhibit telecommunications services that can be delivered over the same network infrastructure. Many in the record explain that fiber networks support both broadband and telecommunications functions, and that restrictions on broadband deployment—such as engineering mandates, network design constraints, or facility-placement rules—therefore directly impede the ability to provide telecommunications services.”).

<sup>204</sup> 47 U.S.C. §§ 154(i), 201(b), 253, 303.

<sup>205</sup> Some state and local government commenters argue that “Congress expressly withheld from the Commission authority to preempt . . . requirements that fall within the scope of Section 253(c).” See League of Oregon Cities Comments at 3; Minnesota LFAs Reply at 3. This argument has previously been made by state and local governments challenging the ability of the Commission to preempt state and local requirements under Section 253 and has been rejected. As the Commission has explained, if this argument were viable, “any party could avoid preemption or the Commission’s jurisdiction simply by invoking section 253(c) as a defense, ‘creating a procedural oddity where the appropriate forum would be determined by the defendant’s answer, not the complaint.’” See *Bluebird Order*, 35 FCC Red at 12823, para. 30 (quoting *City of White Plains*, 305 F.3d at 75-76).

consideration (or, where appropriate, preemption) of specific state or local legal requirements.<sup>206</sup> We note that many courts have not construed Section 253(d) as establishing an exclusive method of enforcing Section 253, as evidenced by the fact that they have allowed providers to challenge state and local requirements in federal court, regardless of the availability of the Commission as a forum to resolve petitions. We seek comment on these tentative conclusions.

72. Finally, we propose to adopt a rule that delegates authority to the Wireline Competition Bureau to resolve petitions seeking preemption under section 253(d), including those raising new and novel issues. We believe this proposal will promote Congress's objectives in enacting Section 253 by expediting the resolution of disputes under the statute and the removal of barriers to the provision of wireline telecommunications services and deployment of wireline telecommunications infrastructure. We believe the Bureau has the expertise needed to resolve the legal and factual issues raised by Section 253(d) petitions and can do so more quickly than the administrative process required for action by the full Commission.<sup>207</sup> We seek comment on this proposal.

#### IV. PROCEDURAL MATTERS

73. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).<sup>208</sup> In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.<sup>209</sup>

74. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Commenters should refer to WC Docket No. 25-253 when filing in response to this *Notice of Proposed Rulemaking*.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each

---

<sup>206</sup> 47 U.S.C. § 253(d).

<sup>207</sup> Consistent with our rules, parties would be able to request review of the Bureau's decisions by the full Commission. 47 CFR §§ 1.106, 1.115.

<sup>208</sup> 47 CFR § 1.1206(b).

<sup>209</sup> *Id.* §§ 1.1200-1216.

filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

75. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

76. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available via ECFS.

77. *Paperwork Reduction Act.* This *Notice of Proposed Rulemaking* may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

78. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

79. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>210</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>211</sup> Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix A. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

80. *Contact Person.* For further information about this proceeding, please contact Benjamin (Jesse) Goodwin, Wireline Competition Bureau, Competition Policy Division, at (202) 418-0958, or [Benjamin.Goodwin@fcc.gov](mailto:Benjamin.Goodwin@fcc.gov).

---

<sup>210</sup> 5 U.S.C. §§ 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

<sup>211</sup> *Id.* § 605(b).

**V. ORDERING CLAUSES**

81. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 253, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 253, 303, and 403, that this *Notice of Proposed Rulemaking* hereby IS ADOPTED.<sup>212</sup>

82. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this *Notice of Proposed Rulemaking* on or before 45 days after publication in the Federal Register, and reply comments on or before 90 days after publication in the Federal Register.

83. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for the Small Business Administration (SB) Office of Advocacy.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>212</sup> Pursuant to Executive Order 14215, 90 Fed. Reg. 10447 (Feb. 20, 2025), this regulatory action has been determined to be economically significant under Executive Order 12866, 58 Fed. Reg. 68708 (Dec. 28, 1993).

## APPENDIX A

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Notice of Proposed Rulemaking (Notice)* assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy.<sup>2</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the *Notice*, pursuant to congressional direction found in the Telecommunications Act of 1996, which sought to spur rapid deployment of new telecommunications technologies in part by reducing regulation, we continue efforts by the Commission to eliminate barriers to the provision of wireline telecommunications services. Such barriers include state and local statutes, regulations, excessive fees, and other legal requirements that can constrain providers attempting to deploy wireline telecommunications infrastructure and provide wireline telecommunications services. We seek comment on proposals that would codify presumptions for when state and local requirements for obtaining authorizations prohibit, or have the effect of prohibiting, wireline telecommunications services in violation of Section 253 of the Communications Act of 1934.<sup>4</sup> Specifically, we propose establishing a deadline for state and local governments to act on wireline telecommunications authorization requests; establishing a standard for state and local fees that complies with Section 253; requiring in-kind contributions to comply with Section 253; and applying the deadline and fee standard to commingled facilities that carry both telecommunications services and other kinds of services. Further, we seek comment on our legal authority to establish such presumptions and on whether any rules promulgated by the Commission would have a binding effect on the courts.

**B. Legal Basis**

3. The proposed action is authorized pursuant to sections 1, 4(i), 253, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 253, 303, and 403.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the

---

<sup>1</sup> 5 U.S.C. §§ 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

<sup>2</sup> *Id.* § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 253.

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act (SBA).<sup>7</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup> The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.<sup>9</sup>

5. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions.<sup>10</sup> In general, a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.<sup>12</sup> Next, “small organizations” are not-for-profit enterprises that are independently owned and operated and not dominant their field.<sup>13</sup> While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees.<sup>14</sup> Finally, “small governmental jurisdictions” are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand.<sup>15</sup> Based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.<sup>16</sup>

6. The rules proposed in the *Notice* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS)<sup>17</sup> codes and corresponding SBA size standard.<sup>18</sup> Where available, we also provide additional information regarding the number of potentially affected entities in the industries identified below.

---

<sup>7</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> 13 CFR § 121.903.

<sup>10</sup> 5 U.S.C. § 601(3)-(6).

<sup>11</sup> See SBA, Office of Advocacy, *Frequently Asked Questions About Small Business* (July 23, 2024), [https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business\\_2024-508.pdf](https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business_2024-508.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> See SBA, Office of Advocacy, *Small Business Facts, Spotlight on Nonprofits* (July 2019), <https://advocacy.sba.gov/2019/07/25/small-business-facts-spotlight-on-nonprofits/>.

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> See U.S. Census Bureau, 2022 Census of Governments –Organization, <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>, tables 1-11.

<sup>17</sup> The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. See [www.census.gov/NAICS](http://www.census.gov/NAICS) for further details regarding the NAICS codes identified in this chart.

<sup>18</sup> The size standards in this chart are set forth in 13 CFR § 121.201, by six digit North American Industrial Classification System (NAICS) code.

Table 1. 2022 U.S. Census Bureau Data by NAICS Code

| Regulated Industry<br>(Footnotes specify<br>potentially affected entities<br>within a regulated industry<br>where applicable) | NAICS<br>Code      | SBA Size<br>Standard | Total<br>Firms <sup>19</sup> | Total Small<br>Firms <sup>20</sup> | % Small<br>Firms |
|---|--------------------|----------------------|------------------------------|------------------------------------|------------------|
| Electric Power Generators,<br>Transmitters and<br>Distributors  | 2211 <sup>21</sup> | 250-1000             | 2,626                        | 2,103 <sup>22</sup>                | 80.08%           |
| Natural Gas Distribution  | 221210             | 1,150<br>employees   | 432                          | 354                                | 81.94%           |
| Water Supply and Irrigation<br>Systems  | 221310             | \$41 million         | 3,887                        | 2,988                              | 76.87%           |
| Wired Telecommunications<br>Carriers <sup>23</sup>  | 517111             | 1,500<br>employees   | 3,403                        | 3,027                              | 88.95%           |
| Wireless<br>Telecommunications<br>Carriers (except Satellite) <sup>24</sup>   | 517112             | 1,500<br>employees   | 1,184                        | 1,081                              | 91.30%           |

<sup>19</sup> U.S. Census Bureau, “Selected Sectors: Employment Size of Firms for the U.S.: 2022.” Economic Census, ECN Core Statistics Economic Census: Establishment and Firm Size Statistics for the U.S., Table EC2200SIZEEMPfirm, 2025, and “Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2022.” Economic Census, ECN Core Statistics Economic Census: Establishment and Firm Size Statistics for the U.S., Table EC2200SIZEREVfirm, 2025.

<sup>20</sup> *Id.*

<sup>21</sup> NAICS Industry Group Code for all businesses in the Electronic Power Generators, Transmitters & Distributors industry group – (Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, and Electric Bulk Power Transmission and Control). Individual data is available for each of these industries based on their six-digit NAICS code.

<sup>22</sup> This represents the number of small firms with less than 250 employees in the Electronic Power Generators, Transmitters & Distributors 2211 NAICS Code Industry Group.

<sup>23</sup> Affected Entities in this industry include Cable Television Distribution Services, Competitive Access Providers, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Competitive Local Exchange Carriers (CLECs), Competitive Local Service Providers, Facilities-Based Carriers (International Telecom Carriers), Incumbent Local Exchange Carriers (Incumbent LECs), Interexchange Carriers (IXCs), Local Exchange Carriers (LECs), Operator Service Providers (OSPs), Other Toll Carriers, and Wired Broadband Internet Access Service Providers.

<sup>24</sup> Affected Entities in this industry include Fixed Microwave Services, Wireless Broadband Internet Access Service Providers, Wireless Carriers and Service Providers, and Wireless Communications Services.

| <b>Regulated Industry<br/>(Footnotes specify<br/>potentially affected entities<br/>within a regulated industry<br/>where applicable)</b> | <b>NAICS<br/>Code</b> | <b>SBA Size<br/>Standard</b> | <b>Total<br/>Firms<sup>19</sup></b> | <b>Total Small<br/>Firms<sup>20</sup></b> | <b>% Small<br/>Firms</b> |
|--|-----------------------|------------------------------|-------------------------------------|---|--------------------------|
| All Other<br>Telecommunications <sup>25</sup>  | 517810                | \$40 million                 | 1,673                               | 1,007                                     | 60.19%                   |
| Computer Infrastructure<br>Providers, Data Processing,<br>Web Hosting, and Related<br>Services   | 518210                | \$40 million                 | 12,054                              | 8,895                                     | 73.79%                   |
| Engineering Services   | 541330                | \$25.5<br>million            | 47,367                              | 37,363                                    | 78.88%                   |

**Table 2. Telecommunications Service Provider Data**

| <b>2025 Universal Service<br/>Monitoring Report<br/>Telecommunications Service<br/>Provider Data <sup>26</sup><br/>(Data as of December 2024)</b> | <b>SBA Size Standard<br/>(1500 Employees)</b> |                        |                             |
|---|---|------------------------|-----------------------------|
| <b>Affected Entity</b>  | <b>Total # FCC<br/>Form 499A<br/>Filers</b>   | <b>Small<br/>Firms</b> | <b>% Small<br/>Entities</b> |
| Competitive Local Exchange<br>Carriers (CLECs) <sup>27</sup>  | 4,049   | 3,853                  | 95.16                       |
| Incumbent Local Exchange<br>Carriers (Incumbent LECs)   | 1,175   | 920                    | 78.30                       |
| Interexchange Carriers (IXCs)   | 112   | 92                     | 82.14                       |
| Local Exchange Carriers (LECs) <sup>28</sup>  | 5,224   | 4,773                  | 91.37                       |
| Operator Service Providers (OSPs)   | 26  | 24                     | 92.31                       |
| Other Toll Carriers   | 72  | 69                     | 95.83                       |
| Wired Telecommunications<br>Carriers <sup>29</sup>  | 4,971   | 4,531                  | 91.15                       |

<sup>25</sup> Affected Entities in this industry include Internet Service Providers (Non-Broadband).

<sup>26</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2025 at 25, Table 1.12 (2026), <https://docs.fcc.gov/public/attachments/DOC-418505A1.pdf>.

<sup>27</sup> Affected Entities in this industry include all reporting local competitive service providers.

<sup>28</sup> Affected Entities in this industry include all reporting fixed local service providers (CLECs & ILECs).

<sup>29</sup> Local Resellers fall into another U.S. Census Bureau industry (Telecommunications Resellers) and therefore data for these providers is not included in this industry.

| 2025 Universal Service Monitoring Report<br>Telecommunications Service Provider Data <sup>26</sup><br>(Data as of December 2024) | SBA Size Standard<br>(1500 Employees) |                              |             |
|--|---------------------------------------|------------------------------|-------------|
|  | Affected Entity                       | Total # FCC Form 499A Filers | Small Firms |
| Wireless Telecommunications Carriers (except Satellite) <sup>30</sup>  | 608                                   | 522                          | 85.86       |

Table 3. Cable Entities Data

| Cable Entities  | Size Standard   | Total Firms       | Small Firms       | % Small Firms in Industry |
|---|---|-------------------|-------------------|---------------------------|
| Cable System Operators (Telecom Act Standard)<br>Small Cable Operator | Serves fewer than 498,000 subscribers, either directly or through affiliates <sup>31 32</sup> | 530 <sup>33</sup> | 524 <sup>34</sup> | 98.87%                    |
| Cable Companies and Systems (Rate Regulation)<br>Small Cable Company  | Serves 400,000 or fewer subscribers nationwide <sup>35 36</sup>                               | 530 <sup>37</sup> | 523 <sup>38</sup> | 98.51%                    |

<sup>30</sup> Affected Entities in this industry include all reporting wireless carriers and service providers.

<sup>31</sup> Pursuant to 47 U.S.C. § 543(m)(2) of the Communications Act of 1934, as amended, the size standard for a “small cable operator,” is a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all U.S. subscribers and has no affiliation with entities with gross annual aggregate revenues exceed \$250,000,000.

<sup>32</sup> *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In the Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

<sup>33</sup> Based on Commission staff review of S&P Global Market Intelligence, S&P Capital IQ Pro, U.S., *Broadband & Video Subscribers by Geography Q3-2025 (June 2025)* data. (last visited Sept. 15, 2025).

<sup>34</sup> *Id.*

<sup>35</sup> 47 CFR § 76.901(d).

<sup>36</sup> *Id.*

<sup>37</sup> Based on Commission staff review of S&P Global Market Intelligence, S&P Capital IQ Pro, U.S., *Broadband & Video Subscribers by Geography Q3-2025 (June 2025)* data. (last visited Sept. 15, 2025).

<sup>38</sup> *Id.*

| Cable Entities   | Size Standard                                    | Total Firms         | Small Firms         | % Small Firms in Industry |
|--|--|---------------------|---------------------|---------------------------|
| Cable Companies and Systems (Rate Regulation)<br>Small Cable System (headends) | Serves 15,000 or fewer subscribers <sup>39</sup> | 4,545 <sup>40</sup> | 3,965 <sup>41</sup> | 87.24%                    |

**D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

7. The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.<sup>42</sup>

8. Small governmental jurisdictions are likely to incur new costs in order to expedite review of wireline authorizations and to comply with the proposals in the *Notice*, if adopted. Other proposed rules may result in changes to state and local governments' administrative procedures. However, our proposals, if adopted, may reduce the time and expense for small and other service providers attempting to obtain authorizations for accessing and using state and local public rights-of-way to provide wireline telecommunications service.

9. In the *Notice*, the Commission seeks comment on proposals that, if adopted, offer clarification as to when a state or local statute, regulation, or legal requirement prohibits or effectively prohibits the provision of wireline telecommunications service, potentially reducing barriers to entry for the latter and enabling small entities to avoid unnecessary legal and administrative costs. Specifically, we propose to require that state and local governments act upon applications for authorizations to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure within 120 days of a submission by a provider.

10. Although these tasks, including, e.g., application review and public safety inspections, would be performed irrespective of any proposed deadline, some small governmental jurisdictions may need to act on timelines shorter than those currently being followed. As such, the Commission proposes to establish a rebuttable presumption that would enable small governmental jurisdictions to offer evidence that its timelines, fees, and other associated requirements do not prohibit or effectively prohibit the provision of wireline telecommunications services, or that they fall within the scope of Section 253's savings clauses. This evidence may include, for example, data that demonstrates that a state or local government's fees relate to its actual, direct, and objectively reasonable costs for the provider to access and use the right-of-way. Although we expect small governmental jurisdictions already keep such records, the *Notice's* proposals may necessitate more diligent recordkeeping and the need to report to the Commission any such evidence in the event a state or local requirement is challenged under Section 253(d).

<sup>39</sup> 47 CFR § 76.901(c).

<sup>40</sup> Based on Commission staff review of S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensusDW, *Operator Subscribers by Geography Q3-2025 (June 2025)* data. (last visited Sept. 15, 2025).

<sup>41</sup> *Id.*

<sup>42</sup> 5 U.S.C. § 603(b)(4).

11. We also propose to limit fees that state and local governments may collect to a reasonable approximation of the government's actual and direct costs of managing its public rights-of-way in connection with a particular wireline telecommunications authorization. Further, we propose that in-kind compensation received by state and local governments be subject to preemption. Finally, we propose that state and local governments be prohibited from exceeding the deadline for processing authorizations or any safe harbor fee levels that may be adopted on the grounds that the provider's wireline telecommunications infrastructure is capable of providing other services such as broadband Internet access service.

**E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities**

12. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities.<sup>43</sup> The discussion is required to include alternatives such as: “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>44</sup>

13. In the *Notice*, the Commission seeks comment on a number of alternatives designed to codify standards for when small governmental jurisdictions must act on authorization requests to deploy wireline telecommunications infrastructure and provide wireline telecommunications services. The Commission also seeks comment on establishing standards for what types of fees state and local governments may charge providers seeking such authorizations. Further, the Commission proposes to apply these standards to commingled facilities, i.e., wireline facilities that can be used to provide both telecommunications and other services. The Commission also seeks comment on alternatives such as setting timelines for small governmental jurisdictions to comply with Section 253 beyond the proposed 120 days, and whether this time period should start when a provider requests authorization or at some other point, or should be extended if the government entity cannot act on a provider's application because it is incomplete or otherwise deficient. Additionally, the Commission seeks comment on limiting the scope of authorization requests that a small governmental jurisdiction must act on concurrently, and establishing bases for rebutting any presumption that a small governmental jurisdiction has violated Section 253 of the Act. This may be contingent on how rights-of-way are granted (i.e., by permit or contract), whether multiple authorizations are required to enable a provider to deploy service, or other factors that may increase the complexity of review. Additionally, the Commission considers different approaches to cost-based fees and alternative fee standards. These include safe harbors, which would permit small governmental jurisdictions to charge fees under a certain threshold that would be presumed reasonable under Section 253. The Commission also seeks comment on allowing overhead costs such as joint and common costs. Relatedly, the Commission seeks comment on in-kind compensation demands, such as requirements that providers make spare conduit available or to repair street curbs damaged in the process of deploying wireline telecommunications infrastructure, and whether it should enable small governmental jurisdictions to impose certain kinds of in-kind compensation requirements, or whether some demands (such as those related to public safety) should not be considered in-kind compensation at all.

14. In evaluating the proposals in the *Notice*, the Commission will fully consider the economic impact on small entities as it evaluates the comments filed, including comments related to costs

---

<sup>43</sup> 5 U.S.C. § 603(c).

<sup>44</sup> *Id.* § 603(c)(1)-(4).

and benefits. Alternative proposals and approaches from commenters will further develop the record and could help the Commission further minimize the economic impact on small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

15. None.