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
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	)	
	)	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates (NASUCA)[1] submits these reply comments in response to the June 26, 2026, Notice of Proposed Rulemaking (NPRM) in the above referenced docket. NASUCA appreciates the opportunity to respond to the FCC's proposal to create a nationwide rule for how quickly state and local governments must process requests from telecommunications companies to install or use wireline infrastructure, such as fiber-optic lines by and through this NPRM. Under the proposal, governments would generally have 120 days to act on these requests. If they do not, the FCC could presume that the government has effectively prevented the company from providing telecommunications services. The FCC also proposes to prevent state and local governments from adding extra requirements simply because the telecommunications infrastructure could potentially be used to provide other

[1] NASUCA is a voluntary association of 63 consumer advocate offices. NASUCA members represent the interests of utility consumers in 45 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

types of services. NASUCA focuses these reply comments on the Commission's authority to make presumptive determinations under 47 U.S.C. § 253 as to the "safe harbor" provisions established for states and local governments in Sections 253(b) and (c) as announced in the NPRM.[2]

NASUCA asserts that the FCC's proposal set forth in ¶ 74 of the NPRM are inconsistent with the plain language of Section 253, as well as the longstanding framework of federal-state cooperation established by the Telecommunications Act of 1996.[3] . Moreover, the NPRM conflates the FCC's authority over telecommunications under Title II with the deployment of broadband service, a Title I service, over which the Commission has twice divested itself of regulatory authority, the second time with the assistance of a court decision. The Statement of Chairman Carr confirms the same when he states "[t]today, we are continuing our work . . . by tackling unnecessary barriers that slow the deployment of broadband infrastructure."[4] As consumer advocates, NASUCA supports the concepts of broadband infrastructure deployment on an expedited basis but does not support the federal government's restriction of regulatory authority from States and local authorities.

[2] As NASUCA members most often appear in state regulatory proceedings on matters of state law, we do not offer comment on the Commission's intent to oversee certain local government fees. We do note, however, that the FCC has no legal authority to rule on, enjoin, or suspend any tax duly imposed under state law. Section 253(c) only addresses unreasonable and discriminatory fees from telecommunications providers and provides the Commission with no jurisdiction over state taxes. Federal courts themselves are prohibited from doing so as well so long as there is a state court vehicle to challenge a tax law or ruling. 28 U.S.C. § 1341. *See also* 47 U.S.C. § 542(i) ("Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section."). For these reasons, NASUCA's reply comments do not address the NPRM's proposal concerning governmental fees.

[3] *See, e.g.,* 47 U.S.C. § 1302(a); Congressional Research Service, LSB10693, "*ACA Connects v. Bonta*: Ninth Circuit Upholds California's Net Neutrality Law in Preemption Challenge" at 2 ("The Communications Act sets up a dual system of federal and state regulation.).

[4] Statement of Chairman Brendan Carr, WC Docket No. 25-253 (p. 52).

With respect to FCC concern about delays and alleged "red-tape"[5] in constructing infrastructure, the federal government should look to its own record before attributing delays in infrastructure deployment to state and local governments. Indeed, the NTIA and the Department of Commerce, under both the current and previous administrations, have imposed requirements and processes that have contributed to delays in broadband infrastructure deployment.[6] These delays are often on a scale far greater than any delay resulting from a state or local government's lawful exercise of its authority to manage the use of public streets and highways, and in fact have contributed to certain of these delays.[7] For example, the federal government's administration of broadband funding programs has required providers and state and local governments to navigate extensive application, review, and compliance requirements before projects can move forward. The federal government has also reconfigured the terms and conditions of the Broadband Equity, Access, and Deployment (BEAD) program, such as the so-called "Benefit of the Bargain" round of grant applications, and the updates of the broadband fabric, all of which have contributed to delaying reaching the objective of universal broadband availability.

[5] *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, FCC 26-40, at 7 (June 26, 2026) (*hereinafter* NPRM).
[6] *Audit of NTIA's Review of the Broadband Equity, Access, and Deployment Program's Planning Phase Requirements*, Report No. OIG-26-018-A at 2.
[7] "Senate Appropriations Panel Scrutinizes Broadband Deployment Funding" ("States struggle with federal review delays pushing applications beyond 120 days past deadline, preventing construction despite available funds." https://legis1.com/news/broadband-deployment-funding-senate-hearing

II. NASUCA COMMENTS ON FCC'S PROPOSALS TO PROSPECTIVELY ESTABLISH NATIONAL REGULATIONS UNDER SECTION 253 OF THE COMMUNICATIONS ACT.

A. The FCC proposes to establish national regulations under Title II of the Communications as a pretext to create regulations for broadband, a Title I service.

The NPRM proposes to establish national regulations under 47 U.S.C. § 253 that are not contemplated by the plain language of the statute and unlawfully apply to providers of Title II telecommunications services.[8] The accompanying statements of Chairman Carr, Commissioner Gomez, and Commissioner Trusty each demonstrate that telecommunications service is not the underlying purpose of the NPRM:

> Chairman Carr: "Today, we are continuing our work on the latter by tackling unnecessary barriers that slow the deployment of *broadband* infrastructure."[9]
>
> Commissioner Gomez: "That being said, this issue is complicated and requires us to carefully balance competing interests. On one hand, providers seek assistance from the Commission to bring *broadband* to communities as fast as possible, and on the other, states and localities face large volumes of requests that may or may not have the resources to respond to as rapidly as providers would like."[10]
>
> Commissioner Trusty: "I have often heard *broadband* providers identify the time and expense associated with state and local permitting as significant barriers to deployment. At the same time, some providers have also cited examples where they have worked collaboratively with a state or local government to develop solutions that advance both *broadband* deployment and other local priorities."[11]

As a telecommunications statute, Section 253 contains only the terms of "telecommunications services", "telecommunications providers", and "telecommunications carrier." NASUCA fully supports efforts to expedite broadband deployment, but Section 253 is not the appropriate vehicle for establishing sweeping national rules governing broadband

[8] NPRM at ¶74.
[9] NPRM at 52 (statement of Chairman Brendan Carr) (emphasis supplied).
[10] NPRM at 53 (statement of Commissioner Anna Gomez) (emphasis supplied).
[11] NPRM at 55 (statement of Commissioner Olivia Trusty) (emphasis supplied).

infrastructure. Congress enacted Section 253 before broadband services became ubiquitous, and, importantly, expressly preserved state and local authority in Section 253(c) to manage public rights-of-way and require fair and reasonable compensation from telecommunications providers. 47 U.S.C. § 253(c). Using Section 253 to impose a uniform federal permitting regime on state and local governments for broadband deployment purposes risks extending the statute beyond its text and diminishing the authority that Congress expressly preserved. In other words, it is inappropriate to interpret § 253(a) and (d) so broadly that those provisions effectively swallow the authority Congress expressly preserved for the states in § 253(c).

Further, the NPRM seems to be designed to transfer the authority of States and localities over public rights-of-way in 47 U.S.C. § 253 to the federal government. From a legal perspective, this transfer of authority is contrary to the Telecommunications Act of 1996 and the police powers of the States guaranteed under the Tenth Amendment of the United States Constitution.

Finally, in making a claim that any service is inherently jurisdictionally mixed means that such a service is automatically subject to FCC jurisdiction, and thus outside State authority ignores the holdings of the United States Court of Appeals for the District of Columbia in Mozilla Corp. v. FCC.[12] The Mozilla decision vacated the FCC's attempt to broadly preempt state broadband regulation following the Commission's decision to reclassify broadband as a Title I information service. In New York State Telecommunications Association, Inc. v. James, 101 F.4th 135 (2d Cir. 2024) (cert. denied twice), the decision held in part that the FCC lacked authority to broadly preempt state broadband regulation because preemption requires an underlying federal statute endowing the agency with the regulatory authority that it seeks to

[12] *Mozilla Corp v. FCC,* 940 F.3d 1 (D.C. Cir. 2019).

exercise. The Commission may not conflate 47 U.S.C. § 253 to impose broadband regulation at the federal level by preempting State and local authority, as the NPRM clearly intends to so according to the statements of each of the Commissioners.

i. The plain language, legislative history, and purposes of Section 253 do not provide the Commission with the legal authority to establish national regulation that preempt state police powers over the oversight and management of public rights-of-way.

Section 253 is entitled "Removal of barriers to entry" and in subsection (a) preempts State and local statutes, regulations and other legal requirements that "may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services."[13] Subsection (d) establishes the FCC's authority "after notice and an opportunity for public comment" to preempt the enforcement of any such State and local laws that violate or are inconsistent with the prohibition on barriers to entry in subsection (a).[14] Congress meant Section 253 to be applied on a State-specific and law or regulation-specific basis. Subsection (d) sets forth terms like "a State or local government", not all states, local governments or anywhere else the FCC has some degree of regulatory authority. Similarly, that same subsection refers to "such statutory or regulation", which is to be preempted "only to the extent necessary to correct such violation." This text is far from a prescription for general rules that apply to classes of different statutes and regulations. Moreover, nothing in either subsection directs or authorizes the FCC to establish regulations that would substitute for the due process in the "notice and opportunity" of subsection (d).

Subsections (b) and (c) of Section 253 establish "safe harbors" with respect to subsections (a) and (b) for States and local governments:

[13] 47 U.S.C. § 253 (a).
[14] 47 U.S.C § 253 (d).

> to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[15]

As consumer advocates, NASUCA is concerned that any regulations that might be developed as discussed in this NPRM would infringe on these critical State's rights to manage the public rights-of-way consistent with existing law and constitutional rights including State police powers. Judicial decisions concur with NASUCA's position that Section 253 does not categorically preempt state and local regulation of telecommunications infrastructure, universal service, consumer protection and safety and reliability issues.[16]

Accordingly, the authority of States and local governments to manage the public rights-of-way is reserved in Section 253(c) and clearly must be construed by a court on a case-by-case basis. This subsection is designed specifically to preserve State and local regulatory authority over managing public rights-of-way and requiring fair compensation from telecommunications providers. Courts have ruled that only Sections 253(a) and (b) may be preempted by the FCC under subsection (d).[17] National rules will undoubtedly not address the situations in which providers do not, or refuse to, abide by necessary State and local standards.[18]

The legislative history of Section 253 also confirms that there is no preemptive authority under subsection (c).[19] With the authority to enforce 47 U.S.C. § 253(c) given to the federal

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[15] 47 U.S.C. § 253 (b)-(c).
[16] *See, e.g., City of Auburn v. Qwest Corp*., 260 F.3d 1160, 1175–82 (9th Cir. 2001).
[17] *See, e.g. Qwest Corp. v. City of Sante Fe, New Mexico*, 380 F.3d 1258, 1266 (10th Cir. 2004); *Bell South Telecomm. Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1187-89 (11th Cir. 2001); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 623 (6th Cir. 2000).
[18] *See, e.g.,* Comments of City of Lyon, Michigan at 1-2 (citing incomplete and inaccurate permit applications, failure of providers to abide by restoration, repaving and recovery requirements, failure to coordinate with other providers on open trench or conduit so as to eliminate continued street excavations).
[19] "There is no preemption . . . for subsection (c) which is entitled, "Local Government Authority," and which is the subsection which preserves to local governments control over their public rights of way." 141 Cong. Rec. S8213 (1995) (comments of Sen. Slade Gorton); Subsection (c) "retains not only the rights of the local communities to deal

courts, not the FCC, Congress recognized not only the historic authority of State and local governments to manage their rights-of-way, but also that the determination of "fair and reasonable compensation" will vary by locality and be dependent on a distinct set of facts and circumstances. Accordingly, any national regulation concerning what constitutes fair and reasonable compensation for use of public rights-of-way would be contrary to Section 253(c), as Congress has established that State and local governments are best situated to make these determinations. The Commission should not ignore legislative determination by imposing non-fact-specific national rules.

Neither should the FCC not construe its authority under Section 253 to establish a uniform federal permitting regime in a manner that effectively nullifies the authority Congress reserved for states and localities in subsection (c). Congress clearly prohibited state and local governments from erecting certain barriers to telecommunications service in § 253(a) and gave the FCC preemption authority in § 253(d). But Congress expressly preserved state and local authority to manage public rights-of-way in § 253(c). Therefore, the FCC should not interpret § 253 as granting it the authority to displace traditional state and local rights-of-way management without a clear statement from Congress.[20]

Further, Section 601(c)(1) requires the Commission and the courts to do in this proceeding, what the plain text of 47 U.S.C. § 253 requires – construe this provision narrowly. This mandate is codified as a note on 47 U.S.C. § 152.[21]

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with their rights of way, but their right to meet any challenge on home ground in their local [federal] district courts." 141 Cong. Rec. S8308 (1995) (comments of Sen. Slade Gorton).

[20] *See Nixon v. Mo. Mun. League*, 541 U.S. 125, 139-40 (2004).

[21] 47 U.S.C. § 152, Telecommunications Act of 1996, Pub. L. No. 104-104, §601(c), 110 Stat. 56 (codified in the note to 47 U.S.C. § 152.) Section 601(c) specifies: "NO IMPLIED EFFECT – This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments."

ii. The FCC lacks jurisdiction to preempt State authority to impose on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Respectfully, NASUCA has genuine concerns that the NPRM leads the Commission down a path of ignoring, if not eviscerating, the safe harbor provisions in 47 U.S.C. § 253(b) and (c). Accordingly, should the FCC move forward with proscriptive rules under 47 U.S.C. § 253 for wireline services, which NASUCA does not believe would be enforceable, such rules must be carefully tailored so as to not obstruct, hinder or impede with this statutorily and constitutionally endowed State authority. The imposition of such prospective non-fact-based rules to purport to preempt State authority could not be considered to constitute reasoned decision-making and would be unlikely to survive judicial review under *Loper-Bright*. The bottom line is that Congress has not given Commission the right to impose regulations confining States' authority to manage the public rights-of-way, advancing universal service, protecting public safety, ensuring quality of telecommunications services, and safeguarding the rights of consumers.[22]

iii. State government is not the primary cause in any alleged delays in broadband deployment.

Imagine a State that has enacted three policies that were designed to expedite the deployment of advanced telecommunications infrastructure for the purpose of expediting broadband deployment. Those policies include "one-touch make-ready" and "self-help engineering" to allow providers to get quicker access to utility poles, and a dig-once mandate that would require advance notice to all wireline communications providers of any open conduit

[22] *See, e.g.* Comments of the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors ("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.")

for sharing at a reasonable cost. Would you be surprised that over a nearly five-year period, not a single wireline provider has exercised its right to do its own pre-engineering, taken advantage of the one-touch make-ready option for simple pole attachments, or used the option of going into an open conduit before the pavement was restored? This is the experience in the State of Connecticut.

State and local governments do not act as barriers to broadband deployment.[23] To the contrary, numerous states have adopted policies specifically designed to accelerate deployment and reduce the costs and delays associated with accessing public rights-of-way and utility infrastructure. States have implemented or pursued one-touch make-ready and streamlined pole-attachment procedures, self-help mechanisms, and "dig once" programs that coordinate broadband deployment with road and other infrastructure projects. For example, Pennsylvania provides a useful example of state efforts to facilitate, rather than impede, broadband deployment. The Pennsylvania Broadband Development Authority has established a Broadband Ready Communities program specifically to reduce procedural, policy, and permitting barriers to broadband deployment and to streamline communication between municipalities and providers.[24] Pennsylvania's statewide broadband planning also has identified One-Touch Make-Ready as a means of reducing the time required to prepare utility poles for new attachments and has recommended a "Dig Once" policy to coordinate broadband deployment with road and other infrastructure projects.[25] These initiatives demonstrate that state and local governments can and

[23] *Id*.
[24] *See* Pennsylvania Broadband Development Authority. (n.d.). *Broadband Ready Communities (BBRC),* available at https://broadband.pa.gov/resources/local-governments/broadband-ready-communities-bbrc/ (last accessed Oct. 19, 2026).
[25] *See* Pennsylvania Broadband Development Authority, *Pennsylvania Statewide Broadband Plan (2022),* available at: https://broadband.pa.gov/wp-content/uploads/2024/01/StatewideBroadbandPlan_2022.pdf (last accessed Oct. 19, 2025); Pennsylvania Broadband Development Authority, *Connecting the Commonwealth of PA: A 5-Year Strategy Toward Internet for All* (2025), available at: https://broadband.pa.gov/wp-content/uploads/2025/02/BEAD-5-YearStrategyReport_2025.pdf (last accessed Oct. 19, 2025).

do adopt policies designed to accelerate broadband deployment while retaining authority over the management of public rights-of-way.

The point of this revelation about the avoidance of using helpful policies established to expedite broadband deployment is that wireline providers' preference is not to take advantage of these policies as they do not fit within their operational plans. As in the Connecticut experience described above on p.12, it is far easier for a wireline communications provider to pay a pole owner to do pre-engineering and pole make-ready, than it is to hire skilled workers to do the same. This results in creating longer queues among the infrastructure and utility teams at electric utilities, thereby potentially driving up expenses for utility consumers and delaying broadband deployment. While the FCC focuses on generic local and state permitting but fails to take into consideration the size of the responsible governmental entity and the volume of the provider applications, the providers bear their own share of accountability for contributing to the delay in any communications infrastructure deployment.

Street excavation permit terms and conditions, including fees, are reviewable at the State agency level.[26] Adjudications of those terms, conditions and fees are made at the State level under the laws and precedents of that State, and it would be inappropriate for a federal agency to substitute its own opinion of what are acceptable terms, conditions and fees for that of the State, particularly when an aggrieved provider has the right to appeal any such adjudication to the courts of that State.[27]

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[26] *See, e.g.,* Conn. Gen. Stat. §§ 16-229 through 16-231.

[27] *See, e.g.* Comments of Washington State Dept. of Transportation at 2 ("The variations of a proposed installation's complexity and geographical differences would make determining a fair and balanced cap difficult and could restrict charging the actual and direct costs incurred during application review, which would be a violation of the 18th amendment to the Washington State Constitution.")

Many of the contentions by providers are not specific enough to justify national standards and FCC actions.[28] Anecdotes should not form the basis for federal agency rulemaking, and they certainly do not provide any basis to preempt State and local laws and regulations.

Finally, many delays in broadband-deployment under the BEAD program were caused by red-tape at the federal level under both the Biden and Trump administrations. Enacted under the Infrastructure Investment and Jobs Act of 2021, the BEAD program's infrastructure deployment is not expected to be completed until the end of 2029. This timeline is the result of the federal government, not from actions at the State level. Although there undoubtedly have been some delays with local permitting, it is disingenuous for the Commission to blame State and local governments for delayed broadband deployment when other federal agencies were culpable for significant national delays of broadband expansion in the United States.

III. CONCLUSION

As state consumer advocates, NASUCA has grave concerns about the proposed imposition of national rules under Section 253 that would undoubtedly lead to increased litigation that would further delay any broadband deployment. Should providers face a perceived barrier to entry or other violation of Section 253(a), they have full recourse in several ways, including locally at State agencies (such as utility commissions or departments of commerce), the Commission under 47 U.S.C. § 253(d), or federal or state courts, depending on the nature of the barrier. In a geographically diverse country, national rules on construction of facilities, in, under, or over public streets and highways are unjustifiable based on the record developed in this

[28] *See, e.g.,* Comments of GoNetSpeed at 2 (conflating negotiations with a municipality for a commercial arrangement for dark fiber with illegal demands).

proceeding. Nor would such rules be consistent with 47 U.S.C. § 253 or the Tenth Amendment to the United States Constitution.

NASUCA respectfully requests that the Commission end this proceeding without further action or alternatively not impose the national rules under 47 U.S.C. § 253 (NPRM ¶ 74).

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