September 21, 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, FCC 26-40**

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 comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding.[5] These comments respond to the Commission's proposed rules regarding the processing of permits to access and use public rights-of-way and to limit fees and other compensation for that access.[6]

As representatives of the government closest to the people, local leaders work closely to bring together various stakeholders, including federal, state, and private-sector partners, to provide affordable and accessible telecommunications services to all communities and residents. The Local Government Associations demonstrated the importance of the local permitting process in their comments and

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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).
[6] *Id.*, para. 11, available at https://www.federalregister.gov/d/2026-16196/p-19.

reply to the Commission's Notice of Inquiry (NOI) in this proceeding.[7] The Local Government Associations incorporate their comments and reply in the NOI by reference in this proceeding.

Local permitting is not a barrier to broadband deployment — it is an essential public safety function protecting residents, taxpayers, and all users of finite, multi-tenant public rights-of-way. The complex coordination required to safely deploy wireline telecommunications infrastructure in, above, and below public roadways cannot be reduced to an arbitrary federal deadline.

The Commission's proposed 120-day shot clock, cost-based fee standard, and restrictions on in-kind compensation are harmful policies that would endanger public safety and undermine the local government-provider partnerships that enable responsible deployment. The proposed rules also exceed the Commission's authority in several ways:

- Sections 154(i), 201(b), 253, and 303 of the Communications Act provide no authority to impose one-size-fits-all rules on local land use and property management decisions.
- Section 253(c) affirmatively preserves local ROW management authority and the right to require fair and reasonable compensation.

[7] USCM NLC NACo NATOA, Comments on Notice of Inquiry into Build America: Eliminating Barriers to Wireline Deployments (2025 Notice of Inquiry), WC Docket 25-253, FCC 25-66 (Nov. 18, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/11170023709661, and
USCM NLC NACo NATOA, Reply Comments on 2025 Notice of Inquiry, (Dec. 18, 2025) https://www.fcc.gov/ecfs/document/12180293825450/1).

- Section 253(d) authorizes only case-specific preemption of a singular government's regulation — not the nationwide rulemaking the Commission proposes.

Further, the Commission lacks the subject matter expertise to issue these rules without rendering them arbitrary and capricious.

The Local Government Associations urge the Commission to refrain from adopting the proposed rules and instead pursue collaboration, provider accountability requirements, and locally-tailored solutions to advance deployment.

II. Local Permitting Protects All Rights-of-Way Users

As the Local Government Associations explained in the Commission's Wireline Notice of Inquiry (NOI), local governments work to further the deployment of advanced telecommunications services to their residents while also protecting public safety and other public assets and interests. The Local Government Associations strenuously object to the portrayal of local permitting as an obstacle to deploying wireline telecommunications services. The parties suggesting this seek to strip local governments of their ability to responsibly manage public assets in the rights-of-way, while still expecting to have access to rights-of-way that are safe, well-planned, and conducive to competition. Local permitting processes protect finite publicly-owned resources and ensure public safety. These processes reflect the unique geographic, infrastructure, and community needs of each jurisdiction.

The primary goal of local government telecommunications permitting processes is to facilitate safe deployment of telecommunications infrastructure above, in, and below public streets and roadways, while protecting existing infrastructure and users of the rights-of-way from harm caused by poorly planned or executed construction. Local rights-of-way often include a wide variety of users, including power, water, gas, stormwater, and transportation infrastructure. The deployment of any additional infrastructure, including wireline telecommunications infrastructure, must be carefully managed in coordination with all other users of this finite public resource. Coordination and communication throughout the permitting process enables safe deployment of wireline telecommunications across the country.

This complex and nuanced coordination includes numerous steps beyond simply reviewing applications. These steps include, but are not limited to, residents being notified of work; enforcing safety rules for construction and installation; rerouting traffic as necessary; coordinating with existing utilities and other occupants of the right of way to protect workers and the existing infrastructure; and conducting inspections during and at the conclusion of projects. Local permitting offices and staff are responsible for ensuring the smooth completion of these steps. Despite local governments' best efforts, disruptions and damage to public and private property resulting from telecommunications providers' failure to deploy telecommunications infrastructure responsibly still occur.

The Commission's proposed rules, in particular the proposal to establish a strict timeline for completing the local permitting process, may seem like an easy way to speed deployment, but the arbitrary rules simply endanger the public <u>and</u> other infrastructure already located in the rights-of-way. Local permitting, as implemented by local governments, is not a barrier to deployment; rather, it supports safer, more cost-effective deployment by providing essential safeguards for residents and taxpayers, providers, and all rights-of-way users.

In addition to being harmful policy, the Commission's proposed rules are squarely outside both the Commission's statutory authority to regulate "telecommunications services" and its quasi-judicial authority to adjudicate disputes. Further, the Commission lacks the expertise necessary to issue the proposed rules, thereby rendering them arbitrary if adopted.

III. The Commission Lacks Authority to Adopt the Proposed Rules

The Local Government Associations caution the Commission not to exercise preemption beyond the scope of its authority over telecommunications services.[8] Expanding the scope of § 253 to cover services and categories that are not "telecommunications services" exceeds the Commission's statutory authority and its expertise.

The Commission tentatively concludes these sections of the Communications Act give it authority to issue its proposed Rules: 47 U.S.C. § 154(i); 47 U.S.C. § 201(b); 47 U.S.C. § 253, and 47 U.S.C. § 303.[9] The Commission is mistaken. Section 303 deals with radio - classification of radio stations,[10] operator licenses,[11] radio station call letters,[12] and the like. Section 303 cannot provide authority to abridge local government

[8] The Commission wrongly suggests § 253 applies to infrastructure that does not provide wireline telecommunications service. "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." NPRM at para. 69 n. 201, https://www.federalregister.gov/d/2026-16196/p-80. The text of § 253 (a) clearly states it applies to telecommunications service, not telecommunications infrastructure.

[9] NPRM at para. 74, available at https://www.federalregister.gov/d/2026-16196/p-85.

[10] 47 U.S. Code § 303 (a).

[11] 47 U.S. Code § 303 (l) and (m).

[12] 47 U.S. Code § 303 (o).

land use decisions, as governed by local permitting processes. Likewise, § 201 (b) details some of the obligations of common carriers and a full reading of 47 U.S.C. § 201(a) and (b) shows that § 201(a) refers to the duty of common carriers to establish physical connections, through routes, and facilities - there is no discussion of local governments' ability to manage land use within their jurisdiction. Section 154(i) also fails to provide support for the proposed rules. It provides the Commission only with authority to make rules "not inconsistent with this chapter."[13]

Section 253 does not provide general support for the proposed rules and as the Commission knows, the text of § 253 (c) specifically preserves the authority of local governments to manage their rights-of-way and to require fair and reasonable compensation - making any attempt by the Commission to impose rules over local government right-of-way management "inconsistent" with the Communications Act.[14] Further, § 253 (d) only allows the Commission to preempt a **specific** local government's regulation or regulations, not a class of similar regulations imposed by local governments throughout the nation. Section 253 (d) allows the Commission to act in its quasi-judicial capacity when it finds **"a"** local government (singular) has violated § 253 (a) or (b) and gives the Commission the ability to preempt **"such"** a regulation. By its terms, § 253 (d) only applies to violations of § 253 (a) and (b), not § 253 (c).[15] In footnote 212 of the NPRM, the Commission opines that if it does not have authority to

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[13] 47 U.S. Code § 154 (i).

[14] 47 U.S.C. § 253 (c) states "[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 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."

[15] 47 U.S.C. § 253 (d) states "[i]f, 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."

preempt local regulations falling within § 253 (c), then any party could avoid the quasi-judicial jurisdiction of the Commission and that this creates a procedural oddity of the appropriate forum being decided by a defendant's answer.[16] However, no such oddity would occur and the Commission's reliance on *TCG New York v. White Plains* and the *Bluebird Order* provides no support for such an imagined result because the complaint and petition in those respective matters alleged violations of 253(c) in their opening papers.[17]

Different titles of the Communications Act give the FCC jurisdiction to regulate "certain technologies"[18] and the providers of those technologies. Those technologies are "telecommunications services," "radio transmissions," and (3) "cable services."[19] The Commission's proposed rules attempt to govern local governments' land and property use regulations, not "telecommunications services." The "technologies" amendable to regulation under the Communications Act do not include property regulation. The Commission does not have authority over local land use decisions pursuant to any code sections on which it relies nor any other code section.

IV. The Commission Lacks the Necessary Expertise to Adopt the Rules

As explained above, the Commission does not have the statutory and quasi-judicial authority to establish regulations governing local land-use decisions. It also lacks the necessary expertise to issue reasonable rules on land use and compensation for land use without the rules being considered arbitrary and capricious.

[16] NPRM at para. 74 n. 212, citing *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, 12823, para. 30 (WCB 2020) (Bluebird Order), and *TCG New York v. City of White Plains*, 305 F.3d 67, 74-75 (2nd Cir. 2002).
[17] *TCG New York v. City of White Plains,* 125 F.Supp.2d 81, 86 (S.D.N.Y. 2000); Bluebird Petition at 19.
[18] *Mozilla Corp. v. FCC*, 940 F.3d 1, 75 (D.C. Cir. 2019).
[19] *Comcast Corp. v. FCC*, 600 F.3d 642, 645 (D.C. Cir. 2010).

Approximately forty-three (43) federal agencies possibly exercise authority over the placement of communications infrastructure on federal property.[20] Of those forty-three agencies, the Bureau of Land Management (BLM) and the U.S. Forest Service, together, process the vast majority of permits for communications uses (which includes the placement of wireless towers, small cells, and fiber optic cable on federal property).[21]

The Federal Broadband Quarterly Report library shows that the FCC processed **zero** permits for communications uses on federal property between the second quarter of fiscal year 2024 and the second quarter of fiscal year 2026.[22] It seems unlikely that the Commission has ever been responsible for processing land use permits for communications, though admittedly complete information is unavailable to the Local Government Associations. Having processed no applications, the Commission lacks the expertise to make judgments and issue unilateral one-size-fits-all rules governing local land use decisions.

a. Federal Agency Experience Shows Why the Proposed 120-day Deadline is Unworkable and Arbitrary

In addition to having no expertise in processing communications use permits, the Commission's 120-day proposal is arbitrary and bears no connection to the realities of permitting processes and procedures. Examining federal permitting procedures reveals

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[20] U.S. Gen. Serv. Admin., *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*, Q2 FY 2026 Quarterly Report (2026) at 5, available at https://www.gsa.gov/system/files/Q2_FY%2026_Executive_Order_13821_Quarterly_Report.pdf.

[21] Gov't. Acct. Off., Broadband Deployment: Agencies Should Take Steps to Better Meet Deadline for Processing Permits, at 2 (April 10, 2024).

[22] The nine quarterly reports for that time period are available at https://www.gsa.gov/policy-regulations/policy/real-property-policy-division-overview/data-collection-and-reports/federal-broadband-quarterly-report-library. Presumably, the reporting that the Commission processed zero permit applications reflects the fact that it received no applications, not that it received applications but did not process them.

the arbitrariness of the Commission's proposed rule. The MOBILE NOW Act[23] "requires" the federal government to process communications use applications in 270 days. There is no consequence if federal agencies do not meet the 270-day deadline. Despite this "deadline," between 2018 and 2022, the BLM and the Forest Service processed only fifty percent (50%) of applications within the 270-day time frame. Thirty-six percent (36%) of applications processed exceeded 270 days.[24] The two most common reasons for processing delays between 2018 and 2022 were applicant non-responsiveness and delays (30%) and staffing shortages (28%).[25]

In the second quarter of fiscal year 2026, the average amount of time communications use applications were pending before the BLM, the Forest Service, and other federal agencies was to 222 days - meaning some are pending for more than 222 days, which is 102 days more than the FCC suggests should be sufficient for local governments to process applications.[26] During quarter 2 of fiscal year 2026, the federal government received 163 communications use applications, acted on 192 applications (with an average processing time for approved applications of 178 days), and maintained a **backlog of 798 applications**.[27]

The GSA notes that different permitting agencies use different methods to determine when the 270-day aspirational deadline starts.[28] For instance, pursuant to 43 C.F.R. 2804.25, the BLM starts "processing" an application only after a "complete"

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[23] 47 U.S.C. § 1455 (b)(3) (2018).
[24] Gov't. Acct. Off., *supra* note 21, at 13. The GSA noted that in a significant percentage of cases it did not have data sufficient to determine processing time.
[25] Gov't. Acct. Off., *supra* note 21, at 14.
[26] U.S. Gen. Serv. Admin., *supra* note 20, at 2.
[27] *Id*. at 2 and 7.
[28] *Id*.

application has been received.[29] Time spent evaluating an application for completeness and time spent waiting for an applicant to respond does not count toward the 270 day time limit.[30] While the BLM acknowledges that it is operating under a "mandatory" 270-day time limit, even once it has a complete application, "sometimes the BLM is not able to complete its application review process in that time."[31]

The Forest Service has a similar, but different process to the BLM's. The Forest Service requires a pre-application meeting, which is not included in its "processing" time. This screening happens within 60 days and is a "pre-application" process.[32] Its regulations further provide that an application is "evaluated" at initial and second screening before the application is processed.[33] If an application meets both initial and second-level screening criteria, the agency notifies the applicant that they may submit a written application for evaluation.[34] Thereafter, the agency evaluates the application.[35]

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[29] The BLM recommends a pre-application meeting which does not count towards processing time. See, 43 C.F.R. 2804.10 (2024).

[30] *See*, 43 CFR § 2804.25 (2024); https://www.blm.gov/programs/lands-and-realty/rights-way/obtaining-right-of-way/how-blm-processes-row-applications; and *Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way*, 89 FR 25922, 25944 (April 12, 2024) ("Because the BLM cannot process an incomplete application, the BLM cannot adopt the commenter's suggestion that an application be deemed complete 60 days after it is filed, regardless of the completeness of the application."), available at https://www.govinfo.gov/content/pkg/FR-2024-04-12/pdf/2024-06997.pdf. See, also, the BLM Processing Flowchart at https://www.blm.gov/sites/default/files/images/2023-08/BLM_Broadband_ROW-Processing-Flowchart_fullsize.jpg.

[31] *Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way*, 89 FR 25922, 25943-25944 (April 12, 2024).

[32] See, 36 CFR § 251.54(e) (2023).

[33] See, 36 CFR § 251.54, and https://www.fs.usda.gov/managing-land/special-uses/communications-uses/fiber-optic-cable. See also the Application Process Diagram (Diagram) at https://www.fs.usda.gov/sites/default/files/styles/scale_880/public/2024-03/Application_Process_Diagram.png?itok=kesEGKjS.

[34] 36 CFR § 251.54(g)(1).

[35] 36 CFR § 251.54(g)(4).

This is when the Forest Service starts the 270-day clock for processing communications use applications.[36]

Knowing that the Commission has no experience processing communications land use permits and applications to the federal government for communications land uses remain pending for an *average* 222 days, it becomes clear that requiring local government to conform to the 120-day deadline proposed by the Commission for all authorizations[37] required for wireline deployments is arbitrary. The deadline fails to account for operational, legal, and risk management challenges, including right-of-way agreements, construction permits, road closure authorizations, traffic management and environmental reviews — particularly for smaller jurisdictions with limited staff resources.

In urban communities, multiple agencies, utilities, and public services need to review these project permits, with varied timelines and tasks. In rural communities, there may be fewer utilities and services, as well as fewer staff and resources to support a compressed review timeline. Federal permitting allows for 270 days, despite limited or no infrastructure and utilities, and vastly different public services, necessitating a review of these federal lands.

b. Defining "Completeness" of Permitting Applications Should be Left to Individual Local Governments

While the Commission asserts it has statutory authority to impose a time limit on local authorizations of wireline projects and proceeds to propose one, its proposed definitions and underlying assumptions have been insufficiently scrutinized. For

[36] 36 CFR § 251.54(g)(4) and the Diagram, *supra* note 33.
[37] NPRM at para. 20, available at https://www.federalregister.gov/d/2026-16196/p-28.

example, the Commission insinuates that if the definition of "completeness" is left to local governments, local governments could and would engage in "gamemanship."[38] However, left entirely unscrutinized is whether the very same concept of gamemanship could be applied to telecommunications service providers, in the service of triggering an authorization request timeline to outmaneuver their competitors or seeking to acquire permits in areas they do not intend to build in, if such definitions on completeness were left to the private sector. Completeness of public rights-of-way permitting applications should be required and should not be subject to an arbitrary 120-day deadline. Information elicited through permit applications provides local governments with important data for managing safe projects. This information includes whether a provider, contractor, and subcontractors are bonded and insured; whether tradespeople are licensed; whether consent from the gas and electric utilities has been obtained; and whether city services have confirmed that the project will not interfere with existing overhead and underground infrastructure. Hitting a gas or electric line, breaking a storm drain, cutting other existing providers' copper or fiber, and leaving a trench uncovered are very real threats to public safety and convenience. A complete application addresses these concerns and includes provisions to prevent such harms. An incomplete application is a real threat to a community's safety.

The Commission could theoretically define "completeness," but there would be insufficient means to enforce it, as the Commission would become the *de facto* referee for every local permitting process in the country. It becomes clear that, in reviewing the implementation challenges associated with definitions such as "completeness," the

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[38] NPRM at para. 19, available at https://www.federalregister.gov/d/2026-16196/p-28.

difficulty of implementing a fair deadline for action is significant. Furthermore, it appears the Commission assumes an obstructionist motivation on the part of local government. For example, in questioning whether a local government should be able to define “completeness”, the FCC presumes local government - and not providers - are the culprit that leads to delay. Furthermore, the inability to exercise judgment at the local level on when a shot clock should be reasonably paused, whether due to the need to organize a provider’s various submissions and communications into a singular application or issue corrections, would lead one to assume that local governments must have both the capacity to as well as the ability to review that application - no matter their form - in their entirety under a constrained timeline. If the Commission were contemplating a neutral approach to the start of a shot clock, it would consider the starting point to be defined at a state or local level.

c. Shot Clocks Should Not Be Imposed On Batched Permitting Applications

While we maintain that the Commission lacks statutory authority to impose any permitting deadlines, if the Commission nevertheless adopts such a deadline, it should exempt batched permitting applications. Batched permitting applications - sometimes pursued by providers to consolidate the number of submissions entered into a local government for authorization - can present increased complexity in processing. Local governments should be able to retain the authority to batch applications with providers.

We have considerable concern over the public peril in ‘batch permitting’ if local governments are required to process batched permit applications within a finite period of time.[39] Batch permitting could easily overwhelm and threaten the careful review

[39] NPRM at para. 22, available at https://www.federalregister.gov/d/2026-16196/p-30.

required to manage the orderly orchestration and co-existence of infrastructure services.

Allowing local governments to define the 'completeness of applications' and removing 'batch permitting applications' and any proposed deadlines are crucial to the safety and well-being of our residents, their homes and property, our roads and our communities.

V. An Arbitrary Fee Standard Vitiates Local Governments' Ability To Request and Receive Reasonable Compensation For The Use Of The Right Of Way

The Commission proposes to unify and establish a standard for fee collection based on the assessment 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 right of way."[40] This is an important distinction, as characterizing local fees as profit generators vs. fair compensation requests requires a review of the origin of the fees themselves.

Some states and local governments are obligated to obtain fair market value reasonable compensation for private commercial use of public property, including the public rights of way.[41] State constitutions, the public trust doctrine, anti-gift clauses, state

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[40] NPRM at para. 35, available at https://www.federalregister.gov/d/2026-16196/p-43.

[41] *See, e.g.*, N.M. Const. art. IX, § 14. *See, also*, Ill. Mun. League, *Legal Brief: Selling or Disposing of Property*, (July 23, 2012), available at https://www.iml.org/page.cfm?key=9139; and *see, generally*, Timothy Sandefur, *The Arizona Gift Clause In The Twenty-First Century*, 16 Drexel L. Rev. 299-358 (2024), and Jeremy Farris, The Anti-Donation Clause: What It Does, What It Does Not Do, & The Risks Of Living Without It, Legis. Fin. Comm. Meeting (Dec. 10, 2024), available at https://www.nmlegis.gov/handouts/ALFC%20120924%20Item%2011%202024-12-05%20Farris%20on%20Anti-Donation%20Clause.pdf.

statutes, and states' constitutional principles impose these obligations.[42] The NPRM's flawed cost-based fee standard limiting local governments' ability to require compensation directly conflicts with these state constitutional, statutory, and case law, and raises significant federalism concerns.

In addition to creating federalism concerns, the NPRM offers a narrow and incomplete description of "direct costs," poorly accounting for the actual costs and burdens of right-of-way deployment borne by local governments.[43] Despite the oft-told, unsupported and unsubstantiated tales of woe offered by providers of excessive fees for local permitting, the providers themselves have failed to provide honest detail of such fees to the Commission. There is no basis for the Commission to set actual or presumptive limits on permitting fees or to address rights-of-way compensation.

Just as the Commission lacks statutory authority to impose rules on local government right-of-way management, so too it lacks statutory authority to dictate what a local government can charge for the use of its property, whether a right-of-way or another type of land or property. The Communications Act contains no section authorizing the Commission to value local government land or other property. Instead, § 253 (c) specifically protects the right to charge fair and reasonable "compensation." Fair and reasonable compensation does not mean simply direct or actual cost reimbursement.

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[42] Twenty-nine states have gift clauses prohibiting the government from making appropriations, donations, grants, gifts, subsidies, or some combination thereof in exchange for use of public property. *See*, Matthew D. Mitchell, Robin Currie, and Nita Ghei, Mercatus Center, Geo. Mason University, *A Summary of the History and Effects of Anti-Aid Provisions in State Constitutions*, Corporate Welfare - Policy Briefs, (December 16, 2019) available at https://www.mercatus.org/research/policy-briefs/summary-history-and-effects-anti-aid-provisions-state-constitutions.

[43] NPRM at para. 39, available at https://www.federalregister.gov/d/2026-16196/p-57.

VI. Abandonment and Unused Facilities in Public Rights-of-Way

The Commission notes that some state and local government commenters asked that the Commission refrain from adopting requirements that would interfere with permit or land use conditions that pertain to old, unused telecommunications infrastructure left in the public rights-of-way.[44] We share those concerns.

The network modernization framework of the Commission aggressively streamlines how carriers can retire copper networks, but fails to address what happens to the physical infrastructure they leave behind in local rights-of-way.[45] The Commission's regulatory focus does not address the physical facilities that remain in local rights-of-way after service ends, ultimately leaving abandoned assets as a local liability and public safety concern.

The Network and Services Modernization Order eliminated network change disclosure filing requirements entirely; ended the public notice and objection processes; granted blanket grandfathering authority — carriers can now grandfather legacy copper services; and preempted conflicting state rules, though preemption is limited to the discontinuance of interstate and jurisdictionally mixed services, and does not reach consumer protection laws, state universal service obligations, or state authority over 911 service.

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[44] NPRM at para. 73, available at https://www.federalregister.gov/d/2026-16196/p-84.

[45] *Reducing Barriers to Network Improvements and Service Changes; Accelerating Network Modernization*, Report and Order, WC Docket Nos. 25-208, 25-209 (Mar. 26, 2026)(Network Services and Administration Order), available at https://www.federalregister.gov/documents/2026/04/20/2026-07622/reducing-barriers-to-network-improvements-and-service-changes#summary.

a. Aerial Infrastructure

Abandonment of legacy service existing copper aerial lines in place creates multiple problems, including safety hazards and concerns due to sagging or fallen lines that pose risks to pedestrians and vehicles; physical deterioration of both the attachments and poles, thereby creating structural risk of failure and harm; and wind or storm damage from abandoned lines weakened due to a lack of maintenance. Abandonment of legacy service existing copper aerial lines also results in operational impacts and higher costs for other providers as local utility work crews must work around abandoned lines; tree and foliage trimming becomes more complex; pole replacement would require additional handling and burden; and emergency response risk due to uncertainty about which lines are live or powered.

Visual and aesthetic concerns are also raised as community character is negatively impacted by abandoned infrastructure; historic district preservation is harmed; and nearby property values are likely hurt by visible abandonment and neglect.

b. Unused Facilities under the Public Rights-of-Way

Underground infrastructure concerns arise because abandoned underground copper creates additional problems for underground rights-of-way management: conduit space occupied by abandoned copper is unavailable for new deployments and excavation for new deployments becomes complicated because contractors may encounter abandoned copper underground, necessitating new construction design and deployment around abandoned infrastructure. "Dig Once" policies are compromised. Environmental concerns arise if copper cables contain toxic materials that can leach into soil over time and cable insulation deteriorations. Removal costs escalate significantly if done later and may result in a second staging of construction.

Other safety concerns for local governments, traffic, and the general public include deteriorating vaults, handholes, and access points, which create real hazards and public safety concerns. Uncertainty as to whether underground assets are live or abandoned complicates location operations and adds future costs and risks utility strikes where abandoned copper is present but not marked.

c. Pedestal and Cabinet Concerns in the Public Rights-of-Way

Above-ground infrastructure supporting copper networks presents perhaps the most visible local impact because above-ground pedestals are often located in prominent locations in public rights-of-way. These abandoned assets become eyesores when no longer maintained; attract vandalism and graffiti; exacerbate ADA accessibility issues on sidewalks; and deny public rights-of-way space that could be used for other purposes. Additionally, cross-connect boxes – the oversized termination cabinets that require a significant footprint – are often located at street corners or in prominent locations and when abandoned and not removed, these deteriorating cabinets can pose safety hazards.

d. Restoration and financial burden on local governments due to abandoned assets above, under, and on the public rights-of-way

Without any federal requirements that carriers restore public sites to their pre-installation condition, local governments face significant financial burdens and safety risks from abandoned assets. For example, removal of abandoned pedestals, failing aerial poles, crumbling manholes, handholes, and vaults may require excavation and restoration. If carriers don't remove their abandoned infrastructure, local governments may be forced to do so, a cost and liability that should not be imposed on taxpayers. Pursuing legal remedies against carriers to force removal is also expensive, produces uncertain results, and challenges local governments' capacity.

We urge the Commission to address physical infrastructure removal upon abandonment by conditioning any abandonment and retirement on removal obligations; requiring carriers to fund eventual removal; and preserving local authority to require such removal.

VII. We ask the Commission to Address Provider Delays, Failures to Deploy, and Permit-Hoarding

We ask the Commission to consider non-governmental barriers to deployment to be addressed through rulemaking, as well as best practices and incentive-based mechanisms that could encourage timely deployment without preemption. Delays in deployment often result from applicants' unreadiness; a lack of coordination among providers; or applicants' failure to promptly deploy after approvals have been obtained from the local government.

Local governments' efforts to attract telecommunications infrastructure investment to their communities often lead to frustration due to applicants' permit-hoarding and other bad-faith actions by providers intended to crowd out competition in sought-after locations and routes, regardless of the provider's actual intent to deploy and provide service or upgrades. Providers are aware that local governments have limited resources and existing legal obligations to review and process complete permits in a timely manner, and will generally do so in the order they are received. When a provider stakes "claimed" space on a pole or structure through permits, requests for make-ready work, or other actions – regardless of actual intent or ability to deploy in a timely fashion – this limits the ability of other providers to deploy in those same locations, particularly if a city must make decisions and recommendations based on elements such as the physical capacity of a structure given the assumption that the provider that has completed the permitting process will deploy soon.

Based on the foregoing, the Local Government Associations ask the Commission to consider whether it has authority to impose deployment requirements over providers, such as deploying within 180 days of authorization by a local government.

VIII. Encourage and Incentivize Transparency and Coordination

Local governments strongly desire new and improved telecommunications service for their communities. To that end, localities have attempted to create processes to ease and expedite deployment, such as providing planning data, including maps of existing infrastructure assets in a community. However, these actions are only effective when providers cooperate with them. Local governments plan and schedule their own work to open and resurface streets well in advance and make this information publicly available to manage utility safety, traffic management, and resident expectations. Unfortunately, providers often do not take advantage of this information to collaborate with localities to place telecommunications infrastructure while street work is already taking place, or to run telecommunications infrastructure through existing conduit built during this work, and regularly request work to disturb newly reconstructed streets and roadways that are often less than a year old, thereby drastically shortening the serviceable life of the street. We encourage the Commission to explore ways to incentivize providers to collaborate with planned street work schedules.

The Commission could incentivize local public data and digital services delivery, through grant flexibility to allow for technology adoption, particularly by small and rural communities. The Commission could also encourage the appropriate use of mechanisms such as advisory committees, which can provide useful guidance on practices that are already working well in the field.

Conclusion

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 in our NOI comments. Furthermore, we urged the Commission to consider ways to address local government concerns around the timely deployment and restoration of work sites and hold providers accountable to the commitments made to our communities.

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, Mike Lynch, Legislative & Regulatory Affairs Director for the National Association of Telecommunications Officers and Advisors at mlynch@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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