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COMMENTS OF ITIF

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:

Build America: Eliminating Barriers to Wireline
Deployment

WC Docket No. 25-253

November 17, 2025

INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation (ITIF) appreciates the opportunity to comment on eliminating barriers to wireline broadband deployment.¹ As the NOI highlights, there has been significant private investment in the deployment of wireline infrastructure in recent years.² Additionally, massive federal funding programs like the Broadband Equity, Access, and Deployment (BEAD) program and the Rural Digital Opportunity Fund (RDOF) will continue to spend major sums in the years to come.³

However, the ability of these investments to deliver consumers the benefits of connectivity is reduced by unnecessarily onerous processes and fees for obtaining authorizations to access public rights-of-way (ROW) from states and localities. These unreasonable processes and regulations delay projects, squander millions of dollars on administrative requirements, and increase deployment costs that make projects untenable. The Commission should recognize that section 253 requires state and local governments to process ROW authorizations expeditiously, limit fees, and eliminate in-kind compensation requirements to maximize the effectiveness of money spent on wireline infrastructure projects.⁴ Doing so will prevent future deployment projects from facing prohibitive delays and costs, ensuring that money spent on deployment actually goes toward deployment.

CONNECTIVITY IS ITS OWN BENEFIT; STATES AND LOCALITIES SHOULD NOT OBSTRUCT IT FOR SHORT-TERM CASH

Excessive fees and lengthy ROW authorizations consume resources that could otherwise be spent on connectivity. That's a bad deal for consumers because the economic benefits of widespread broadband access include increased employment and economic activity, which are both direct benefits to local citizens and grow the tax base for state and local governments.⁵ That long-term economic growth can support improvements to local communities. Unfortunately, state and local governments sometimes prioritize a short-term local

¹ Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. For more, see: “About ITIF: A Champion for Innovation,” <https://itif.org/about>; Notice of Inquiry Build America: Eliminating Barriers to Wireline Deployment (WC Docket No. 25-253), FCC, September 30, 2025, <https://docs.fcc.gov/public/attachments/FCC-25-66A1.pdf>, (NOI).

² NOI, para. 1.

³ “Broadband Equity Access and Deployment Program,” NTIA, accessed November 4, 2025, <https://broadbandusa.ntia.gov/funding-programs/broadband-equity-access-and-deployment-bead-program>; “Rural Digital Opportunity Fund,” FCC, accessed November 4, 2025, <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/>.

⁴ NOI, para. 9; 47 U.S.C. 253.

⁵ Jessica Dine, “Enabling Equity: Why Broadband Access Rates Matter,” (ITIF, August 2023), <https://www2.itif.org/2023-value-of-universal-connectivity.pdf>.

revenue bump by charging excessive fees for ROW access.⁶ These requirements by states and localities prevent efficient broadband deployment and the economic benefits that come with it.

The consequences of these barriers to cost-effective and timely wireline deployment are exacerbated for federal programs like BEAD and RDOF. Not only do the same issues slow down deployment, but any excess funds spent on fees or administrative matters are federal taxpayer dollars that Congress and the FCC dedicated to connecting households. The Commission should use section 253 to establish guardrails to prevent states and localities from imposing prohibitive requirements on providers that waste resources and impede efficient broadband deployment.

THE COMMISSION SHOULD ESTABLISH AUTHORIZATION SHOT CLOCKS TO PREVENT EXCESSIVE DELAYS

Another way state and local governments effectively prohibit broadband deployment is by taking too long to review and approve applications to deploy. When delays dissuade providers from submitting applications or cause abandoned deployment projects, they effectively prohibit deployment.⁷ To prevent excessive delays, the Commission should determine a time limit for when delays become prohibitive and establish a shot clock, like in the *Small Cell Order*, so that if the shot clock is violated, the state or locality is required to expedite the authorization.

The Commission, in establishing new shot clocks in the *Small Cell Order*, reiterated its finding in the Declaratory Ruling that

“A regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services.”⁸

The Commission should recognize that section 253(a) has the equivalent intent of preventing state and local regulations from unlawfully prohibiting wireline broadband service. Given that the intent is the same, if the Commission established one or more shot clocks for authorizing wireline deployment, then violations of the shot clock would violate section 253(a), just as violations of shot clocks for wireless deployments violate

⁶ Joe Kane and Jessica Dine, “Ten (Suggested) Commandments for Closing the Digital Divide, (ITIF, May 2022), <https://itif.org/publications/2022/05/23/ten-suggested-commandments-closing-digital-divide/>.

⁷ *Moratoria Order*, 33 FCC Rcd at 7780-87, para. 149-60.

⁸ “Declaratory Ruling and Third Report and Order: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,” (WT Docket No. 17-79 and WC Docket N. 17-84), FCC, September 27, 2018, para. 119, <https://docs.fcc.gov/public/attachments/fcc-18-133a1.pdf> (*Small Cell Order*).

section 332.⁹ To prevent effective prohibition of wireline deployment, the Commission should exercise its authority under section 253(a) and create a shot clock to prevent prohibitive authorization delays.¹⁰

THE COMMISSION SHOULD LIMIT FEES TO THE DIRECT COSTS OF MANAGING ROW, AND PREEMPT IN-KIND COMPENSATION REQUIREMENTS

The Commission should limit state and local governments to collecting fees that are equal to the objectively reasonable costs of maintaining the ROW and processing an application to prevent fees from prohibiting wireline deployment projects.¹¹ Under this approach, “reasonable” means that the costs that a state or local government aims to recover with the fees are justified and that the fee charged does not exceed those costs.¹² This standard would prevent state and local governments from using ROW fees as a revenue-generating venture, which is detrimental to the goal of closing the digital divide.¹³

The Commission rightly observes that states and localities set ROW fee amounts without facing competition.¹⁴ The monopoly of local governments over ROW access will tend to push up regulatory costs. Previous ITIF analysis also found that the same monopoly can have even worse effects in localities that use their regulatory monopoly to favor government-owned broadband networks.¹⁵ As such, fees should be limited to recovering direct costs of ROW maintenance, and fees that are inconsistent with those costs should be considered in violation of section 253.

Finally, the Commission should preempt state requirements for in-kind compensation under section 253(a) because it overcomplicates the authorization process and presents a less clear-cut method of cost recovery for state and local governments. The Notice correctly highlights that courts have previously found that in-kind compensation requirements can have a prohibitive effect that violates section 253 when the requirements increase providers’ costs.¹⁶

CONCLUSION

Removing regulatory barriers to wireline deployment will ensure that private and federal investment in broadband deployment can close the digital divide. Streamlining ROW authorizations, capping fees collected by state and local governments, and applying common-sense economic principles to an analysis of section 253 rules will all improve the ability of innovators to build a brighter future for America.

⁹ NOI, para. 29.

¹⁰ NOI, paras. 18 and 29.

¹¹ NOI, para. 42.

¹² NOI, para. 32.

¹³ See Dine and Kane at 6.

¹⁴ NOI, para. 46.

¹⁵ Ellis Scherer, “Government-Owned Broadband Networks Are Not Competing on a Level Playing Field,” (ITIF, December 2024), <https://www2.itif.org/2024-government-owned-broadband.pdf>.

¹⁶ NOI, para. 50.

Thank you for your consideration.

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