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

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

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

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I. INTRODUCTION/BACKGROUND & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Inquiry[2] released by the Federal Communications Commission ("Commission") seeking comment on "state and local requirements that needlessly constrain the deployment of modern, high-speed wireline infrastructure."[3] The NOI also seeks comment on how the Commission can remove such barriers to wireline infrastructure deployment using its authority to do so found in Section 253 of the Communications Act of 1934, as amended ("the Act").[4]

In serving rural areas, NTCA members face a number of challenges as they build, upgrade, and maintain their wireline communications services networks, including low densities,

[1] NTCA is an industry association composed of approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services. NTCA members' "wireline infrastructure" is capable of providing voice as well as broadband Internet access services to residential, enterprise, and community anchor institution end-users.

[2] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, Notice of Inquiry, FCC 25-66 (rel. Sep. 30, 2025) ("NOI").

[3] *Id*., ¶ 1.

[4] 47 U.S.C. § 253.

long distances from urban areas, mountainous and rocky terrain, workforce shortages, and weather-shortened construction seasons that drive up deployment and operating costs. Exacerbating such concerns inherent to serving deeply rural areas, however, NTCA members increasingly face challenges in obtaining timely and cost-effective access to state and local government-controlled rights-of-way ("RoWs") for the purpose of installing wireline infrastructure.[5] Fees for RoW access can be excessive, and delays of up to a year or more (rivaling or at times exceeding delays experienced on the federal level[6]) in obtaining final RoW authorizations/permits to access a public RoW are increasingly common as well. Moreover, construction authorizations conditioned upon "in-kind" contributions to a governmental entity – for example, access to fiber stands for government use before approval to deploy is granted – are typically unrelated to the overall project and have the effect of driving up overall project costs. Fees for access to railroad property are excessive as well.

Even as expedited or lower cost access to public RoWs will not, standing alone, improve the business case to expand in many rural areas, excessive fees divert capital that could be utilized to connect additional consumers, and excessive delays can induce cost overruns that have a similar effect. This is the problem Congress intended the Commission to address when it enacted Section 253.

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[5] The terms "state and locally controlled" RoWs and "public RoWs" are used interchangeably herein.

[6] Obtaining access to federal lands for broadband facilities installation – or otherwise obtaining a permit when a project is considered a "major federal action" under the National Environmental Policy Act ("NEPA") and/or a "federal undertaking" pursuant to the National Historic Preservation Act ("NHPA") – is typically a time-consuming process for rural providers. As NTCA has noted, compliance with these processes typically take a year or more. *See* Statement by Michael Romano Executive Vice President NTCA–The Rural Broadband Association Before the United States House of Representatives Committee on Natural Resources Subcommittee on Federal Lands, (Jul. 9, 2024), available at: https://naturalresources.house.gov/uploadedfiles/testimony_romano070924.pdf

Section 253 of the Act grants the Commission legal authority to address these kinds of excessive fees and delays, as well as "in-kind" contribution schemes. Accordingly, the Commission should: (1) explicitly state that any fee assessed by a state or municipal government upon wireline communications providers' for access to public RoWs, as well as any associated permit/permit application fees, must be cost-based (as defined herein); (2) explicitly ban any construction authorizations conditioned upon "in-kind" contributions; (3) adopt "shot clocks" that govern wireline providers' access to public RoWs; and (4) address excessive fees for access to railroad crossings and other property for the purposes of installing communications services infrastructure.

II. TO COMPLY WITH SECTION 253 OF THE ACT, ANY FEE ASSESSED FOR WIRELINE COMMUNICATIONS PROVIDERS' ACCESS TO PUBLIC RIGHTS OF WAY MUST BE "COST-BASED."

A. Fee structures that are not based on the direct and actual costs that state and local governments incur when providers access public RoWs divert resources away from additional network investment.

The Commission should require that any fee assessed by a state or local government upon wireline communications providers for access to public RoWs must be cost-based as defined herein. The Commission's 2018 interpretation of Section 253 in a similar context[7] – upheld by the 9th Circuit Court of Appeals[8] – compels such a result in this proceeding.

In 2018, the Commission interpreted Section 253(a) of the Act to mean that "state and local fees and other charges associated with the deployment of wireless infrastructure can

[7] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, FCC 18-133 (rel. Sep. 27, 2018) ("*Small Cell Order*").

[8] *City of Portland*, 969 F.3d 1020 (9th Cir. 2020).

unlawfully prohibit the provision of service" when such fees "recover more than the state or local costs associated with facilities deployment."[9] As the *NOI* notes, this interpretation was based on the conclusion that, "fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere."[10] These findings also led the Commission to conclude that non-cost based fees run afoul of Section 253 because these fees, when viewed in the aggregate have "potential limiting implications for a nationwide wireless network that reaches all Americans, which is among the key objectives of the statutory provisions in the 1996 Act that we interpret here."[11]

The Commission's reasoning that state and local fees associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service in violation of Section 253(a) applies in equal measure to wireline providers' access to public RoWs. As the *NOI* acknowledges, wireline communications providers have indicated that non-cost based fee regimes have forced providers to eschew or scale back deployment.[12] In addition, as the Commission acknowledged in the wireless context,[13] non-cost based fees have the effect of diverting funds that could otherwise be used to connect additional consumers. Moreover, as to this diversion of investment capital, there is an equal "potential limiting implication" for

[9] *Small Cell Order*, ¶¶ 11, 56. *See also NOI*, ¶ 32.

[10] *NOI*, ¶ 33.

[11] *Small Cell Order*, ¶ 62.

[12] *NOI*, ¶ 40, fns 98-100 (citing to a diverse group of wireline infrastructure providers indicating that certain state or local fee regimes have caused providers to scale back deployment projects or avoid certain jurisdictions altogether).

[13] *Small Cell Order*, ¶ 61.

nationwide wired connectivity "that reaches all Americans"[14] – the Commission's failure to set a standard for the fees at issue herein will impede consumers across the nation from gaining timely and cost-effective access to connections they otherwise would obtain.

Section 253(a) was intended to prevent this specific result. Making clear that only cost-based fees assessed upon wireline providers for public RoW access are consistent with Section 253(a) will remove a barrier to the availability of these services by freeing up capital for additional network investment.

Sections 253(b) and (c) likewise support enactment of a cost-based fee standard.[15] The Commission has interpreted 253(b) narrowly with respect to express and *de facto* "moratoria,"[16]

[14] *Id*., ¶ 62.

[15] Sections 253(b) and (c) are often referred to as "savings clauses," allowing the Commission to deem permissible state or local laws that are otherwise deemed impermissible pursuant to Section 253(a). Section 253(b) states that state or local requirements that run afoul on Section(a) can remain in place where these are imposed on a "competitively neutral basis," are "consistent with section 254" of the Act and therefore are "necessary to preserve and advance universal service," or "protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Section 253(c) states that "[n]othing 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." 47 U.S.C § 253. *See also NOI*, ¶ 42.

[16] In 2018, the Commission ruled "state and local moratoria on telecommunications services and facilities deployment are barred by section 253(a) of the Act because they 'prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'" *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, FCC 18-111 (rel. Aug. 3, 2018) ("*Moratoria Order*"), ¶ 4, citing 47 U.S.C. § 253(a). The Commission also stated therein that "section 253(a) also prohibits *de facto* moratoria, which we define for the purpose of this Declaratory Ruling as state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium." *Id*., ¶ 149. Further the Commission also stated that neither express moratoria nor *de facto* moratoria can be saved (or deemed permissible) by Section 253(b). *Id*., ¶ 153.

and this reading of the statute was upheld by the 9th Circuit.[17] Similarly in the wireline context, because non-cost based fee structures divert resources away from network expansion, like moratoria, they "run counter to the goal of preserving and advancing universal service [because they] prevent or materially limit deployments that could assist in achieving universal service."[18] Moreover, it is difficult to envision how fee structures that undercut additional investment in this manner could "conceivably improve the quality of such services."[19] Meanwhile, a reasonable, plain meaning reading of "fair and reasonable compensation" found in Section 253(c) indicates that providers should reimburse state and local governments only for the costs the latter incur due to the formers' decision to install facilities in the public RoW. Cost-based fees are thus consistent with this provision.

The Commission should therefore state that per-linear-foot annual rental fees, revenue-based fees[20] or any other fee structures not based on the direct and actual costs incurred by state

[17] *City of Portland*, 969 F.3d 1020, 1036 (9th Cir. 2020).

[18] *Moratoria Order*, ¶ 155 (finding that moratoria and *de facto* moratoria cannot be saved by Section 253(b) because these actions by state and local governments "run counter to the goal of preserving and advancing universal service as moratoria prevent or materially limit deployments that could assist in achieving universal service.").

[19] *Id*. ("Neither the Commission nor a court has ever evaluated whether a state requirement that violated section 253(a) was permissible on the grounds that it was nevertheless necessary to 'ensure the continued quality of telecommunications services,' and it is difficult to envision how a ban on deployment could conceivably improve the quality of such services. If anything, a moratorium is likely to decrease the quality of telecommunications services by barring competitive entry into the market, reducing the quality and quantity of services available to consumers, and inhibiting providers' ability to deploy the facilities needed to broaden the geographic areas they can serve, fill coverage gaps, expand capacity, and/or upgrade the technology used in their networks.").

[20] NTCA members have reported being assessed public RoW access fees based on the number of linear feet of fiber placed in the RoW, and that these fees often are annual rental fees. Members have also stated that "gross revenues" fees – a percentage of gross revenue earned by the provider within the jurisdiction at issue – are becoming more common as well. As the *NOI* indicates, these types of fees are increasingly prevalent for providers all across the nation. *See NOI*, fns. 93, 98. It should be noted as well that the Commission has already concluded that "fees not reasonably tethered to costs appear to violate section

and local government as a result of wireline providers' installation of facilities are prohibited under Section 253. To implement this finding, the Commission should define "cost-based" fees as:

- Costs incurred to review and issue public RoW access permits;
- Costs incurred to supervise providers' installation of facilities within state or locally controlled RoWs, including for the purposes of traffic control;
- Costs incurred to ensure any state or locally controlled RoWs and nearby property damaged specifically by wireline infrastructure installation are properly restored to the *state quo ante*; and
- Not including a locality's general right-of-way costs (for road repair/maintenance, or trash removal) because the locality incurs those costs even in the absence of wireline facilities installation.

As discussed above, Commission precedent upheld by a federal court supports a Commission ruling that Section 253 permits only cost-based fees associated with wireline infrastructure providers' access to public RoWs.[21]

253(a) in the context of Small Wireless Facility deployments, including *gross revenue fees that are generally not based on the costs associated with a provider's use of the rights-of-way*." *NOI*, fn. 85, citing *Small Cell Order*, ¶ 70 (emphasis added).

[21] As USTelecom has noted, "many localities are increasingly recognizing the decline in traditional telecom revenues and, as a result, are requiring new telecommunications franchise agreements for broadband networks with fees based on total project revenues and broadband revenues." USTelecom – The Broadband Association, *ex parte* letter, WC Docket No. 17-84 (fil. Jul. 31, 2025), p. 3. NTCA members have experienced this as well. One NTCA member for several years provided competitive local exchange voice service as well as traditional cable service in a rural Kansas town, with each provided under franchise agreements that provided revenue to the city. Upon transitioning these operations to Voice over Internet Protocol and "streaming" video services, the city in which these services are provided now insists upon a franchise fee based on 5% of gross revenues from broadband service provided to customers within the city. The city has reasoned that the provider has always paid franchise fees and should continue to do so regardless of whether the services provided are not subject to a franchise fee under state law.

B. "In-kind" contributions required as a condition for access to public RoWs should be deemed inconsistent with Section 253 as well.

As the *NOI* states, the record indicates that state and local governments' have requested compensation or concessions (i.e. "in-kind" contributions) as a condition for authorization to access to public RoWs, and these are typically unrelated to providers' deployment projects.[22] NTCA members have been forced into such arrangements as well. For example, one state transportation department in the mountain west regularly demands access to strands of fiber installed in the public RoW as a condition for providers' access. In an upper midwest state, a local government required the provider to replace street curbs in areas where network construction did not even take place.

Just as non-cost based fees needlessly divert resources away from additional deployment, so do these "in-kind" contribution schemes, and the Commission is similarly empowered by Section 253(a) to prohibit these. In addition, these arrangements are inconsistent with Sections 253(b) and (c). It is difficult to envision how demands to cede control of network assets or replace city infrastructure in unaffected areas "advance universal service" or any of the other objectives found in Section 253(b) or represent "fair and reasonable compensation" under Section 253(c). Indeed, as noted above, a plain meaning interpretation of "fair and reasonable compensation" in Section 253(c) is that a provider should reimburse a state or local government for only the costs the latter incurs due to the former's request to install facilities in the public RoW. Certainly these could and should include any damage done by a provider to streets, curbs

[22] *NOI*, ¶ 50 ("Sometimes, the concessions have taken the form of excess conduit and fiber installed for the government's use. In other cases, providers have stated that they have been required to install video surveillance cameras for law enforcement use, bring street curbs unrelated to the provider's deployment into compliance with federal requirements, and repave entire street lanes and blocks when the project only required a minor street cut.") (internal citations omitted).

and other government-owned property *related specifically to their wireline infrastructure project*, as well as a reasonable approximation of costs incurred to review and process applications. But, where a state transportation department finds itself in need (or even merely desirous) of access to fiber strands, these have no tether to management of the project or the costs incurred as a result of the deployment.

III. THE COMMISSION SHOULD ADOPT "SHOT CLOCKS" THAT GOVERN AUTHORIZATION FOR WIRELINE INFRASTRUCTURE PROVIDERS' ACCESS TO STATE OR LOCAL GOVERNMENT CONTROLLED RIGHTS-OF-WAY.

The *NOI* seeks comment on when excessive delays in authorizations for wireline providers' access to public RoWs violate Section 253(a) "even if the delays do not rise to the 'extreme' level of *de facto* moratoria."[23] As the record indicates, wireline providers of all kinds confront excessive delays in obtaining authorization to install communications infrastructure in RoWs controlled by state and local governments.[24] NTCA members frequently report that these excessive delays drive up project costs and even threaten to render certain network deployment projects unsustainable.

To address these delays, the Commission should reinforce its previous determination that *de facto* moratoria inherently violate Section 253(a) when such delays "continues for an unreasonably long or indefinite amount of time such that providers are *discouraged from filing applications*."[25] More specifically, when authorization delays render planned projects unsustainable because the overall cost has increased by a material percentage due to the passage

[23] *Id*., ¶ 19.

[24] *Id*., fns. 50-54.

[25] *Id*., ¶ 18 (emphasis added).

of time, this is an effective loss of capital that could have otherwise been used to connect consumers elsewhere. 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 every bit as problematic from the perspective of Section 253 as providers being "discouraged from filing applications." In both scenarios, the general availability of wireline communications services is diminished, which the Commission has already determined Section 253 was intended to prevent.[26]

Unfortunately, crafting a remedy for these types of excessive delays is difficult. The Commission cannot "put the genie back in the bottle" on abandoned or scaled-back projects as the damage has already been done. Moreover, many of these delays result not from specific laws that providers can point to but rather state and local governments not processing RoW authorizations/permits using a consistently applied, defined, and formal process[27] – in these

[26] *Small Cell Order*, ¶ 62.

[27] As NTCA has stated, "experience has shown that many of these delays are caused by a lack of standardized process and/or timeline for reviewing permits." *Ex parte* letter of NTCA–The Rural Broadband Association, WC Docket No. 17-84 (fil. Jul. 2, 2025), p. 2. "Standardized" or "formal" permitting processes refers, for example to state and local governments' application procedures (including

cases providers cannot turn to the Commission and file a petition for preemption under Section 253(d)[28] as there are no specific state or local laws to point to as the source of delay.

Thus, the most sensible approach to addressing excessive delays is adoption of a "shot clock," as the Commission has done in the wireless context. Specifically, for state and local government RoW authorization/permitting processes:

- applications once submitted should be processed within a maximum of 90 days;
- state and local governments' application procedures (including documentation and any surveys that must accompany a permit application) should be clearly defined and posted on the government entities' websites;
- any requests for additional documentation, surveys, or other information necessary for an application to be deemed "complete" must be issued by the state or local government within a defined period of time (15 to 30 days, for example);
- the shot clock should start on the date the state or local government receives the completed application; and
- any requests for additional documentation or surveys once an application is deemed complete should not "toll" this "shot clock."

documentation and any surveys that must accompany a permit application) being clearly defined and posted on the government entities' websites. NTCA members often report that local government entities lack such formal processes and that this leads to multiple follow-up requests for documents, surveys, and other information from providers. The result is delay and unpredictability.

[28] 47 U.S.C. § 254(d) ("If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.").

IV. THE COMMISSION SHOULD ADDRESS EXCESSIVE FEES FOR ACCESS TO RAILROAD CROSSINGS AND OTHER PROPERTY FOR THE PURPOSES OF INSTALLING COMMUNICATION SERVICES INFRASTRUCTURE.

NTCA has repeatedly highlighted that access to railroad crossings and other railroad-owned/managed property for the purposes of installing network infrastructure represents a persistent deployment barrier.[29] NTCA members report prolonged delays and excessive fees for access to railroad property, including for insurance premiums, railroad employees' presence during construction, and construction permits, as well as fees assessed on outside contractors performing infrastructure installation. Indeed, fees of thousands or even tens of thousands of dollars and delays of several months can ensue for relatively limited work (e.g., boring a short distance under a railroad crossing) that is complete in a matter of hours and poses no credible safety threat to railroad property or operations.

Railroads often cite state or local laws as the basis for their authority to demand such excessive fees and impose such delays.[30] These practices, backed allegedly by state and local laws, result in the diversion of resources that could have been spent elsewhere – and NTCA members have in fact reported redirecting limited resources to deployment in other parts of their service areas simply to avoid the excessive fees and unnecessary delays associated with railroad crossings. These excessive fees and delays are every bit as problematic as the fees and delays

[29] *Ex Parte* Letter from Michael Romano, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 and WT Docket No. 17-79 (fil. Sept. 6, 2018); *Ex Parte* Letter from Michael Romano, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 and WT Docket No. 17-79 (fil. Aug. 27, 2020).

[30] *See Ex Parte* Letter from Robert Millar, Associate General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, Federal Communications Commission ("Commission"), WC Docket No. 17-84 and WT Docket No. 17-79 (dated June 1, 2018) ("Crown Castle Letter").

discussed above, and to the extent that they are enabled by a state or local law that grants the railroad such "gatekeeper" status, these too should be viewed as within the scope of barriers contemplated by Section 253 of the Act.[31]

V. CONCLUSION

For the reasons set forth above, the Commission should: (1) explicitly state that any fee assessed by a state or municipal government upon wireline communications providers' for access to public RoWs, as well as any associated permit/permit application fees, must be cost-based; (2) ban construction authorizations conditioned upon "in-kind" contributions; (3) adopt "shot clocks" that govern wireline providers' access to public RoWs; and use Section 253(a) to drive reasonable access to railroad crossings and other railroad-owned/managed property.

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[31] Commission action to address railroads going forward would and should not interfere, however, with state or local laws that, for example, are found to set already a reasonable fee for access to railroad crossings and/or to set reasonable timelines for the processing of requests for such access.