



September 21, 2026

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

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

Dear Ms. Dortch,

The ACLP at New York Law School respectfully submits the following comments in the above-referenced proceeding.

Should you have any questions, please do not hesitate to contact us.

Kind regards,

_____/s/
Michael J. Santorelli, Director

_____/s/
Alex Karras, Senior Fellow

1. Introduction

The ACLP commends the Federal Communications Commission for its continued focus on identifying and removing barriers to advanced communications deployment. In particular, the FCC, under the leadership of Chairman Carr, deserves significant praise for its ongoing efforts across myriad dockets to systematically modernize the ways in which every kind of communications infrastructure is built.

This proceeding builds on a robust record highlighting core failures of the bureaucratic machinery that directly impact how, when, where, and at what cost advanced communications networks capable of delivering high-speed internet access and other services can be deployed. The scattershot way some state and local officials review and approve requests for accessing rights-of-way (ROW) and other key inputs to infrastructure deployment might have once been acceptable in a world dominated by basic communications services delivered by a small number of local providers. But these methods no longer make sense when multiple entities operating at scale, typically serving multiple states, if not the entire country, engage in fierce competition to connect users to advanced offerings.

As discussed in Section 2, the Commission is correct: a wide range of “state and local requirements...constrain the deployment of modern high-speed wireline infrastructure by burying providers in red tape and excessive fees.”¹ In Section 2, the ACLP offers additional data to support the Commission’s proposed actions that would “limit processing times and fees for state and local authorizations that constrain deployment of wireline infrastructure in violation of Section 253 of the Act.”² These data make clear that Commission action is urgently needed.

In Section 3, these comments evaluate the Commission’s proposals vis-à-vis their ability to streamline wireline deployments. Taken together, the proposals would provide greater clarity and consistency for ISPs seeking to deploy advanced networks. Increased clarity and consistency will reduce costs and hasten construction, the benefits of which will inure most immediately to consumers.

The momentum being built toward comprehensive reforms of the vast regulatory underbrush that ISPs are required to navigate on their way to building networks must continue past this proceeding. Indeed, this proceeding should serve as a wake-up call to states and municipalities to roll up their sleeves and get to work in modernizing their law and regulations impacting advanced communication network deployments. Otherwise, the

¹ *Build America: Eliminating Barriers to Wireline Deployments*, Notice of Proposed Rulemaking, at ¶ 1, WC Docket 25-253 (June 25, 2026) (“*Barriers NPRM*”).

² *Id.* at ¶ 4.

fractured nature of ROW administration and related processes will slow network buildout and discourage continued investment.

2. The Need for Continued Reform

The record of this proceeding is already replete with numerous examples of the real-world impacts that lengthy review and approval processes, high fees, and other local administrative burdens have on network deployment decisions. The ACLP seeks to supplement the record by summarizing recent research documenting similar harms and estimating likely negative impacts of unresolved permitting (Section 2.1) and related issues (Section 2.2) in the context of the BEAD program and elsewhere.

2.1 The Impacts of a Fractured Permitting Landscape

The \$42+ billion BEAD program, the largest ever federal investment in broadband network expansion, was designed by Congress to close the U.S. digital divide once and for all. The approximately 3.7 million locations that may ultimately be reached by BEAD-funded projects are among the most challenging and costly to serve.³ These projects will be built in every state and across more than 2,400 counties and 12,000 localities (towns, cities, etc.).⁴ There is also a clock involved with these projects – they must be built within four years of being funded – so, in addition to offering a compelling microcosm of the myriad dynamics at play when ISPs build networks, BEAD must happen within a finite period.

Among the obstacles facing BEAD projects is the sheer number of permissions, approvals, and other planning steps that subgrantees must navigate and secure, typically in collaboration with state and local officials, before they can begin building. Per ACLP estimates, these include:

- A minimum of 86,402 permitting events, of which more than half will occur at the state or local level⁵;

³ See, e.g., Alex Karras and Michael Santorelli, *Sizing Up Another BEAD Round Using the Ever-Changing BEAD Map*, Sept. 9, 2026, Broadband Expanded, <https://broadbandexpanded.com/posts/anotherbeadround>.

⁴ Alex Karras and Michael Santorelli, *BEAD Broadband Builds Must Clear a Thicket of Overlapping Permits*, Aug. 5, 2026, Broadband Expanded, <https://broadbandexpanded.com/posts/beadpermitting> (“BEAD Permits”).

⁵ *Id.* This is a lower bound estimate that counts each permitting event as a single permit. The real-world figure will likely be far higher because many localities might require more than one permit for certain projects.

- Nearly 4 million utility pole touches.⁶ Of these, only about 10% of the poles are regulated by the FCC.⁷
- ISPs will likely submit about 1.4 million utility locate tickets to state 811 one-call centers seeking 8+ million utility locates to ensure that other underground infrastructure (gas lines, electric wires, water pipes, sewers, etc.) are not damaged when fiber is laid.⁸ These other underground assets are owned by a mix of public and private utilities.

As has been documented extensively throughout the record of this proceeding, the fragmented nature of the review and approval processes surrounding local permitting, utility pole access, and other issues adds time to and increases the costs of deployment.⁹ Indeed, in the past, a number of wireline ISPs have abandoned projects because of the delays and costs arising from adversarial pole attachment disputes arising in reverse-preemption states.¹⁰

The byzantine nature of local permitting stands as one of the most formidable remaining barriers to broadband deployment. As detailed in the ACLP's analysis of permitting in the BEAD context, the average minimum number of permits needed for a BEAD project is 8, but more than half require 10, and one in seven need more than 20.¹¹ Across all of BEAD, at least 22,000 of the 86,400 permits needed for these projects arise at the county and municipal levels.¹² The requirements, review timeframes, and costs implicated by each local permit will likely be distinct, which means that ISPs looking to build networks across multiple jurisdictions must juggle these overlapping yet divergent criteria within the limited timeframes and strict budgets required by BEAD.

⁶ Alex Karras and Michael Santorelli, *Lingering Utility Pole Issues Could Raise Costs and Delay BEAD Buildout*, May 12, 2026, Broadband Expanded, <https://broadbandexpanded.com/posts/beadpoles> ("Utility Poles").

⁷ *Id.* See also *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; States That Have Certified That They Regulate Pole Attachments*, Reply Comments of the ACLP at New York Law School, WC Docket Nos. 17-84, 10-101 (July 27, 2026), <https://broadbandexpanded.com/files/policy/ACLP%20-%20Reply%20Comments%20to%20FCC%20re%20WC%20Docket%20Nos.%2017-84%20and%2010-101%20-%20July%2027%202026.pdf>. Fortunately, NTIA requires BEAD subgrantees that own poles to submit to FCC jurisdiction, a requirement that will likely hasten deployment.

⁸ These figures are from a forthcoming ACLP/Broadband Expanded analysis. For additional details, please contact us directly.

⁹ See, e.g., *BEAD Permits; Utility Poles*.

¹⁰ See, e.g., *Utility Poles*.

¹¹ *BEAD Permits*.

¹² *Id.*

These characteristics are not limited to BEAD. As echoed extensively in the record of this proceeding, local permitting has in many cases become akin to a lawless Wild West, with some localities looking to these processes as a revenue-generating opportunity by implementing very high fees, while others simply lack the wherewithal to move applications along in a timely manner. Such action and inaction have the effect of prohibiting or severely constraining network deployment.

In short, the scale of permitting issues facing ISPs is significant. Across the 50 states, ISPs must grapple with numerous state-level permitting entities, including those overseeing roadways, environmental protection, historical preservation, parks, housing, and many others.¹³ In addition, with at least 90,000 local government entities spread across the country, the number of permitting entities with which ISPs must engage is staggering.¹⁴

If ISPs served only one town, these issues would be much less pressing. However, the modern communications market is characterized by ISPs that serve multiple localities across multiple states. According to the ACLP's analysis of the most recent FCC data¹⁵:

- 93.6% of U.S. residential units (123,987,527 of 132,526,201) are served by a wireline ISP that operates in more than one state.
- 91.1% of U.S. residential units are served by a wireline ISP that operates in at least 100 counties, and 92.4% by one that operates in at least 100 municipalities.
- The U.S. wireline market includes many small single-state operators: 1,410 of 1,655 providers (85.2%) operate in one state only. But, together, they reach only 10% of residential units. In many of these instances, most units also have a multi-state provider available.
- In every state but Alaska, roughly 80% or more of residential units are served by a multi-state ISP. Alaska is the exception at 30.5%, where the largest wireline operators serve no other state.

Given these dynamics, even the slightest variations in application requirements, review timelines, and fees across these jurisdictions could raise deployment costs considerably and

¹³ *Id.*

¹⁴ See, e.g., Amy Smaldone and Mark L.J. Wright, *Local Governments in the U.S.: A Breakdown by Number and Type*, March 14, 2024, Federal Reserve Bank of St. Louis, <https://www.stlouisfed.org/publications/regional-economist/2024/march/local-governments-us-number-type>.

¹⁵ Analysis on file.

thus serve as effective prohibitions if they unduly delay, constrain, or otherwise impede network buildout. Commission action to address these barriers is thus critical.

2.2 In the Absence of Clear Rules of the Road, Localities Are Creating Additional Burdens and Barriers

Among the more unfortunate outcomes of this fractured ROW access landscape is the myriad ways in which localities have sought to take advantage of the lack of formal legislative or regulatory guardrails for their own benefit. These actions can be sorted into two buckets: (1) unjust enrichment vying the levying of new and/or excessively high fees on ISPs and (2) leveraging seemingly boundless authority over ROW to tilt the playing field to entice new market entry.

Regarding unjust enrichment, Section 3 discusses why the Commission’s proposal for aligning ROW access fees with actual costs must be adopted. The record already includes robust evidence demonstrating that many of the permitting fees and other charges levied by localities are astronomically high relative to the actual costs incurred in their management of ROW.

In addition to permitting, another relevant example of how fee-setting has run amok at the municipal level can be seen in the emergence of a new kind of local franchise agreement that cities use to extract funds, in-kind commitments, and other payments from ISPs. There is wide variability of the fee structures stemming from these agreements, which strongly suggests that these fees bear little or no relation to the actual costs of managing public ROW. These agreements typically pertain to broadband-only providers and employ novel – and extractive – pricing policies.

For example, in New York City, information service franchises are available to those providing data-only services.¹⁶ Entities are charged \$0.19 per linear foot per quarter in the public ROW (this figure rises 4% each year).¹⁷ However, that figure could decrease to \$0.09 if the entity has deployed or plans to deploy fiber outside of the central business district of Manhattan.¹⁸ Franchisees are also required to pay flat-rate annual payments of at least

¹⁶ See, e.g., *Information Services Franchise Agreement Between the City of New York and Crown Castle Fiber LLC*, <https://www.nyc.gov/assets/oti/downloads/pdf/information-services-franchises/crown-castle-fiber-info-services-franchise-agreement.pdf>

¹⁷ *Id.* at Section 3.2.1

¹⁸ *Id.* at Section 3.2.1.1.

\$40,000, with annual escalators, though new Franchisees get a discount.¹⁹ Similar linear foot pricing is evident elsewhere across the country.²⁰

Other cities have imposed fees pegged to a particular percentage of local revenues derived from the network being built. These are reminiscent of cable franchise fees, but they lack any grounding in statute or guardrails to keep them from inflating. For example, Pittsburgh, PA, charges non-cable and non-telecom franchisees (essentially broadband or data-only providers) 5% “of the annual total local gross revenues derived from the customers” served by the network built in the public ROW.²¹ In Junction City, OR, that figure is 7% of gross revenues.²² Similar arrangements are evident in a growing number of cities.

The cost to a locality to manage local ROW does not hinge on how much the networks being built in the ROW are being used. Allowing an entity to lay or hang fiber on public ROW is essentially a fixed cost – whether the services enabled by the network leveraging public ROW are used a lot or a little has no bearing on how much it costs a city to manage that input.

Regarding actions that potentially tilt the playing field in favor of new entrants, cities have experimented with offering non-incumbent ISPs an array of concessions to incentivize deployment. Among many others, these typically include promises to provide entities with a single point of contact in city government to administer permitting requests; many also promise to waive permitting fees and/or otherwise prioritize the new entrant’s paperwork.

This framework was pioneered by Google Fiber (now gFiber) in the early 2010s as it explored deploying retail fiber networks.²³ Google Fiber would only partner with cities that agreed to its terms, many of which proved favorable to the ISP, including those related to permitting. Over time, other ISPs and cities have adopted this approach, and several states, including Colorado, Georgia, and Indiana, incorporated aspects of this framework into “Broadband Ready” designations extended to localities that complied with certain criteria related to facilitating new network deployment.²⁴

¹⁹ *Id.* at Section 3.2.1.2.

²⁰ See, e.g., *Telecommunications Right-of-Way License and Use Agreement Between Viaero Fiber Networks LLC and the City of Cheyenne, WY*, https://cheyenne.granicus.com/MetaViewer.php?view_id=5&event_id=1282&meta_id=137833.

²¹ City of Pittsburgh, PA, Code § 427.11(b), <https://ecode360.com/45446305>.

²² Junction City Municipal Code Ch. 5.10, § 5.10.170, <https://www.codepublishing.com/OR/JunctionCity/html/JunctionCity05/JunctionCity0510.html#5.10.010>.

²³ See, e.g., *Google Fiber City Checklist (Updated February 2014)*, <https://fiber.storage.googleapis.com/legal/googlefiberchecklist2-24-14.pdf>.

²⁴ See, e.g., *Pew Memo to State Broadband Offices Comparing Broadband-Ready Community Programs*, March 23, 2023, <https://www.pew.org/-/media/assets/2023/04/broadband-ready-communities-ta-memo-pdf.pdf>.

Though these approaches might seem benign at first glance, a closer look reveals that many of these activities can negatively impact broadband deployment. The wide variation in permitting and novel franchise fee structures evident in cities across the country makes clear that these fees are almost entirely untethered from the real costs of administering the underlying ROW. Further, the myriad ways in which cities have sought to leverage their permitting power signals that localities view this authority as nearly boundless. Left unaddressed, this unchecked authority will result in greater fragmentation, higher fees, and the emergence of even more extractive practices.

In sum, there is significant evidence highlighting the need for rules of the road that can provide ISPs with the clarity and consistency needed to support continued network investment and deployment.

3. Compelling Evidence from the Field and Strong Statutory Authority Support Adoption of the Commission’s Proposals

This proceeding is the latest in a series of actions by the Commission to update outdated ROW policies and align them to reflect the increasingly converged nature of the modern communications marketplace. The Commission has powerful statutory tools at its disposal, notably Section 253, to implement these needed changes. The proposals included in the NPRM at issue here are in line with those prior actions and should be adopted, with minor adjustments. This section evaluates each component of the Commission’s proposal in turn.

3.1 The 120-Day Shot Clock

Based on the extensive record already developed in this proceeding, along with the data and analysis included above in Section 2, lengthy delays in processing authorizations at the state and local levels have material adverse impacts on broadband deployment. Delays raise costs, disincentivize deployment, deprive consumers of new offerings, and effectively prohibit wireline network buildout.

Section 253(a) provides the Commission with clear and legally robust authority to define the parameters around what constitutes an “effective prohibition” vis-à-vis wireline deployments. Establishing a shot clock provides clear notice to all parties that, after a certain point in time, state or local inaction on a permit request or other authorization effectively prohibits network deployment. The relationship between unreasonable delays in granting such authorizations and a dampening of network deployment is clearly established in the record. Adopting a rebuttable presumption in this context also makes sense and provides state and local government entities with an opportunity to demonstrate that a particular delay in granting an authorization is not unreasonable if extenuating circumstances exist.

The ACLP supports this framework but urges the Commission to narrow the shot clock to 60 days. A 120-day shot clock is too long and does not reflect the urgency with which ISPs are seeking to invest in and deploy networks. This urgency is amplified in the context of

grant programs like BEAD, but, in general, the intense competitive dynamics of the modern communications market demand more responsiveness from state and local government. As the recent uproar over data center construction has made clear, state and local government actors can move very fast when they want or need to. The Commission should not shy away from implementing a shorter shot clock and should strongly consider a 60-day timeframe for authorizations.

3.2 Limiting Fees to Actual, Direct Costs

As discussed in Section 2, in the absence of rules or guidance on how to set rates, states and particularly localities have structured fees in ways that no longer reflect the actual costs they incur when administering their ROW. As a result, ROW-related fees have become a means for localities to squeeze additional revenue from ISPs. This may be an attempt by localities to offset steep declines in cable franchise fee revenues, which have plummeted in recent years due to consumer cutting the cable cord and shifting their video viewing to streaming platforms.²⁵ Regardless, neither states nor localities should be able to extract excessive payments from captive customers of their public ROW.

Limiting allowable fees to a “government’s actual, direct costs of managing the rights-of-way with respect to that authorization” makes sense, as does establishing “safe harbor fee levels that presumptively comport with that standard.”²⁶ This will reduce the kind of unjust enrichment discussed in Section 2 and will align this framework with similar cost-based approaches previously adopted by the Commission in other contexts, including small cells and pole attachments.

3.3 Limiting In-Kind Compensation

Capping fees is only the first step toward eliminating the ability of states and localities to unduly extract unreasonable compensation from ISPs. To that end, the Commission’s proposal to “require that the value of in-kind compensation demanded by state and local governments count toward any safe harbor fee levels adopted by the Commission” is a sensible way of achieving this goal.²⁷

Adopting this proposal would place the wireline deployments at issue here on par with recent reforms made by the Commission to cable franchising. Those reforms were a necessary response to attempts by localities to offset steady declines in cable franchise fee

²⁵ This phenomenon has been well documented. See, e.g., Ted Hearn, *U.S. Mayors Target Cable Broadband Revenue*, June 23, 2024, <https://broadbandbreakfast.com/u-s-mayor-target-cable-broadband-revenue/>; Kevin Flowers, *Why is Cord Cutting Affecting the city of Erie’s Revenues?*, Nov. 28, 2025, Erie Times-News, <https://www.goerie.com/story/news/local/2025/11/28/city-of-erie-pa-losing-money-tv-users-cut-cord-spectrum-revenue/87455670007>.

²⁶ *Barriers NPRM*.

²⁷ *Id.*

revenues by seeking in-kind compensation from franchisees, which encompassed a range of monetary payments and service-related commitments. To prevent further excess resource extraction by localities via in-kind compensation, the Commission now requires all forms of compensation derived from cable franchisees to be included as part of the 5% statutory cap placed on cable franchise fees.²⁸ Adapting this approach for use here will further limit the ability of localities to impose fees or requirements that effectively prohibit or otherwise unduly constrain wireline deployments.

3.4 Addressing the Mixed-Use Nature of Modern Communications Infrastructure

Some have sought to preclude FCC intervention on issues raised here by suggesting that certain networks, particularly those used to deliver or enable non-telecommunications services, are beyond the reach of Commission authority as detailed in Section 253. These arguments do not hold up given the mixed-use nature of modern communications infrastructure. In short, today’s networks transmit traffic of all kinds, making it difficult, if not impossible, to pigeonhole networks as serving only one kind of function.²⁹

The reverse is also true: networks built for one purpose (e.g., to transmit data) will inevitably evolve to serve other purposes. Per the Commission:

“It is axiomatic that wireline telecommunications infrastructure does not cease to be such simply because it is used to carry other types of traffic, and we thus tentatively conclude that the infrastructure remains subject to the protections of Section 253 irrespective of whether the buildout is required solely to provide telecommunications services or to provide non-telecommunications services, as well.”³⁰

The Commission has been actively grappling with this issue for years, most recently in the context of whether the FCC can preempt state-level carrier of last resort rules for plain old telephone service (POTS).³¹ Previously, the Commission updated its POTS discontinuance rules to better reflect the mixed nature of traffic flowing over modern networks.³²

²⁸ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable TV Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Third Report and Order, 34 FCC Rcd 6844, *aff’d in pertinent part City of Eugene, Oregon v. FCC*, 998 F.3d 701, 715 (6th Cir. 2021).

²⁹ See, e.g., *AT&T Services, Inc.’s Petition for Preemption and Declaratory Ruling*, Comments of the ACLP at New York Law School, WC Docket No. 26-125, <https://www.fcc.gov/ecfs/document/26109998348/1>.

³⁰ *Barriers NPRM*.

³¹ *AT&T Services, Inc.’s Petition for Preemption and Declaratory Ruling*, Public Notice, WC Docket No. 26-125 (May 22, 2026).

³² *Reducing Barriers to Network Improvements and Service Changes*, WC Docket No. 25-209, Report and Order, FCC 26-19 (Mar. 27, 2026).

The instant proposal, to “prohibit state and local governments from imposing additional requirements on wireline telecommunications infrastructure deployments on the grounds that the infrastructure may be used to provide other services,” would align the wireline deployments at issue here with prior Commission action, including in the POTS and mobile contexts, and would further underscore the mixed-use nature of today’s communications infrastructure.

4. Conclusion

Even though broadband investment and deployment continue at very high levels, ISPs still face persistent impediments at the state and local levels when it comes time to build networks. Foremost among these is a scattershot, highly fragmented, and largely unregulated approach to granting permission to use local ROW for wireline deployment. The Wild West nature of permitting has allowed localities to engage in extractive practices via the imposition of unreasonably high fees and other burdensome conditions on ISPs. In many instance, ISPs are saying no to these conditions and shifting their deployments – and investment dollars – elsewhere. At the same time, some localities simply fail to appreciate the urgency with which ISPs are looking to build and thus do not act on ROW requests in a timely manner, if at all.

For these reasons, FCC action to provide clarity and consistency in how states and localities authorize access to public ROW is essential and long overdue. The ACLP supports the Commission’s proposals and urges it to adopt them, with the adjustments proposed herein, as soon as possible. This would add to the current Commission’s robust legacy of scraping the regulatory barnacles that have formed on the hull of our economy’s flagship fleet of digital infrastructure.

Action here, though, should be the start, not the end, of regulatory modernization. States must step up and finally take a hard look at their own legacy telecom rules and pare them back to reflect today’s intermodal and intensely competitive marketplace. States must also rein in unproductive actions by their political subdivisions vis-à-vis broadband deployment.

Though the proposed actions in this docket are critical, only concerted action at every level of government to modernize relevant regulatory frameworks will finally unleash the full transformative power of broadband.