STATEMENT OF
COMMISSIONER ANNA GOMEZ

Re: *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Proposed Rulemaking (June 26, 2026).

Accelerating broadband deployment is a bipartisan priority. It is incumbent upon the FCC to ensure the timely buildout of wireline infrastructure, the backbone of the reliable, high-speed connectivity necessary for the US to be a global leader in Artificial Intelligence.

That being said, this issue is complicated and requires us to carefully balance competing interests. On the one hand, providers seek assistance from the Commission to bring broadband to communities as fast as possible, and on the other, states and localities face large volumes of requests that they may or may not have the resources to respond to as rapidly as providers would like.

I am pleased that the Commission is seeking comment on how to ensure that communities are connected quickly and efficiently while being realistic about the burdens on states and localities. However, as I have expressed before, I am dubious about the Commission's authority under Section 253 to use rulemaking to preempt states and localities when it comes to their management of rights of way and fees charged to providers for a couple of reasons.

It is unclear whether Congress intended to confer on the Commission preemption authority over local management of public rights-of-way or over State and local governments' requirement of compensation from providers. In Section 253(d), Congress authorized the Commission to preempt the enforcement of a State or local government's specific statute, regulation, or legal requirement if it violates Section 253(a) or (b).[1] There is a question of whether this allows preemption of State or local management of public rights-of-way or the requirement of fair and reasonable compensation from providers which are protected under Section 253(c).[2] Congress in its drafting of Section 253 indicated its intention to narrow the preemption authority to subsections (a) and (b) to make clear that "local powers should be retained locally."[3] As legislative history suggests, Congress may have meant for Section 253(c) to allow for companies to pay for the use of public property and for States and localities to be in charge of pricing access to their rights-of-way, [4] perhaps beyond actual and direct costs.

In the NPRM at hand, the Commission proposes to adopt a presumption that "any failure by a state or local government to act by a specified deadline on applications for authorizations to access and use public rights of way" constitutes a violation of Section 253(a). It also tentatively concludes that fees that exceed direct and actual costs violate Sections 253(a) and (c). I am interested in hearing from outside parties about whether this constitutes an expansion of the Commission's preemption authority over rights that Congress intended to reserve for the States.

[1] 47 U.S.C. § 253(d).
[2] 47 U.S.C. § 253(c).
[3] League of Oregon Cities Comments, WC Docket No. 25-253, at 4 (rec. November 18, 2025) (citing 141 Cong. Rec. S8213 (daily ed. June 13, 1995) (statement of Sen. Gorton)).
[4] *Id.* at 26-27 (citing 141 Cong. Rec. H8460 (daily ed. Aug. 4, 1995) (statements of Rep. Stupak and Rep. Barton)).

Lastly, the language of Section 253(d) allows the Commission upon determination that "*a* State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b)" to "preempt the enforcement of *such* statute, regulation, or legal requirement"[5] (emphasis added). A plain reading of the text seems to suggest that the Commission has the authority to preempt on a case-by-case basis as it identifies individual State or local initiatives that violate Sections 253(a) or (b), rather than using rulemaking authority to issue a blanket preemption under Section 253(d). I hope commenters will opine on whether this reading is likely to survive judicial scrutiny under *Loper Bright* as the "best" interpretation[6] of Section 253(d), without which it is unclear the Commission has a basis to issue rule-based preemptions.

Since this item is still at the NPRM stage, it has my support. I remain very interested in reviewing the comments as they come in to determine what the Commission's role should be in accelerating broadband deployment.

I thank the Wireline Competition Bureau for their work on this item.

[5] 47 U.S.C. § 253(d).

[6] *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024) (holding that only the "best reading" of a statute is permissible).