November 5, 2026

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
45 L Street NE
Washington, DC 20554

Re: Build America: Eliminating Barriers to Wireline Deployments, WC Docket No. 25-253

REPLY COMMENTS OF THE UNITED STATES CONFERENCE OF MAYORS, THE NATIONAL ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES, AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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I. SUMMARY AND INTRODUCTION

On behalf of the nation's counties, cities, towns, and villages, the United States Conference of Mayors (USCM),[1] the National League of Cities (NLC),[2] the National Association of Counties (NACo),[3] and the National Association of Telecommunications Officers and Advisors (NATOA)[4] (the Local Government Associations) submit these reply comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding.[5] These reply comments provide additional clarification with respect to the processing of permits to access and use public rights-of-way and the proposal to limit fees and other compensation for that access.

In the NPRM, the Commission indicated its intent to issue rules related to management of public rights-of-way by state and local governments and related to the compensation state and local governments can charge for the physical occupation of public rights-of-way by providers of telecommunications services and other services.

As it reviews the Comments, Reply Comments, and *ex parte* submissions in this proceeding, questions the Commission should answer are:

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[1] The United States Conference of Mayors (USCM) is the official nonpartisan organization of cities with populations of 30,000 or more. There are over 1,500 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

[2] The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

[3] The National Association of Counties (NACo) provides essential services to the nation's 3,069 counties, serving nearly 40,000 county elected officials and 3.6 million county employees. Since 1935, NACo unites county officials to advocate county priorities in federal policymaking and optimize county and taxpayer resources and cost savings while promoting exemplary county policies and practices.

[4]The National Association of Telecommunications Officers and Advisors (NATOA) is the local government association supporting our members by advocating for broadband deployment, digital equity, cable services, public, educational and governmental access (PEG) television, public safety communications and the preservation of local authority in our public rights-of-way (PROW).

[5] Build America: Eliminating Barriers to Wireline Deployments, Notice of Proposed Rulemaking, WC Docket No. 25-253, FCC 26-40, 91 Fed. Reg. 51121 (Aug. 7, 2026)(NPRM).

1) On what statutory authority does the Commission issue the proposed rules?

2) On what basis does the Commission assume expertise in the regulation and valuation of local land use, sufficient to justify issuing the proposed rules?

3) On what evidence does the Commission rely to justify issuing the proposed rules?

These reply comments reiterate that the Commission lacks the authority and expertise to promulgate the proposed rules regarding rights-of-way management, zoning decisions related to property outside the rights-of-way, infrastructure that does not provide telecommunications services, and fees and compensation related to telecommunications services, permitting, and land use regulation.

Further, the Commission cannot meet the Administrative Procedure Act requirement of a "rational connection" between local governments' administration of telecommunications service rights-of-way management and permitting processes and zoning and land use practices and the proposed rules. Local governments provided substantial, verifiable facts and evidence supporting their objections to the proposed rules. Proponents of the rules failed to provide more than a modicum of unsubstantiated allegations of local government malfeasance, much less verifiable facts and evidence in support of the proposed rules. The Commission should refrain from adopting the proposed rules.

II. THE COMMISSION LACKS AUTHORITY TO ISSUE THE PROPOSED RULES

As we stated in our opening comments, the Commission does not have authority to issue its proposed rules. In addition to the arguments we raised in our opening comments, we support and agree with comments filed by numerous local government

representatives.[6] In support of our opposition to shifting the burden of telecommunications services deployment to local taxpayers, the Local Government Associations note that the Communications Act contains no section authorizing the Commission to value local government land or other property. Further, the Commission lacks expertise in determining what constitutes "reasonable compensation" for occupying public land. Other federal agencies have that expertise and exercise it on behalf of the federal government. Those agencies charge rent for communications uses.

Several commenters suggest that the Commission has authority to dictate the terms of the local government regulatory environment related to infrastructure that is *capable* of providing telecommunications service, even when the purveyor of the infrastructure does not intend to provide telecommunications service.[7] This is a mistaken view of § 253(a). The text itself proves this: no regulation is allowed to the ability of any entity to "provide telecommunications service." By focusing on the infrastructure involved and equating that infrastructure with "ability" rather than focusing on the service provided (as required by the text), the Commission is reading the congressionally created classifications of "telecommunications service," "information

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[6] *See*, *e.g.*, City of Ottumwa, Iowa, NPRM Comments (Sept. 18, 2026)(Ottumwa Comments), https://www.fcc.gov/ecfs/document/26110076982/1; Kentucky League of Cities, NPRM Comments (Sept. 18, 2026)(KLC Comments), https://www.fcc.gov/ecfs/document/26110076992/1; League of Oregon Cities, NPRM Comments (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077550/1; Arlington, TX; Bellevue, WA; Boston, MA; Bowie, MD; Chicago, IL; Culver City, CA; Dallas, TX; District Of Columbia; Gaithersburg, MD; Henderson, NV; Hillsborough, CA; Howard County, MD; Huntsville, AL; Las Vegas, NV; Marin County, CA; Montgomery County, MD; Ontario, CA; Overland Park, KS; Palo Alto, CA; Piscataway, NJ; Plano, TX; and Texas Coalition of Cities for Utility Issues, NPRM Comments (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077526/1;The League Of Minnesota Cities; Minnesota Association Of Community Telecommunications Administrators; City Of Saint Paul, Minnesota; Northwest Suburbs Cable Communications Commission; North Metro Telecommunications Commission; South Washington County Telecommunications Commission; North Suburban Communications Commission; Quad Cities Cable Communications Commission; Ramsey/Washington Counties Suburban Cable Communications Commission II; City of Coon Rapids, Minnesota; and City of Northfield, Minnesota, NPRM Comments (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077468/1.

[7] *See, e.g.*, Connect Us, NPRM Comments at 22-24 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077573/1.

service" and "cable service" out of the Communications Act.[8] Further, the Commission is engaged in the regulation of hypothetical situations - the ultimate solution in search of a problem. Some of the proponents of the proposed rules suggest that an intent to provide telecommunications services is not required.[9] Federal preemption of traditional local government authority such as land-use regulation should be interpreted narrowly. This ask is the furthest thing from a narrow interpretation, and the Commission should not countenance it.

INCOMPAS suggests that the Commission may rely on the statutory provisions identified in the NPRM and suggests that 47 U.S.C. § 1302 (colloquially known as Section 706) provides a statutory basis for issuing the proposed rules.[10] While INCOMPAS accurately quotes a line from a federal appellate opinion, it is mistaken in the breadth of the Commission's authority under Section 706 with respect to local government management of rights-of-way and the ability to charge for the physical occupation of local government property.[11] The case cited by INCOMPAS focuses on the Commission's authority over broadband providers, not over local governments. "That said, even though the Commission has general authority to regulate in this arena, it may not impose requirements that contravene express statutory mandates."[12] Right-of-way management and compensation for the use of the rights-of-way are

[8] "Given that the Commission has chosen to classify broadband providers in a manner that exempts them from treatment as common carriers, the Communications Act expressly prohibits the Commission from nonetheless regulating them as such." *Verizon v. F.C.C.*, 740 F.3d 623, 628 (D.C. Cir. 2014). If broadband providers cannot be subject to common carrier treatment and obligations, they should not be entitled to such protections.

[9] *See, e.g.*, Connect Us, NPRM Comments at 22-24 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077573/1.

[10] INCOMPAS, NPRMComments, at 27 (Sept. 22, 2026), https://www.fcc.gov/ecfs/search/search-filings/filing/26110077574.

[11] INCOMPAS, NPRM Comments, at 27 (Sept. 22, 2026), (quoting *Verizon v. F.C.C.*, 740 F.3d 623, 628 (D.C. Cir. 2014)), https://www.fcc.gov/ecfs/search/search-filings/filing/26110077574.

[12] *Verizon v. F.C.C.*, 740 F.3d 623, 628 (D.C. Cir. 2014).

expressly removed from any statutory mandate by the opening clause of § 253 (c): "Nothing in this section affects the authority of a State or local government"[13] to manage the rights-of-way or require fair and reasonable compensation.

Further, Section 706 is designed to encourage deployment of advanced telecommunications *to underserved populations,* as is made clear in 47 U.S.C. § 1302 (c), "Demographic information for unserved areas," where the Commission is instructed to include in its annual survey of advanced telecommunications capability a geographic list of areas not served by any provider.[14] The Local Government Associations welcome the Commission's assistance in convincing providers to locate in underserved areas, provided that "assistance" isn't simply the preemption of our regulatory authority. Neither Section 706 and nor 47 U.S.C. § 201(b), (likewise, neither 47 U.S.C. §§ 151 nor 403),[15] provide statutory authority to override state and local land use and zoning authority, rights-of-way management authority, or ability to seek compensation for management and occupation of public land, either through the Commission's rule-making or adjudicatory processes, despite the Competitive Enterprise Institute's suggestion to the contrary with respect to § 201(b).[16] The code sections are general statements of authority that provide no power to act beyond the scope of what has been granted, and certainly do not provide power to do that which has been withheld.

Lastly, with respect to the Commission's lack of authority, the Local Government Associations agree with the Wireless Infrastructure Association (WIA) that this proceeding is not appropriate for implementing a "deemed granted" remedy based on

[13] 47 U.S.C. 253.
[14] 47 U.S. Code § 1302.
[15] *See*, NPRM at Appendix A, Regulatory Flexibility Analysis.
[16] Competitive Enterprise Institute, NPRM Comments, at 6-12 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077488/1.

the current state of the record before the Commission.[17] Proponents of a "deemed granted" remedy have not adequately addressed the statutory authority for such a remedy nor the significant federalism protections provided for by the United States Constitution.[18] The Local Government Associations appreciate both the Commission's restraint on this issue and the WIA's support of that restraint.[19]

III. THE COMMISSION LACKS EXPERTISE IN MANAGING RIGHTS-OF-WAY

In the United States, most public rights-of-way are owned and managed by general purpose local governments, i.e., cities, towns, villages, and counties. Close to 40,000 general-purpose local government units exist in the United States.[20] In addition to the general-purpose local government units in the United States, another almost 40,000 special-purpose districts (such as water, sewerage, sanitary, and utility districts, and the like) exist in the United States.[21] Special-purpose districts also have permit and management authority over their rights-of-way, easements, and other property. The

[17] WIA, NPRM Comments, at 11 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077559/1.
[18] *See*, *e.g.*, WISPA, NPRM Comments, at 11 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077485/1.
[19] We also appreciate the acknowledgement of the WTA – ADVOCATES FOR RURAL BROADBAND that its members "generally [have] few problems with local permitting given the responsive nature of government in the small towns served by" its members. WTA– ADVOCATES FOR RURAL BROADBAND, Notice of Ex Parte at 2 (Sept. 22, 2026), https://www.fcc.gov/ecfs/document/26110078087/1. The Local Government Associations and their members look forward to continuing to work positively with the WTA.
[20] Amy Smaldone, Mark L.J. Wright, Federal Reserve Bank of St. Louis, Local Governments in the U.S.: A Breakdown by Number and Type (Mar. 14, 2024), https://www.stlouisfed.org/publications/regional-economist/2024/march/local-governments-us-number-type.
[21] Amy Smaldone, Mark L.J. Wright, Federal Reserve Bank of St. Louis, Local Governments in the U.S.: A Breakdown by Number and Type (Mar. 14, 2024), https://www.stlouisfed.org/publications/regional-economist/2024/march/local-governments-us-number-type.

Commission's proposed rules will affect the property of tens of thousands of local government entities.[22]

The Local Government Associations, which represent the general interests of thousands of local government units in the United States, have filed comments, reply comments, and *ex parte* materials throughout the process associated with this proceeding.[23] In addition, individual local governments, state local government associations, and broad coalitions of local governments from across the country have filed comments and reply comments both in the Notice of Inquiry and Notice of Proposed Rulemaking detailing their experiences with providers; explaining why the Commission does not have authority to promulgate the proposed rules; and outlining the detrimental effects should the rules be adopted.[24]

For instance, the City of Ottumwa, Iowa, recounted that there are nine (9) communications utilities using its rights-of-way, including four residential broadband

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[22] The Commission inquired about the possibility of applying the proposed rules to property owned by local governments, not just the rights-of-way themselves. NPRM at paras. 28, 29, and 59. The Local Government Associations oppose the Commission's suggestion to apply the proposed rules to other government owned infrastructure and property and oppose the suggestion by Connect Us that the rules should apply to property outside the rights-of-way. Connect Us, NPRM Comments at 22-24 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077573/1. There is no indication that Congress intended to preempt traditional zoning and land use powers exercised every day by local governments with respect to the provision of telecommunications services, much less infrastructure that is only capable of providing telecommunications service but does not provide it. Extending that type of special treatment to one profit-seeking industry at the expense of voters choices requires a more explicit statement from Congress.

[23] The Local Government Associations note that other national associations such as the National Association of Towns and Townships (NATaT) and the American Public Power Association (APPA), who likewise represent thousands of members, have also filed comments throughout this proceeding. See, NATaT, NPRM Comments (Sept. 22, 2026), https://www.fcc.gov/ecfs/document/26110077590/, and APPA, NPRM Comments (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077543/. We support and concur with their comments.

[24] *See, e.g.*, Ottumwa Comments, https://www.fcc.gov/ecfs/document/26110076982/1; KLC Comments, , https://www.fcc.gov/ecfs/document/26110076992/1; Arlington, TX; Bellevue, WA; Boston, MA; Bowie, MD; Chicago, IL; Culver City, CA; Dallas, TX; District Of Columbia; Gaithersburg, MD; Henderson, NV; Hillsborough, CA; Howard County, MD; Huntsville, AL; Las Vegas, NV; Marin County, CA; Montgomery County, MD; Ontario, CA; Overland Park, KS; Palo Alto, CA; Piscataway, NJ; Plano, TX; and Texas Coalition of Cities for Utility Issues, NPRM Comments (Sept. 18, 2026), https://www.fcc.gov/ecfs/document/26110077526/1.

internet providers, with a fifth expected to deploy in the next year. The City states it works cooperatively with telecommunications service providers, and the fact that nine providers have deployed shows this to be true.[25] The City also states that it can only afford to employ one person to locate utilities and provide inspection services in the rights-of-way, and that telecommunications service installations must proceed at a pace that allows that employee to adequately manage the installation crews. The City has experience first-hand that communications installation crews routinely damage other utilities:

> Fiber optic boring crews have hit dozens of gas lines, water services, sewer laterals, and electric lines every year for the past few years. Their crews rarely self-report hits. It is up to our inspectors, private citizens, or the affected utilities to catch them. It's only a matter of time before these crews cause serious injury, or worse.[26]

Jefferson Parish, Louisiana, raised similar concerns in its comments:

> Jefferson Parish has experienced incidents where inadequate coordination of underground work has resulted in damage to existing utility infrastructure, including gas line strikes and water main breaches. These incidents endanger lives and impose substantial costs on local taxpayers. The Parish's permitting processes exist precisely to prevent such incidents, and the proposed rules would undermine those processes by prioritizing speed over safety.[27]

Jefferson Parish also explains the unique geographic and environmental challenges it faces as a coastal Louisiana community situated in one of the most hurricane-prone regions of the United States. Its circumstances require regular coordination with federal and state agencies and local levee authorities when infrastructure projects affect flood protection systems and other resources, turning what

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[25] A quick internet search reveals that there are multiple communications providers in Ottumwa, including Mahaska Communication Group, Kinetic (by Windstream), Mediacom Communications Corporation, CenturyLink, T-Mobile, Verizon, US Cellular (T-Mobile), and AT&T.
[26] Ottumwa Comments, at 1 (Sept. 18, 2026), https://www.fcc.gov/ecfs/document/26110076982/1.
[27] Jefferson Parish, Louisiana, NPRM Comments at 4 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110069428/1.

may seem like a routine deployment into a multi-agency undertaking requiring complex consideration.[28]

The Local Government Associations also draw attention to the Comments of the City of Vacaville, California. Vacaville explains in detail the steps it has taken to further deployment. It also explains why a 120-day time limit is unworkable. The City references a project involving Comcast and notes that the proposed aerial installation requires approval from the U.S. Bureau of Reclamation (USBR), among others. A proposed alternative also requires approval from the USBR.[29] The City cannot responsibly approve a project without ensuring that other interested stakeholders have reviewed the project - granting such a permit risks the providers beginning work when other stakeholders may have significant safety and environmental concerns that need to be addressed.

The City of Lakeville, Minnesota provides additional details supporting the facts that a nationwide uniform standard is unworkable. The City outlines numerous problems that have resulted from communications deployments, including "pavement depressions, heaves, and sinkholes due to, among other things, incorrect boring depths.[30] Lakeville goes on to describe a myriad of other negative effects which would be increased under the artificial deadline of the proposed rules, including strikes on storm sewer components and gas service lines, lagging restoration efforts which leave

[28] Jefferson Parish, Louisiana, NPRM Comments at 7 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110069428/1.
[29] City of Vacaville, California, NPRM Comments at 3 (Oct. 1, 2026), https://www.fcc.gov/ecfs/document/26110079035/1.
[30] City of Lakeville, Minnesota, NPRM Comments at 4 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077595/1.

open holes and exposed pedestals, and more.[31] The City also raises concerns about the timing of any proposed deadline for action on an application because it

> regularly receives applications that are incomplete, inconsistent, or missing essential components, such as: updated utility mapping, accurate boring plans and depth profiles, traffic control plans, and restoration specifications for boulevard, driveway and sidewalk/trail impacts.[32]

The City of St. Louis Park, Minnesota provides details about challenges faced by established jurisdictions, noting its narrow, heavily occupied rights-of-way corridors and aging infrastructure which require a robust annual capital replacement program. These conditions necessitate careful local review to ensure that proposed installations do not conflict with existing or planned public infrastructure and other rights-of-way users. "This coordination takes time, but it helps avoid situations in which newly installed private utilities must be relocated shortly afterward to accommodate other projects.[33]

The Local Government Associations ultimately refrain from repeating the comments of every local government, or group of local governments, that has filed in this proceeding. We include these examples to urge the Commission to take the time to read and understand the experience of local governments in trying to keep their residents physically safe and economically whole while also supporting private commercial communications activity. The Commission must consider that the proposed rules will have a material impact on state and local government obligations to provide

[31] City of Lakeville, Minnesota, NPRM Comments at 4-5 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077595/1. *See also*, City of Rosemount, Minnesota, NPRM Comments at 3-6 (Sept. 21, 2026)(noting among other things that "the City of Rosemount has recorded five natural gas line strikes, 4 electric strikes, and one internet line strike in 2026 construction season" and that incomplete applications create problems for current and future approvals and installations), https://www.fcc.gov/ecfs/document/26110077536/1.

[32] City of Lakeville, Minnesota, NPRM Comments at 5 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077595/1. *See also*, City of St. Louis Park, Minnesota, NPRM Comments at 3-4 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077521/1.

[33] City of St. Louis Park, Minnesota, NPRM Comments at 3 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077521/1.

for the safe and efficient use of public property, to provide for adequate police, fire, and emergency medical services, and to ensure safe drinking water and transportation thoroughfares, among other duties and responsibilities.

Jefferson Parish urges that "any regulatory framework governing wireline deployment timelines must account for the reality that not all jurisdictions face the same challenges."[34] The Local Government Associations agree and urge the Commission to understand that while Jefferson Parish (like other hurricane-prone jurisdictions) faces unique obstacles, thousands of local governments face their own unique obstacles, including temperatures rising above 100 degrees or below zero degrees Fahrenheit; rainfall such that rock- and mud-slides are a concern; fire, earthquake, snow, and ice hazards; aging and crowded infrastructure, and hundreds of other unique circumstances. The proposed rules do not account for the complexities local governments face, the Commission has no expertise to craft an appropriate regulatory framework, and therefore should refrain from adopting one.

IV. THE COMMISSION LACKS EXPERTISE IN SETTING RIGHT-OF-WAY MANAGEMENT FEES AND COMPENSATION AND IS PREVENTED FROM DOING SO BY FEDERALISM PRINCIPLES

Many local governments address the practical effects of the proposed rules on local government budgets, particularly infrastructure and safety concerns that must be paid for by someone. For instance, the City of St. Louis Park, Minnesota, points out that

> [p]ublic rights-of-way are valuable, finite assets built and maintained with taxpayer funds. Private occupation creates ongoing costs, including inspection, maintenance, utility coordination, emergency work, and infrastructure relocation.

[34] Jefferson Parish, Louisiana, Comments in 25-353 NPRM Proceeding at 7 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110069428/1.

> Restricting compensation would shift these costs to residents and businesses through higher taxes, reduced services, or deferred maintenance.[35]

Likewise, the Michigan Coalition to Protect Public Rights-Of-Way, the City of Ann Arbor, and the Grand Valley Metropolitan Council (collectively, Michigan Coalition) point out the problems posed by the proposed rules' intent to apply compensation limits to municipally owned property in the public rights-of-way. The Michigan Coalition explains that "government-owned infrastructure involves different and additional costs, such as capital investment, depreciation, maintenance, replacement, capacity scarcity, and opportunity cost." The Michigan Coalition highlights that the proposed compensation rules "risk compensating the first function [right-of-way management] incompletely and the second function [use of local government owned property] not at all."[36]

The Local Government Associations also support and highlight the Comments filed by the Kentucky League of Cities (KLC) regarding the financial consequences of the occupation of public property by commercial interests. The KLC explains the constitutional and statutory framework under which Kentucky Cities grant franchises. The KLC also requests that the Commission avoid adopting any proposal that would shift private deployment costs to local taxpayers.[37] The Local Government Associations concur in that request.

Turning to the federal level, the Bureau of Land Management (BLM) and the Forest Service, both within the U.S. Department of the Interior, together manage over

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[35] City of St. Louis Park, Minnesota, NPRM Comments at 3 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110077521/1.

[36] Michigan Coalition, NPRM Comments at 14-15 (Sept. 18, 2026), https://www.fcc.gov/ecfs/document/26110077494/1.

[37] KLC, NPRM Comments, at 6, https://www.fcc.gov/ecfs/document/26110076992/1. Jefferson Parish, Louisiana notes an additional problem with the proposed rules in that they would "create discriminatory treatment uniquely favoring telecommunications providers by limiting their fees to direct costs while other occupants pay market-rate compensation." Jefferson Parish, Louisiana, NPRM Comments at 5 (Sept. 21, 2026), https://www.fcc.gov/ecfs/document/26110069428/1.

two-thirds of all federally owned land in the country (about 615 million to 640 million acres), which is approximately 19% of the entire United States. The two federal agencies are responsible for processing most communications land-use applications on behalf of the federal government; both charge fees for processing applications and rent for the privilege of occupying federal property. For example, 36 C.F.R. § 251.57(a) requires the Forest Service to charge and collect in advance a land use fee based on the fair market value of the authorized use and occupancy as determined by appraisal or other sound business management principles. Similarly, the "BLM rental schedule for communications-use ROWs and leases is based on the population served and the type of communications use(s) for which the ROW is granted."[38] The Department of the Interior has explained to the House Subcommittee on National Parks, Forests and Public Lands that "to compensate the public for … commercial [communications] uses, BLM collects rental fees…" and that it was committed to "ensuring that rents accurately reflect fair market values for these uses of public lands."[39]

Local governments are no less entitled to charge rent to compensate the public for the commercial use of public property than the federal government. Any action by the Commission to limit rent payments is without authority and is arbitrary and capricious for several reasons, including the Commission's lack of expertise in valuing property.

The City of Ottumwa accurately summed up the local government position in this proceeding when it stated:

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[38] *See*, https://www.blm.gov/programs/lands-and-realty/communication-sites.
[39] Department of the Interior, Statement to the House Subcommittee on National Parks, Forests, and Public Lands regarding H.R. 2611 - Public Lands Telecommunications Act (June 18, 2020), https://www.doi.gov/ocl/hr-2611.

> A federal rule should not require local taxpayers to subsidize private occupation of public property. The public ROW is a valuable, finite asset built and maintained with taxpayer funds. Local governments also own or hold in trust streets, sidewalks, bridges, sewers, drainage systems, and other right-of-way assets on behalf of the public. Private occupation creates ongoing costs, including inspection, maintenance, utility coordination, emergency work, and infrastructure relocation. Restricting compensation would shift these costs to residents and businesses through higher taxes, reduced services, or deferred maintenance.[40]

On a related matter, the Fiber Broadband Association (FBA) suggests that the value of in-kind contributions should be calculated on the fair market price of any products or services that a local government requests as part of compensation for the use of rights of way.[41] Providers cannot have it both ways - direct costs only as compensation for access to valuable land, but fair market value for their property. While the Local Government Associations oppose the proposed rules with respect to compensation, should the Commission nonetheless decide to proceed down this ill-advised road, we agree with INCOMPAS that the value of in-kind services should be based on "the provider's reasonable, documented incremental cost of supplying"[42] the in-kind service.

The Commission lacks expertise in permitting. The Commission lacks expertise in valuing public property. Local governments have come forward explaining the myriad of financial concerns that are addressed through permitting fees and compensation. The federal government itself charges rent. Providers argue that the federal government should override market forces in determining compensation for the physical occupancy of land it does not own. The argument that providers are experiencing higher costs of

[40] Ottumwa, NPRM Comments, https://www.fcc.gov/ecfs/document/26110076982/1.
[41] FBA, NPRM Comments at 11, (Sept. 21, 2026), https://www.fcc.gov/ecfs/search/search-filings/filing/26110077472.
[42] INCOMPAS, NPRM Comments, at 23 (Sept. 22, 2026), https://www.fcc.gov/ecfs/search/search-filings/filing/26110077574.

doing business and that permitting fees are an expense they must pay as part of doing business, does not provide the Commission with the necessary expertise to adopt the proposed rules.

V. COMPLAINTS ABOUT 74 STATE AND LOCAL GOVERNMENTS FAIL TO SATISFY THE EVIDENTIARY REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT

While a significant number of local governments have come forward to share their experiences, the proponents of the proposed rules have relied on what can at best be classified as vague, anonymous, and unsubstantiated claims against local governments.

For instance, in an *ex parte* meeting with the Commission on September 29, 2026, the Fiber Broadband Association (FBA) presented the Commission with a submission "provid[ing] a fact-based view of wireline permitting practices."[43] The factual basis of this presentation is dubious. A single entry describes "egregious" local government requirements in "multiple jurisdictions" that require professional surveys, detailed drawings of existing utilities, and pre- and post-construction video scoping of sewer lines as part of their permitting process. This entry was created from a broadly described "FBA member submission (2026)."[44] This "fact-based" information fails to include:

- the size and type of project(s) seeking to be permitted,
- the name(s) of the jurisdiction(s),

[43] David Young, Samuel Kornstein, Megan Corriveau, Cartesian - A Bounteous Company, Wireline Telecommunications Permitting Challenges: Economic Impact of State and Local Permitting Practices (Sept. 29, 2026) (Prepared for: Fiber Broadband Association and presented at Sept. 29, 2026 *ex parte*) ("FBA submission"), https://www.fcc.gov/ecfs/search/search-filings/filing/26110078989.
[44] FBA submission, at 20, https://www.fcc.gov/ecfs/document/26110078989/2.

- the number of jurisdiction(s) involved,
- the state(s) where the jurisdictions are located,
- the name(s) of provider(s) and FBA member(s) seeking the permit,
- the amount of the "additional cost" above "ordinary permit review" as a result of the requirements, or
- the basis for determining what "ordinary permit review" should cost.

No part of this anonymized claim constitutes a "fact," and context is completely lacking.

The remainder of the FBA submission is similarly flawed, consisting largely of references to conduct committed by unnamed jurisdictions (sometimes in unnamed states, sometimes in named states) and, found either in the NPRM or in an unproduced member survey. As these references are unverifiable, they cannot constitute "facts" on which the Commission can base a decision to promulgate rules. Likewise, unnamed jurisdictions relied upon by other proponents of the proposed rules are unverifiable and cannot provide factual support or context necessary to support promulgating the proposed rules.[45] The references provided by proponents of the rules use conclusory statements and phrases to describe rights-of-way management and compensation requirements without providing context.

A permit issued 400 days after a provider submits an application is not evidence of a "delay." It is simply evidence that the permit issuance took 400 days – was it because the application was incomplete and it took the provider 380 days after notification to complete the application? Did the application involve other jurisdictions or

[45] To survive review under the arbitrary and capricious standard articulated in the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), the Commission must "examine the relevant data and articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962)).

reviewers, such as rail crossings or federal lands? Based on the information shared by proponents of the rules, there is no way to determine the reasons for the lengthy processes or similar complaints.

The FBA submission includes 17 named jurisdictions as examples of "egregious" actors. Among them is Katy, Texas, cited as being an example of "egregious permitting approval."[46] According to the FBA submission, Katy, which had suffered 16 incidents of damage, engaged in "egregious permitting approval" by authorizing a 120-day moratorium on approvals of fiber deployment, which only lasted 2 months.[47] The FBA submission fails to explain that the "damage" was to its waterlines and occurred between approximately October 2024 to March 2025. The submission also fails to mention that there were multiple near misses, which, had they occurred, would have left residential neighborhoods without water for days. The FBA submission also fails to mention providers could still deploy if they agreed to standards with the City.[48] The City took action to protect its residents, its infrastructure, and even providers themselves, worked to ensure that any interruption to deployment was as short as possible, and provided for waivers to the moratorium. Nonetheless, it is identified as being an example of "egregious permitting approval."

The FBA is not alone in failing to provide factual examples of conduct which would support the adoption of the Commission's proposed rules. Other providers and the NPRM largely cite unnamed jurisdictions when discussing "examples" to justify

[46] FBA submission at 25. Nowhere does the submission define what an "egregious permitting approval" is.
[47] FBA submission at 25.
[48] *See*, Natalie Weber, Houston Public Media, Katy Pauses New Fiber Installation Projects Following Water Line Damage, (March 6, 2025), https://www.houstonpublicmedia.org/articles/news/fort-bend/2025/03/06/515415/katy-pauses-new-fiber-installation-projects-following-water-line-damage/; and Official Press Release, Feb. 18, 2025; https://www.cityofkaty.com/Home/Components/News/News/1197/17\.

imposing nationwide rules. In total, across the NOI, the opening comments in the NPRM, and other filings in this proceeding, proponents of the proposed rules name approximately 74 state and local governments as causing undue complications during the permitting process. Even if one were to assume and accept the extraordinary claim that every named community engaged in conduct that violated the Communications Act - which we do not - the actions of those **seventy-four** state and local government entities would not justify imposing nationwide rules on upwards of **eighty thousand** local government and special district entities.

The FBA and other proponents of the rules also reference a handful of active or recently decided federal and state litigation efforts. These citations raise an important point: Congress created a mechanism by which those who feel that state and local governments have violated or failed to comply with the requirements of Section 253 can bring suit in either federal or state court. They can also attempt to vindicate their rights in individual cases before the Commission for what they allege are failures to comply with the mandates of 253(a) and 253(b). (As a reminder, any claim that a Section 253(a) violation exists which involves claims that the requirements of 253(c) are not met cannot be heard by the Commission - the text of Section 253(d) is very clear in setting this limitation of the Commission's jurisdiction and authority). Congress created a system for deciding these issues, and it has worked exceedingly well for 30 years. It is likely that neither providers nor local governments are always happy with the outcomes, but the system works. Proponents of this action want to jettison the congressionally mandated system in favor of Commission rulemaking based on shoddy, limited "evidence."

Proponents of the proposed rules have come forward with only about seventy-four named communities whom they accuse of causing delays or increasing costs. If there were more, surely they would name them. Even including the unnamed communities, which at most total 100 and 200 communities – it's impossible to tell when there are multiple references to "a community in Ohio" – it's hard to believe that the permitting process and compensation requirements are impeding deployment. Proponents simply want fast and cheap access to valuable land owned by American citizens, and they portray local governments as a "boogeyman" rather than the democratically elected representatives of the people who do the most direct work of representing the public's interests.

VI. CONCLUSION

The Local Government Associations urge the Commission not to promulgate its proposed rules for the following reasons:

1) The Commission lacks the authority and expertise to promulgate the proposed rules with respect to both rights-of-way management and compensation; and

2) The Commission can provide no "rational connection" between local governments' administration of telecommunications service rights-of-way management and permitting processes and the proposed rules, as required by the Administrative Procedure Act, because

a. Local governments provided substantial, verifiable facts and evidence counseling against adopting the proposed rules; and

b. Proponents of the rules failed to provide more than a modicum of unsubstantiated allegations of local government malfeasance, much less verifiable facts and evidence in support of the proposed rules.

The Local Government Associations remain committed to working collaboratively with the Commission, telecommunications providers, and our federal partners to advance the shared goal of expanding access to telecommunications services in every community. Local governments are better able to protect their streets, sidewalks, and constituents' safety with support from the Commission and improved communications and planning from wireline providers. Our members have shared real-world experiences from their cities, towns, and counties about wireline deployments that present public safety risks.

USCM, NLC, NACo, and NATOA urge the Commission to consider mechanisms that foster and improve the collaborative, locally tailored processes that have been shown to balance cost, safety, and responsible stewardship of finite public resources, as outlined in our various filings. Furthermore, we urged the Commission to consider ways to address local government concerns about the timely deployment and restoration of work sites, and to hold providers accountable for the commitments they made to our communities. Actions such as restoring work sites and removing obsolete equipment can have clearer, more direct impacts on permitting than the Commission's current proposed rules, given that clearing the right-of-way of unused equipment can resolve some of the complexities in the area.

We appreciate the Commission's consideration of these comments. If you have any further questions, they may be directed to David W. Burns, Assistant Executive

Director for the United States Conference of Mayors at dburns@usmayors.org, Seamus Dowdall, Legislative Director for Telecommunications and Technology for the National Association of Counties at sdowdall@naco.org, Lani Williams, of counsel, the National Association of Telecommunications Officers and Advisors at LaniWilliams@natoa.org, or Angelina Panettieri, Legislative Director for Information Technology and Communications for the National League of Cities at panettieri@nlc.org.

Respectfully Submitted,



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