International Center for Law & Economics

Comments of the International Center for Law & Economics

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

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Authored by:

Jeffrey Westling (Senior Scholar, Innovation Policy, ICLE)

Kristian Stout (Director of Innovation Policy, ICLE)

laweconcenter.org | icle@laweconcenter.org
1104 NW 15th Ave. Ste 300 Portland, OR 97209

@laweconcenter
503.770.0076

I. Introduction and Summary

The International Center for Law & Economics (ICLE) submits these comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) on reducing local barriers to broadband deployment.[1] ICLE is a nonprofit, nonpartisan research center that applies law & economics to public policy. Its work promotes sound economic analysis and consumer welfare, particularly in dynamic, technology-driven markets such as telecommunications.

The NPRM proposes reforms to streamline the state and local approvals that providers must obtain before building wireline infrastructure. Deployment often requires numerous permits, rights-of-way authorizations, and access agreements. Slow, discretionary, or unpredictably priced approval processes increase the cost and risk of investment and can make otherwise viable projects uneconomical.

These barriers carry especially high costs in broadband markets. Broadband networks require substantial upfront investments that providers cannot recover if a project fails. They also generate broad economic and social benefits that providers cannot fully capture. Permitting delays and excessive fees therefore shape where and how quickly providers build next-generation networks—and whether they build them at all. The resulting costs fall hardest on rural and lower-income communities, the very communities that federal connectivity policy seeks to reach.

The FCC should adopt its proposals to require cost-based fees and establish firm deadlines, known as shot clocks, for local review of wireline-infrastructure applications. It should pair those deadlines with a strong deemed-granted remedy that treats an application as approved when a locality fails to act on time. The FCC should also prevent localities from evading fee caps by demanding noncash, or in-kind, contributions. Together, these reforms would reduce avoidable deployment costs and help broadband providers build the infrastructure needed to support next-generation applications, including artificial intelligence.

II. Local Barriers Deter Broadband Deployment

As the NPRM explains, providers must secure numerous permits, rights-of-way authorizations, and access agreements before deploying infrastructure.[2] Slow, inconsistent, or unpredictably priced approvals increase both the cost and risk of deployment. These barriers can deter investment even when a provider has capital available. They therefore shape the cost of individual projects, where and how quickly providers build next-generation infrastructure, and whether they build it at all.

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[1] *See Build America: Eliminating Barriers to Wireline Deployment*, Notice of Proposed Rulemaking, WC Docket No. 25-253, FCC 26-40 (rel. June 25, 2026), https://docs.fcc.gov/public/attachments/FCC-26-40A1.pdf.

[2] *See also* Jeffrey Westling & Kristian Stout, *The Permission Layer: Clearing the Way for AI-Era Broadband* 13 (Int'l Ctr. for L. & Econ. Sept. 9, 2026), https://laweconcenter.org/resources/the-permission-layer-clearing-the-way-for-ai-era-broadband.

A. Broadband Economics Magnify Regulatory Barriers

Two features of broadband deployment make the FCC's proposed reforms especially important. First, broadband networks require high fixed costs, and providers cannot recover much of that investment if a project fails.[3] A provider must incur most network costs before serving a single customer. If the network attracts too few customers, much of that spending is lost.[4]

Providers spread these fixed costs across their customer base. Projects serving large or affluent populations are therefore more likely to produce an adequate return, while projects in rural and lower-income communities often remain marginal.[5] Every avoidable regulatory cost or delay pushes more of those marginal projects below the threshold for investment.

Second, broadband creates broad social benefits that providers cannot capture through subscription revenue.[6] Reliable connectivity can raise property values, improve educational outcomes, expand access to telemedicine in ways that make rural living more viable, and allow remote workers to bring income into lower-cost communities.[7] Providers cannot charge for a farmhouse's increased resale value or a student's improved grades.

These spillover benefits create an underinvestment problem. A broadband project may produce substantial value for society while generating too little revenue to justify private investment. AI, augmented reality, and virtual reality will widen this gap because their benefits will extend far beyond what any single broadband provider can monetize. Policies that reduce deployment costs and risks therefore create value beyond the revenue that providers earn.

B. Fragmented Approvals Create Holdout Risk

State and local requirements impose transaction costs and create holdout risks that can exceed the cost of the equipment itself. A single linear route may require agreements with several municipalities,

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[3] Geoffrey A. Manne, Kristian Stout & Ben Sperry, *A Dynamic Analysis of Broadband Competition: What Concentration Numbers Fail to Capture* 20 (Int'l Ctr. for L. & Econ. 2021), https://laweconcenter.org/resources/a-dynamic-analysis-of-broadband-competition-what-concentration-numbers-fail-to-capture; *see also* Geoffrey A. Manne *et al.*, *Comments on Refreshing the Record in Restoring Internet Freedom and Lifeline Proceedings*, WC Docket Nos. 17-108, 17-287 & 11-42, at 2 (Int'l Ctr. for L. & Econ. 2020), https://laweconcenter.org/resources/comments-on-refreshing-the-record-in-restoring-internet-freedom-and-lifeline-proceedings-in-light-of-the-d-c-circuits-mozilla-decision.

[4] *See* Comments of the International Center for Law & Economics, *The State of Competition in the Communications Marketplace*, GN Docket No. 26-78, at 8 (May 21, 2026), https://laweconcenter.org/resources/icle-comments-to-the-fcc-on-the-state-of-competition-in-the-communications-marketplace [hereinafter ICLE Competition Comments].

[5] Westling & Stout, *supra* note 2, at 4.

[6] Jeffrey Westling, *The Last Mile Is a Paper Trail: Why Broadband Gets Stuck*, TRUTH ON THE MKT. (Apr. 22, 2026), https://truthonthemarket.com/2026/04/22/the-last-mile-is-a-paper-trail-why-broadband-gets-stuck.

[7] *See* Paraoma Sanyal *et al.*, *Fiber Deployment Has Significant Incremental Economic Benefits* 32 (The Brattle Grp. 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5370089.

county and state authorities, private landowners, and owners of thousands of utility poles.[8] Each party controls a segment of the project and has an incentive to seek the highest payment its approval can command. Yet no single party bears or fully accounts for the cumulative burden imposed on the network.

Many projects thus require consent from a long chain of independent parties, any one of which can block the entire build.[9] This structure creates a holdout problem. After a provider has invested in a route and obtained nearly every required approval, the final gatekeeper can demand far more than the underlying access is worth. The provider must then overpay, redesign the route, or abandon the investment already sunk into the rest of the project.

C. Delay and Uncertainty Deter Marginal Projects

Delay and unpredictability often impose greater costs than the fees themselves. A project's economics depend heavily on when it begins generating revenue relative to when its costs accrue. Protracted or discretionary review postpones revenue while financing and development costs continue to mount. Each month of delay also consumes part of an asset's useful economic life and increases the risk of technological obsolescence.[10] A 10-year asset that spends three years awaiting approval must repay its debt from seven years of revenue instead of 10.

Open-ended standards compound these costs. A provider can budget for a fixed fee. It cannot price a discretionary decision with the same confidence, so it must demand a higher expected return to compensate for the uncertainty. Firm deadlines with meaningful consequences for inaction, paired with fees tied to a government's actual and direct costs, reduce the risk premium built into deployment decisions. This benefit extends even to projects completed on schedule, because providers must evaluate them *ex ante* based on the possibility of delay.

These burdens fall most heavily on marginal projects. Excessive delay and denial risk raise the minimum return needed to justify deployment, eliminating projects in rural and lower-income communities first.

The FCC can directly address these problems by establishing firm deadlines backed by a presumption of approval, limiting fees to reasonable government costs, and counting in-kind demands against those limits. These safeguards target the delay, discretion, and rent extraction that impose the largest avoidable costs and risks on broadband deployment.

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[8] Kristian Stout, *Infrastructure Is Destiny: The Geography of the Next Technology Race* 18 (Int'l Ctr. for L. & Econ. Issue Brief 2026), https://laweconcenter.org/resources/infrastructure-is-destiny-the-geography-of-the-next-technology-race.

[9] ROBERT COOTER & AARON EDLIN, THE FALCON'S GYRE: LEGAL FOUNDATIONS OF ECONOMIC INNOVATION AND GROWTH 6.21 (2014), https://www.law.berkeley.edu/library/resources/cooter.pdf.

[10] ICLE Competition Comments, *supra* note 4, at 11.

III. Shot Clocks Need Effective Enforcement

As explained above, broadband providers need regulatory certainty when deciding whether to invest. ICLE supports the proposed 120-day shot clock, but the remedy for missed deadlines matters more than the precise timeframe.[11] If the record supports a shorter period to encourage deployment or a longer one to let localities manage their public rights-of-way, the FCC should adjust the deadline accordingly.

Whatever period the FCC chooses, it must provide swift and meaningful enforcement. A deadline offers little relief if a locality can ignore it, stall a deployment, and create a *de facto* moratorium on new builds. Although the NPRM declined to propose a deemed-granted remedy, it left the issue open, stating that the FCC "may revisit this decision if evidence submitted to the Commission suggests that a 'deemed granted' remedy is needed."[12]

The economics of broadband deployment provide sufficient evidence of that need. Without an automatic consequence for inaction, providers remain exposed to the same uncertainty that the shot clock should eliminate. The FCC could wait for a more extensive record, but broadband deployment would suffer in the meantime. It should instead adopt a deemed-granted remedy under which an application receives approval when a locality fails to act before the deadline.

The FCC should also apply a single deadline to all authorizations required for access to a public right-of-way. Allowing localities to stack separate shot clocks for rights-of-way agreements, construction permits, road-closure permits, and other approvals would preserve the delay and uncertainty the rule seeks to eliminate.

A. Start the Clock at the First Procedural Step

The FCC should clarify that the shot clock begins to run when a provider initiates the first procedural step in the application process. A firm deadline does little to constrain delay if a jurisdiction can postpone its start by withholding acknowledgment of an application, imposing open-ended preapplication or completeness requirements, or excluding informal preliminary steps from the clock.[13]

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[11] Ajit Pai, Comm'r, Fed. Commc'ns Comm'n, *Remarks at PCIA's 2014 Wireless Infrastructure Show* 3 (May 20, 2014), https://www.fcc.gov/document/commissioner-pai-remarks-pcia-2014; *see also* Comments of the International Center for Law & Economics and TechFreedom, *In re Applications of Cellco P'ship & SpectrumCo LLC*, WT Docket No. 12-4, at 9 (Mar. 16, 2012), https://laweconcenter.org/resources/in-the-matter-of-application-of-cellco-partnership-spectrumco-llc-for-consent-to-assign-licenses-wt-docket-no-12-4 (noting that the FCC's wireless shot clock "has had little effect in practice").

[12] *Build America*, *supra* note 1, ¶ 32.

[13] *See* Comments of the Free State Foundation, *Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, at 5 (Nov. 18, 2025), https://freestatefoundation.org/wp-content/uploads/2025/11/FSF-Comments-Eliminating-Barriers-to-Wireline-Deployments-Final-111825.pdf.

These open-ended requirements introduce the same costly discretion as an unenforceable deadline. In the aggregate, they can recreate the *de facto* moratoria that the shot clock should prevent. Predictability requires an objective, provider-triggered starting point that localities cannot manipulate. The clock should therefore begin when the provider takes the first required procedural step, rather than when the locality later decides that the application is complete.

B. Allow Batch Applications

The FCC should also allow providers to submit batch applications. It has previously approved batching for small-cell deployments.[14] Although wireline projects differ in scale, the same logic applies when a provider proposes substantially uniform work, such as repeated attachments using the same design along a fiber route or materially identical installations using common construction methods.

Batch review would benefit providers and localities alike. Providers could avoid duplicative filings, fees, and staggered timelines. Localities could conduct one engineering and legal review of the shared elements instead of repeatedly examining identical specifications. That approach would accelerate deployment while easing the burden on resource-constrained local review staff.

IV. Fee Limits Must Track Actual Costs

The NPRM cites several examples of localities imposing fees that exceed the actual costs of processing permits and maintaining public rights-of-way.[15] These examples provide ample support for cost-based fee rules. Two additional disputes further illustrate what happens when gatekeepers can impose charges untethered from their costs.

A. Maple Grove Treated Broadband as a Revenue Source

Recent events in Maple Grove, Minnesota, show how directly some localities treat broadband deployment as a revenue opportunity. In March 2026, the city amended its code to require every "Broadband Service Provider" to obtain a cable-television franchise from the Northwest Suburbs Cable Communications Commission (NSCCC) before the city would act on any rights-of-way application.[16]

Gateway Fiber is a certificated telecommunications carrier that provides broadband internet access, rather than cable service. When it sought permits to continue construction, the city deferred its

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[14] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, Declaratory Ruling & Third Report and Order, 33 FCC Rcd. 9088, ¶ 113 (2018), https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf.

[15] *Build America*, *supra* note 1, ¶ 35.

[16] *Gateway Fiber Petition for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act*, WC Docket No. 26-166, at 3 (June 17, 2026), https://www.fcc.gov/ecfs/document/26109834869/1.

applications. A provider accustomed to receiving permits within four to six weeks suddenly could not obtain them at all.[17]

The local commission stated its financial motive plainly. It projected that cable-franchise-fee revenue would fall by about 10% annually and identified "new broadband fees" as the "most impactful" source of replacement revenue.[18] The city's Request for Council Action likewise tied the ordinance to "declining cable franchise revenue." It said nothing about coordinating construction, protecting pavement, or preventing conflicts among users of the rights-of-way—the interests that might justify such a requirement.[19] The ordinance sought to turn a broadband entrant into a replacement source of franchise revenue.

B. Pole-Replacement Charges Require Clear Standards

A recent pole-replacement dispute illustrates a related problem. Owners of essential infrastructure can use their gatekeeping position to impose charges untethered from cost. In February 2026, the FCC rejected Appalachian Power Company's (APCo) "cost causer" policy. The policy required a company seeking to attach equipment to an APCo pole to pay upfront 100% of the cost of replacing a pole that already violated applicable standards, subject to a possible 50% refund.[20]

The FCC held that a new attacher may pay only the incremental cost of the taller or stronger pole its equipment requires. APCo could not charge the attacher for correcting a preexisting violation.[21] The dispute nonetheless continued after the ruling. Rather than apply the incremental-cost standard, APCo allegedly billed Comcast a flat share of roughly 20% of the full replacement cost, regardless of the costs Comcast's attachment caused. APCo also reportedly treated 20% as a floor rather than a ceiling, prompting Comcast to file another complaint.[22]

Investor-owned utilities may have especially strong incentives to extract rents, but similar incentives operate when local governments and permitting offices control access needed for broadband deployment. A rule limiting fees to "reasonable" or "actual" costs will constrain those incentives only if the FCC defines the standard concretely and provides an effective remedy. Providers should be

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[17] *Id.* at 2.

[18] *Id.* at 6.

[19] *Id.*

[20] *Comcast Cable Commc'ns, LLC v. Appalachian Power Co.*, Memorandum Opinion and Order, Proceeding No. 25-330, Bureau ID No. EB-25-MD-002, FCC 26-6, ¶¶ 26–27 (rel. Feb. 5, 2026), https://docs.fcc.gov/public/attachments/FCC-26-6A1.pdf.

[21] *Id.* ¶ 2.

[22] Complaint of Comcast Cable Communications, LLC at 18, *Comcast Cable Commc'ns, LLC v. Appalachian Power Co.*, Proceeding No. 25-330 (July 7, 2026), https://www.fcc.gov/ecfs/document/26109998224/1.

able to challenge systemic overcharges without relitigating the same issue one gatekeeper and one pole at a time.[23]

V. Fee Caps Must Cover In-Kind Contributions

A fee cap that excludes in-kind contributions constrains the form of compensation while leaving the total burden unchecked. When a locality conditions access on free service to municipal buildings, dedicated fiber or conduit, capacity on an institutional network, or a comparable obligation, the provider bears the added cost of supplying that service or facility.[24]

An in-kind obligation requiring $1,000 in additional spending imposes the same direct burden as a $1,000 cash payment. Its total cost may be even greater if the obligation displaces commercial uses or forces the provider to expand capacity sooner than planned. The precise cost depends on the provider's available capacity and the alternative uses it could reasonably expect.

A cap limited to cash payments therefore allows localities to collect compensation above the nominal ceiling. These demands can increase subscriber prices, reduce service quality, and discourage investment. Although the effects depend on market conditions and the nature of the obligation, they fall hardest on marginal projects that broadband policy should encourage.

Cable franchising offers a cautionary precedent. Congress defined "franchise fee" broadly to prevent local authorities from evading the 5% statutory ceiling by demanding services or facilities instead of cash.[25] Localities cannot circumvent Congress' limit simply by changing the form of compensation.[26] The FCC recognized this principle in its 2019 Section 621 order, which held that nonincidental in-kind obligations count toward the 5% cap.[27]

The same principle applies to the fee limits in this proceeding. The FCC should adopt its proposal to count the value of state and local in-kind demands toward any safe-harbor fee level.[28] Covered demands should include dedicated capacity, free service to public facilities, donated equipment, and similar assessments that function as payment.

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[23] Jeffrey Westling, *The Cost of Holding Up Broadband*, TRUTH ON THE MKT. (July 14, 2026), https://truthonthemarket.com/2026/07/14/the-cost-of-holding-up-broadband.

[24] Comments of the International Center for Law & Economics, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311 (June 18, 2019), https://laweconcenter.org/resources/icle-comments-on-implementation-of-section-621a1-of-the-cable-communications-policy-act-of-1984.

[25] *See* 47 U.S.C. § 542(b) (capping franchise fees at 5% of gross revenue), (g)(1) (defining "franchise fee" to include "any tax, fee, or assessment of any kind"); *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Third Report and Order, 34 FCC Rcd. 6844 (2019).

[26] *See* Comments of the International Center for Law & Economics, *supra* note 24.

[27] *See id.*

[28] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, *supra* note 25.

To make the limit durable, the FCC should require the locality to justify the value assigned to each in-kind demand. That valuation should reflect the provider's marginal cost of meeting the demand and its opportunity cost from displaced commercial uses.

VI. Section 253 Supports the Proposed Rules

A threshold objection is that Section 253 protects the ability to provide "telecommunications service," while the FCC currently classifies broadband internet access as a Title I information service. That objection misconstrues both the statute and the deployments at issue. The FCC can apply firm deadlines and cost-based fee limits to the facilities covered by this proceeding without changing the classification of retail broadband. Section 253 protects the deployment of infrastructure capable of carrying telecommunications, regardless of the regulatory classification assigned to a particular retail service.

Section 253(a) reaches any state or local requirement that prohibits or has the effect of prohibiting "the ability of any entity to provide any interstate or intrastate telecommunications service."[29] This language extends beyond firms that sell telecommunications directly to consumers. It also covers entities that deploy infrastructure capable of providing telecommunications services.[30]

The same fiber that delivers mass-market broadband often carries—or can carry—interconnected voice over internet protocol (VoIP), business-data and enterprise-transport services, dark-fiber leases, and point-to-point connections. Providers building these networks also commonly hold state telecommunications certificates and file tariffs for regulated services.[31] The relevant considerations are the network's telecommunications capabilities and the burden imposed on them. A provider's use of the same fiber to offer an information service does not place the infrastructure beyond Section 253's reach.

The FCC should therefore adopt its proposal to prohibit state and local governments from imposing additional requirements on wireline telecommunications infrastructure because the facilities "may be used to provide other services."[32] This commingled-facilities rule would prevent localities from accomplishing indirectly what Section 253 forbids them to do directly.

The proposal also follows the approach the FCC has taken in the cable context. Its mixed-use rule prevents franchising authorities from regulating noncable services carried over a cable operator's mixed-use system.[33] Applying the same principle here places the shot-clock and fee-cap rules on

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[29] 47 U.S.C. § 253(a).

[30] *See Crown Castle Fiber, L.L.C. v. City of Pasadena*, 76 F.4th 425, 433 (5th Cir. 2023).

[31] *See* Comments of Crown Castle Fiber LLC, *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, at 15–16 (Nov. 18, 2025).

[32] *Build America*, *supra* note 1, ¶ 68.

[33] *See* 47 C.F.R. § 76.43 ("A franchising authority may not regulate the provision of any services other than cable services offered over the cable system of a cable operator, with the exception of channel capacity on institutional networks.").

settled statutory ground, even when providers also use the infrastructure to offer an information service.

VII. Conclusion

The proposed reforms reflect the basic economics of infrastructure investment. Broadband deployment requires large, largely sunk investments under substantial uncertainty. It also creates broad social benefits that no provider can fully capture through subscription revenue. State and local delay, discretion, and rent extraction raise the minimum return needed to justify deployment, eliminating marginal projects first. Rural and lower-income communities bear the greatest burden, even though federal broadband policy seeks to reach them most urgently.

Firm deadlines backed by a deemed-granted remedy, fees tied to a government's actual, direct costs, and in-kind demands counted toward those limits would reduce the risk built into every deployment decision. The FCC can adopt these measures on settled statutory grounds. Section 253 reaches requirements that prohibit or effectively prohibit an entity's ability to provide telecommunications service. That protection extends to infrastructure capable of carrying telecommunications, regardless of how the provider's retail services are classified.

ICLE therefore urges the FCC to adopt a firm shot clock backed by a deemed-granted remedy, cost-based fee limits that include in-kind contributions, and a commingled-facilities rule that prevents localities from indirectly imposing requirements that Section 253 directly prohibits. These reforms would give providers the predictability needed to invest and help ensure that next-generation networks reach the communities that need them most.