Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard is proposing to remove the following from 33 CFR part 147:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

§ 147.825 [Removed]

■ 2. Remove § 147.825.

W.E. Watson,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Heartland District.

[FR Doc. 2026–16118 Filed 8–6–26; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 25–253; FCC 26–40; FR ID 359677]

Build America: Eliminating Barriers to Wireline Deployments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes and seeks comment on rules that would eliminate state and local requirements that constrain the deployment of modern high-speed wireline infrastructure in violation of section 253 of the Communications Act (Act), particularly through the imposition of excessive delays and fees that impede infrastructure deployments and disincentivize investments in them. Based on the record resulting from a Notice of Inquiry that identified numerous challenges providers face in offering telecommunications services and deploying wireline infrastructure (*2025 Notice of Inquiry*), this *Notice of Proposed Rulemaking* seeks comment on codifying rules that would: establish a rebuttable presumption that state and local governments have effectively prohibited the provision of wireline telecommunications services if they fail to process all authorizations for use of public rights-of-way to provide wireline telecommunications services or to deploy wireline telecommunications infrastructure within 120 days; limit the fees that state and local governments may charge for a wireline telecommunications authorization to a reasonable approximation of the government's actual, direct costs of managing the rights-of-way with respect to that authorization and establish safe harbor fee levels that presumptively comport with that standard; 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; and 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. The *Notice of Proposed Rulemaking* also seeks comment on the Commission's authority to enact these proposals.

DATES: Comments are due on or before September 21, 2026 and reply comments are due on or before November 5, 2026.

ADDRESSES: Pursuant to §§ 1.1415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments, identified by WC Docket No. 25–253, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS): *https://www.fcc.gov/ecfs.*
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. *ALL filings must be addressed to the Secretary, Federal Communications Commission.*
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).
- *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available via ECFS.

FOR FURTHER INFORMATION CONTACT: For further information about the Notice of Proposed Rulemaking, contact Jesse Goodwin, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *Benjamin.Goodwin@fcc.gov.* For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* in WC Docket No. 25–253, FCC 26–40, adopted on June 25, 2026 and released on June 26, 2026. The complete text of this document is available online at *https://docs.fcc.gov/public/attachments/FCC-26-40A1.pdf.*

Paperwork Reduction Act. This *Notice of Proposed Rulemaking* may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act: Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

Ex Parte Rules. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. Notice of Proposed Rulemaking

The record developed in response to the *2025 Notice of Inquiry* shows that while some state and local governments have implemented effective and efficient requirements for issuing the authorizations that providers need to access and use public rights-of-way to provide wireline telecommunications services, many others are imposing requirements that cause deployments to be scaled back or abandoned altogether due to excessive delays, fees, or other onerous conditions. The record is also clear that the barriers created by such state and local governments have a ripple effect, with excessive delays, fees, and conditions in one jurisdiction impacting a provider's ability to complete a deployment and provide services in other jurisdictions. It is therefore essential that all state and local governments take action to ensure that their statutes, regulations, and other legal requirements do not effectively prohibit the provision of wireline telecommunications services in violation of Congress's direction in Section 253. As the expert agency charged with administering the Communications Act and Section 253 specifically, we adopt this *Notice of Proposed Rulemaking* to propose and seek comment on rules that would establish standards for compliance with the statute. In particular, we propose and seek comment on rules that would require state and local governments to process applications to access and use public rights-of-way in a timely manner and to limit their fees and other demands as necessary to avoid prohibitive financial burdens. Section 253 applies to ''the ability of any entity'' to provide telecommunications service. Accordingly, we use the term ''provider'' to refer to any entities that provide telecommunications services directly to consumers as well as those that deploy infrastructure with the ability to provide telecommunications services. We use the term ''authorization'' to refer to any type of authorization a state or local government may require for a provider to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure, including permits and right-of-way agreements. We use the term ''right-of-way agreement'' to refer to licenses, franchises, or any other contract that a state or local government may require providers to obtain to access and use public rights-of-way. While cable franchises regulated pursuant to Title VI of the Act are not the focus of this *Notice of Proposed Rulemaking,* we do not foreclose the possibility that cable franchisees may be able to avail themselves of any rules or guidance adopted through this proceeding to the extent they are deploying facilities subject to Section 253.

A. Establishing a Deadline for State and Local Governments To Act on Wireline Telecommunications Authorization Requests

We propose to adopt a presumption that any failure by a state or local government to act by a specified deadline on all applications for authorizations to access and use public rights of way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure constitutes an effective prohibition that violates Section 253(a) and does not qualify for the savings clauses in Sections 253(b) and (c). While comments filed in response to the *2025 Notice of Inquiry* show that some state and local governments have established procedures to review and approve authorization applications in a timely manner, others can often take months or even years to complete reviews. This can result in wireline telecommunications deployments and service offerings being canceled, delayed, or scaled back. For example, Intrepid describes the difficulties it has experienced when seeking construction permits and other authorization approvals from localities in Illinois, Minnesota, Massachusetts, and Colorado, and it details how various local requirements have delayed its projects by months to years. Crown Castle states that it has faced extensive delays in obtaining authorizations from the City of Los Angeles, California, ''where the average time to receive a permit from the Department of Transportation for installation of underground fiber facilities is nine months.'' It also describes enduring protracted processes for obtaining right-of-way agreements from localities, such as the Village of Itasca, Illinois, which offered to supply a model right-of-way agreement but did not do so, and then failed to communicate with Crown Castle about draft agreements that Crown Castle provided in an effort to expedite the process. WISPA reports that it can take months or years to obtain authorizations, which presents a particular challenge in localities such as Ottawa County, Ohio, where permits, when finally granted, remain valid for only 90 days. WISPA explains that delays associated with authorization approvals makes it extremely difficult for providers to plan and schedule the work needed to complete a project within that 90-day timeframe. T-Mobile describes a city in Ohio where fiber construction ''requires 13 different departments with 70 different individuals to review a single application,'' resulting in myriad delays that hinder deployments.

Examples such as these illustrate how wireline telecommunications deployments can become mired in red tape for years when state and local governments fail to act on authorization requests in a timely manner, and how such delays can squander provider resources and constrain deployments across the nation. We therefore believe it is necessary and appropriate for the Commission to propose and seek comment on rules that will place presumptive limits on the time that state and local governments may take to review and act on authorization requests. We base our proposal on the point that excessive delays presumptively constitute an effective prohibition that Congress has deemed unlawful under Section 253.

Establishing a Presumptive Deadline to Act Under Section 253(a). Courts and the Commission have recognized that excessive delays in processing and approving applications for authorizations can effectively prohibit the provision of telecommunications services in violation of Section 253(a). The Commission has stated that ''in certain circumstances, a failure by a local government to process a franchise application in due course may 'have the effect of prohibiting' the ability of the applicant to provide telecommunications service, in contravention of section 253.'' Some courts have also found that excessive delays in processing a franchise agreement can constitute an effective prohibition under Section 253. For instance, the Second Circuit found that ''the extensive delays in processing TCG's request for a franchise have prohibited TCG from providing service for the duration of the delays.'' In that case, the delay ''spann[ed] over seven years since TCG's initial request in 1992, one [and] a half years since TCG's first request after the promulgation of the Ordinance [at issue in the case] and more than half a year since TCG's re-application in February 1999.'' Given the record evidence of excessive delays described above, the barriers they create to wireline telecommunications infrastructure and services, and the significant support in the record for addressing those barriers through the establishment of a deadline, we propose to identify the point at which a delay by a state or local government to act on a required authorization is so excessive that it can be presumed to constitute an effective prohibition that violates Section 253(a). We seek comment on this approach.

Do commenters agree that the Commission's authority under Section 253(a) allows the Commission to establish a deadline for when a failure to act by state and local governments can be presumed to effectively prohibit the provision of wireline telecommunications services? In the *Small Cell Order,* 83 FR 51867 (October 15, 2018), the Commission determined that violations of the shot clocks applicable to Small Wireless Facilities presumptively constitute an effective prohibition under Section 332(c)(7)(B)(i)(II) of the Act, which uses similar language in the context of the placement, construction, and modification of commercial mobile services and facilities. For the purposes of this Notice of Proposed Rulemaking, the term ''Small Wireless Facilities'' has the same meaning as the definition in section 1.6002(l) of the Commission's rules. Several commenters responding to the *2025 Notice of Inquiry* argue that, given the comparable language and purposes of Section 253 and Section 332, it is appropriate to construe Section 253 to similarly authorize limits on the time that state and local governments may take to review and act on wireline telecommunications authorization requests. Commenters also suggest that, in the absence of such limits, state and local governments can erect barriers to entry and restrain competition simply by delaying authorization reviews, in direct contravention of Congress's intent when it enacted Section 253. Are these arguments consistent with the best reading of Section 253(a)? Are there additional arguments that would support the establishment of a deadline for when state and local governments' failures to act on wireline telecommunications authorization requests presumptively prohibit telecommunications service under Section 253(a)?

State and local government commenters that responded to the *2025 Notice of Inquiry* generally oppose the establishment of a deadline under Section 253(a). In particular, they note that the shot clocks that the Commission established for Small Wireless Facilities implement language in Section 332 that does not exist in Section 253. Specifically, Section 332 contains a requirement that state and local governments ''act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality[.]'' Some state and local government commenters argue that if Congress intended shot clocks to be established under an effective prohibition standard, which exists in both Section 253(a) and Section 332(c)(7)(B)(i)(II), it would not have enacted the separate requirement in Section 332(c)(7)(B)(ii) that state and local governments act ''within a reasonable period of time,'' *i.e.,* that establishing a deadline for state and local governments to act under Section 253(a) or Section 332(c)(7)(B)(i)(II) would render Section 332(c)(7)(B)(ii) superfluous. Do other commenters agree? Does the fact that Congress adopted a specific requirement in Section 332 for state and local governments to act within a reasonable period of time with respect to wireless siting applications suggest that it did not intend to subject state and local governments to a deadline if the requirements and procedures they impose result in prohibitive delays within the meaning of Section 253(a)? Could the ''reasonable period of time'' requirement in Section 332(c)(7)(B)(ii) simply impose a more specific standard for wireless siting applications than the effective prohibition standard in Section 253(a), which sweeps more broadly to reach all telecommunications services? Does the fact that we propose to establish a deadline based on the point at which delays in approving authorizations can be safely presumed to effectively prohibit the provision of wireline telecommunications services—not the ''reasonable period of time'' standard in Section 332—render the arguments presented by state and local governments concerning the textual differences between Section 253 and Section 332 moot? Are there any other arguments that the Commission should consider when determining whether to establish a deadline under the effective prohibition standard in Section 253(a)?

Timeframe. We propose to establish 120 days from the date that an application for an authorization is submitted as the deadline by which state and local governments must ordinarily—subject to possible exceptions discussed below—act on all applications for authorizations needed to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure. Commenters that favor establishing a deadline propose timeframes ranging from 30 to 150 days, at times contingent on the type of authorization in question (*e.g.,* a permit versus a right-of-way agreement) or the nature of the deployment. As discussed above, our proposed standard is designed to guard against ''effective prohibitions'' as contemplated by Section 253(a). As such, the deadline we propose to choose is the point at which a delay presumptively constitutes an effective prohibition—not the amount of time that it reasonably should take a state or local government to process a particular type of authorization. The record does not show that the lower range of deadlines proposed by commenters would meet that standard. We tentatively conclude based on the existing record, however, that delays that exceed several months routinely have a prohibitive effect by increasing the costs of the deployments and generating uncertainty that requires providers to cancel, postpone, or scale back their investments in certain projects. We thus believe that setting the deadline at 120 days—a deadline closer to the longer time periods proposed in the record—is consistent with Congress's intent to preclude state and local requirements from having a prohibitive effect on the provision of telecommunications services. Notably, the record indicates that a number of state and local governments are already striving to process applications for authorizations to access and use public rights-of-way in significantly less time than 120 days, suggesting that our proposed deadline would appropriately target only those state and local governments engaging in review practices that have a presumptively prohibitive effect within the meaning of Section 253(a). We seek comment on our tentative findings concerning the prohibitive effect of delays longer than 120 days and on this proposed approach. We note that franchising authorities must act on a competitive cable franchise application within 90 or 180 days, depending on whether the competitive applicant already has access to the right-of-way to provide a non-cable service. The deadline is calculated from the date that the applicant files an application that includes information required by our regulation, and if a franchising authority fails to act within the allotted time, the franchising authority is deemed to have granted the application on an interim basis, under which the applicant may begin providing service.

Do commenters agree that the proposed 120-day deadline reflects the point at which a delay in acting on a request to access and use public rights-of-way to provide wireline telecommunications services can be presumed to have a prohibitive effect? Does this timeframe accurately reflect the point at which delays impede the ability of providers to invest in and complete deployments? Is a shorter or longer time period more appropriate? We seek detailed comment on when it becomes nonviable for a provider to wait for authorizations and how a provider makes such determinations. Given the extent of planning required to deploy wireline telecommunications infrastructure and the need to muster resources well in advance, at what point does a provider need an answer, including a possible denial, before it decides to forego or scale back a given project? How does the size of the provider or the extent of the project affect this analysis? We ask that commenters submit specific examples to the Commission of projects that have been canceled, postponed, or reduced in scope as a result of delays created by state and local requirements, with references to specific state and local requirements and the specific point in time that they made the decision to cancel, postpone, or reduce the project (*e.g.,* 120 days, 365 days). Was the decision to cancel, postpone, or reduce the project because of costs associated with the longer review? If so, what were those specific costs (*e.g.,* lessened return on investment, penalties under contracts, lost funding from federal and state programs, customer churn)? Could delays in one jurisdiction or set of jurisdictions have effects on deployment in other markets? For example, to what extent would delays beyond 120 days in one area (or the aggregate effects of such delays in multiple areas) preclude a provider from beginning additional deployments in other areas by tying up resources needed to undertake those additional deployments?

We propose that the 120-day time period start when a provider submits a written application for an authorization, or, if a state or local government requires pre-application steps, when the provider takes the first mandatory procedural step. A number of commenters support such an approach. Do other commenters agree? If commenters disagree, when should the period begin? For example, some state and local government commenters contend that the start of any such timeframe should be the point at which an application is deemed complete. As discussed in more detail below, while some commenters favoring establishing a deadline argue that it should be extended upon discovery of application deficiencies or incompleteness, they further argue that calculating the deadline from the point at which a state or local government deems the application complete could render the deadline meaningless if a state or local government improperly delays that determination. Do commenters agree that requiring completeness would enable gamesmanship by state and local governments to extend their review periods indefinitely, resulting in effective prohibitions? Would requiring completeness before the timeframe begins be inconsistent with the approach that the Commission took to establish shot clocks for Small Wireless Facilities, as Free State Foundation suggests, and if so, what would the consequence of any such inconsistency be? If the Commission were to consider starting the 120-day timeframe on the date that a state or local government deems an application complete, how should the Commission define completeness? Should the Commission consider adopting a rule that requires a state or local government to provide an applicant with written notice that their application is incomplete within a certain period of time, with a failure to do so eliminating incompleteness as a basis for rebutting a presumption that an effective prohibition has occurred?

Authorizations Subject to Deadline. We propose that any and all authorizations that a state or local government may require for a particular use of a particular right-of-way must ordinarily be acted on within the 120-day period that commences when a provider of wireline telecommunications services submits its first application for a required authorization. For instance, if a local government requires that a provider obtain a right-of-way agreement, a construction permit, road closure permits, and additional types of authorizations for a single deployment of wireline telecommunications service infrastructure in a particular right-of-way, the standard we propose would—subject to the possible exceptions discussed below—require that all such authorizations be approved within 120 days of the first request submitted. The record is clear that providers must have a sense of when they will obtain the authorizations needed for their builds to proceed in order to plan and budget for their deployments, as variables such as excessive state and local processing delays can render builds cost prohibitive and the risks of further investment too high. Further, sequential authorization demands that drag out for months, if not years, may delay deployments well beyond the point that we may presume an effective prohibition to have occurred pursuant to the proposals herein. We thus believe the goals of establishing a deadline for state and local governments to act on applications for authorizations that would avoid a presumption that they have violated Section 253 would be best achieved by applying it to all authorizations that the governments may require for a particular deployment in a particular right-of-way, and seek comment on that view.

Do commenters agree that the Commission should adopt a single deadline that applies to any and all authorizations that a state or local government may require a wireline telecommunications services provider to obtain for a particular use of a particular right-of-way? Do state and local governments identify all of the authorizations that a provider must obtain for a particular deployment early in the process, such that providers could organize and submit their applications in a manner that would work with the proposed 120-day period? Are there authorizations that must be processed sequentially and that require review periods that would make it impracticable for all authorizations to be reviewed within a single 120-day period? If so, should the 120-day period restart for certain types of authorizations, or should sequential authorization processing be a basis for seeking an extension of the 120-day period? To the extent governments require providers to obtain authorizations from multiple state or local agencies to deploy wireline telecommunications infrastructure within a particular right-of-way, is it feasible for those agencies to coordinate their work to comply with a single 120-day period? If not, why not? What else should the Commission consider when determining whether to require state and local governments to act on all authorizations required for a particular deployment in a particular right-of-way by a single deadline? If commenters propose that the Commission take a different approach, *e.g.,* separate deadlines for different types of authorizations needed for a particular use of a particular right-of-way, we ask that commenters detail how their proposals would function and comport with the effective prohibition standard in Section 253(a).

We also seek comment on whether the 120-day period should apply to ''batched'' applications, *i.e.,* requests for authorizations for multiple deployments within a single jurisdiction. In the *Small Cell Order,* the Commission found that ''the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area,'' warranted applying the shot clocks applicable to such facilities to batched applications. Do the same considerations apply in the context of deploying infrastructure to provide wireline telecommunications services? Is there sufficient uniformity between the applications for authorizations for multiple deployments within a single jurisdiction to enable state and local governments to efficiently review them all within a single 120-day period, or are there variances between the applications or the locations where the infrastructure is to be deployed that warrant separate review periods? How do state and local governments require providers to structure their applications for authorizations in the wireline context? Are providers required to submit separate applications for each street, sidewalk, or other public right-of-way where they propose to install facilities within a single jurisdiction? Are they required to break their applications down even further (*e.g.,* by city block)? Do any state or local governments allow providers to submit jurisdiction-wide applications? What challenges would state and local governments encounter if they were required to process batched applications within a single 120-day period?

Lastly, we seek comment on whether the Commission can and should apply its proposed 120-day period to applications for state and local authorizations to place infrastructure needed to provide wireline telecommunications services outside the public right-of way. What state and local statutes, regulations, and legal requirements currently apply to requests to place such facilities outside of public rights-of-way? What facilities do providers deploying wireline networks need to place outside of the public rights-of-way (*e.g.,* fiber huts)? Do state and local procedures for placing wireline telecommunications facilities outside of public rights-of-way differ from applications to access and use public rights-of-way? Do the procedures result in delays that effectively prohibit the provision of wireline telecommunications services in violation of Section 253(a)? If so, would the savings clause in Section 253(c) apply to such requirements, given that the statutory provision expressly applies to uses and management of public rights-of-way? Would the savings clause in Section 253(b) apply? What else should the Commission consider when evaluating whether to apply the proposed 120-period to requests to place wireline telecommunications facilities outside the public rights-of-way? Should the Commission evaluate whether there are state and local laws that prohibit or effectively prohibit providers from requesting and obtaining access to private utility easements within the meaning of Section 253?

Section 253(b) and (c) Savings Clauses. We tentatively conclude that 120 days ordinarily provides sufficient time to perform the tasks outlined in Section 253(b) and (c) and seek comment on that view. We acknowledge the safety and other public welfare purposes of the permitting process and the role state and local governments have in managing public rights-of-way to address those concerns. Wireline telecommunications deployments can involve excavation, road closures, aerial attachments, and other types of work that impact the public and warrant review consistent with the purposes identified by Congress in Sections 253(b) and (c) of the Act. Nevertheless, we believe that in most circumstances 120 days provides an adequate amount of time to complete that review, as evidenced by comments from both providers and governments stating that authorization requests are often processed in less than 120 days. Indeed, some states that have adopted deadlines for their political subdivisions to process authorizations for wireline deployments have codified much shorter time periods, *e.g.,* 60 days. Further, our proposal to adopt a single deadline based on the point that an effective prohibition can be presumed to have occurred if the provider cannot proceed with its deployment—rather than structured deadlines for each type of authorization that may be required—would allow state and local governments to continue employing the management and review methods that they have deemed necessary for their jurisdictions. That said, we believe it is important to set a definitive point at which the state and local review process must presumptively stop so as to give providers the certainty they need to plan, fund, and implement their deployments, and that our proposal would achieve that critical objective.

We seek comment on this approach. Do commenters agree that 120 days provides enough time for state and local governments to carry out the tasks set forth in Section 253(b) and (c)? If not, what specific tasks would state and local governments not be able to complete within that timeframe (*e.g.,* inspections, meetings, any required vote by a government body), and what deadline would allow sufficient time for those tasks to be completed? Is 120 days sufficient time for state and local governments to address the unique geographic, economic, or other regulatory considerations of their jurisdictions? If not, why not? Can state and local government commenters provide specific examples of applications that took longer than 120 days to review and detailed explanations for why that was the case (*e.g.,* incomplete applications)? Are there measures that the Commission should consider adopting to address any impediments to completing application reviews within 120 days (*e.g.,* requirements concerning the submission of complete applications)? Could any challenges identified by state and local governments be mitigated through more efficient procedures? For example, INCOMPAS points out that numerous federal, state, and local agencies complete complex permitting activities within mandatory timelines in other contexts. Is there any reason that state and local governments could not develop standard processes that would allow them to complete the public welfare tasks identified in Sections 253(b) and (c) and comply with a deadline to act on wireline telecommunications authorization requests? Would a failure to take such steps that could improve processing times support the conclusion that a state or local government's requirements effectively prohibit the ability of an entity to provide wireline telecommunications services? What else should the Commission consider to determine whether 120 days or another time period that reflects the point at which an effective prohibition has presumptively occurred under Section 253(a) also exceeds any timeframe necessary for a state or local government to perform the tasks identified in Section 253(b) and (c)?

Bases for Rebutting the Presumption of a Section 253 Violation and Extending the Deadline. We propose that state and local governments be permitted to rebut the presumption that an effective prohibition has occurred under Section 253(a). We seek comment on the factors that should be considered to determine whether the presumption has been rebutted and whether the Commission should consider adopting specific provisions for extending the deadline under certain circumstances. For instance, are there particular types of applications or projects that inherently require more time to review due to their complexity, scope, or other factors, and that providers should expect state and local governments to need more time to review when planning their builds? If so, what specific aspects of the applications or projects trigger the need for more time (*e.g.,* the terrain, need for third-party coordination, particular engineering issues) and why could those factors not be addressed within a 120-day period? Are there any other factors that are relevant to rebutting the presumption that an effective prohibition has occurred if more time than any deadline adopted by the Commission is needed (*e.g.,* incomplete applications)?

Should the Commission consider adopting specific extensions of the 120-day period when certain circumstances arise? For example, if—through no fault of the state or local government—a provider does not file an application needed for a particular deployment until late in the 120-day review period (*e.g.,* the provider applied for a right-of-way agreement on Day 1 but does not submit an application for a separate excavation permit until Day 118), should the state and local government be able to take more time to review the late-filed application? If so, should the 120-day clock be restarted for the late-filed permit, or should the 120-day review period be extended for a shorter set period? Should the Commission consider a set extension for applications that are submitted but are incomplete? Should the review period be extended if a provider revises its deployment plan after its applications have been submitted? Should providers and governments be able to extend the 120-day review period by mutual agreement? Should the 120-day period be paused while the parties negotiate a mutual agreement? And what process should take place if negotiations fail and no good-faith, mutual agreement is reached? If a state or local government approves an authorization during the 120-day review period, but then revokes it and requires the provider to reapply, should the 120-day period restart for the renewed application, or should the prior 120-day period still apply and be extended? Should an extension be prohibited if the revocation is due to the state or local government changing its requirements for an application after the provider submits it, or due to a mistake or omission by the government during the review process? Are there any factors or circumstances that should be preemptively rejected as bases for extending the 120-day review period?

Applicability to Government-Owned Structures. The mandates of Section 253 apply not only to requests to access and use public rights-of-way to provide telecommunications services, but to requests to access and use government-owned property in public rights-of-way. Indeed, in City of Portland, the Ninth Circuit agreed with the Commission's determination in the *Small Cell Order* that state and local governments do not act solely as market participants when they grant or deny access to government-owned structures in public rights of way, stating that ''[t]he rights-of-way, and manner in which the municipalities exercise control over them, serve a public purpose, and they are regulated in the public interest, not in the financial interests of the cities.'' Thus, the court upheld the Commission's application of its interpretations of Section 253 to government-owned property in public rights of way, concluding that governments ''act in a regulatory capacity when they restrict access to the public rights-of-way because they are acting to fulfill regulatory objectives.'' Further, the court noted that the Commission's determination was not novel, citing prior in-circuit precedent concluding that ''cities operate in a regulatory capacity when they manage access to public rights-of-way and property thereon.''

Consistent with this precedent, we propose to apply the 120-day deadline for state and local governments to act on applications for authorizations to provide wireline telecommunications services and deploy wireline telecommunications infrastructure to requests to access and use government-owned property located in public rights-of-way, including, but not limited to, government-owned poles. We seek comment on this approach. Are there any factual or practical distinctions between requests to access public roadways, highways, streets, sidewalks, or similar property and requests to attach to different types of government-owned poles or structures that warrant taking a different approach? Is the proposed 120-day deadline sufficient to review applications to attach facilities to government-owned structures? If not, should the Commission consider a longer deadline that is inclusive of any type of authorization that a provider may seek from a jurisdiction, or should the Commission consider a separate deadline that applies solely to applications to access and use government-owned structures? What would be the impact of not applying the proposed deadline to government-owned structures? Would it disadvantage certain types of deployments or providers? Is applying the proposed deadline to government-owned structures necessary to ensure that state and local requirements are applied in a competitively neutral, nondiscriminatory manner, as required by Section 253? What else should the Commission consider when determining whether to apply the proposed deadline to government-owned structures in public rights-of-way?

Enforcement. We seek comment on how providers could seek enforcement of the proposed deadline. We expect that one method of enforcement would be action on petitions submitted to the Commission under Section 253(d) of the Act. That provision directs the Commission to preempt the enforcement of any statute, regulation, or legal requirement ''to the extent necessary to correct'' a violation of, or inconsistency with, Section 253(a) after public notice and comment. Accordingly, if the Commission were to adopt a presumption that a failure to comply with the proposed 120-day deadline constitutes an effective prohibition that violates Section 253, and a state or local government requires that providers comply with procedures for authorization reviews that exceed that timeframe, providers could petition the Commission for preemption of those procedures. At that point, as proposed above, the relevant state or local governments could respond with any arguments the Commission should consider to determine if the presumption of an effective prohibition has been rebutted and/or any additional arguments for why it believes the procedures should be saved from preemption under Section 253(b) or (c). We seek comment on this approach. We observe that Section 253(d) does not expressly authorize the Commission to order injunctive relief, *e.g.,* to require a state or local government to grant a permit or follow procedures specified by the Commission. In view of this, would preempting state and local requirements that allow review and approval of authorizations beyond the 120-day timeframe, without any further relief, sufficiently resolve an effective prohibition created by excessive delays? If not, can commenters identify any source of authority that would enable the Commission to require state and local governments to grant an authorization request or to provide other injunctive relief? Are there other forms of relief the Commission could order beyond preemption that would enable the provider to proceed with its project? Would a petition to the Commission under Section 253(d) be viable if the delay is based on inaction that is not rooted in a statute, regulation, or legal requirement?

Would providers be able to seek enforcement of a deadline adopted by the Commission in court? We note that Section 332(c)(7) of the Act authorizes providers to commence an action in court if a state or local government fails to act on an authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time where they may seek injunctive relief. We expect that, at a minimum, the Commission's determinations of what constitutes an effective prohibition under Section 253, including any presumption adopted by the Commission on when excessive delays have a prohibitive effect, would be persuasive authority to courts. Would courts be legally bound to enforce rules adopted by the Commission that codify and implement the proposals discussed above?

Consistent with the incremental approach taken to establish shot clocks under Section 332 in the *Small Cell Order,* we decline at this time to propose the ''deemed granted'' remedy requested by some commenters. We expect that creating a standard that providers can use to challenge delays as effective prohibitions will be sufficient to address the consequences identified by providers in the record, particularly given that the record indicates that many jurisdictions currently process applications within the proposed deadline period. However, we may revisit this decision if evidence submitted to the Commission suggests that a ''deemed granted'' remedy is needed and, as discussed above, commenters identify sources of authority that would allow the Commission to order state and local governments to grant authorization requests. We thus seek comment on our proposed incremental approach and any bases upon which the Commission could and should require state and local governments to grant requests for authorizations to provide wireline telecommunications services and deploy wireline telecommunications infrastructure.

We also seek comment on whether and how the Commission should enforce its prior determination that de facto moratoria violate Section 253 if we were to adopt the proposed deadline. In the *Moratoria Order,* the Commission determined that de facto moratoria prohibit or effectively prohibit the provision of telecommunications services through indefinite or unreasonable delays in the processing of applications or issuance of permits, such as through blanket refusals to process applications, refusals to issue permits for a category of structures, and frequent and lengthy delays of months or even years in issuing permits and processing applications. By contrast, express moratoria are created via state or local statutes, regulations, or other written legal requirements that expressly prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities, and also violate Section 253. If the Commission were to codify a presumption that a state or local government has effectively prohibited the provision of wireline telecommunications services if it does not act on authorization applications by a set deadline, would that render the Commission's prior ruling on de facto moratoria moot in the context of wireline services? Are there circumstances where de facto moratoria could still exist? If so, what are those circumstances? Should the Commission codify its declaratory rulings on moratoria?

Expediting Deployments Upon Approval. Some government commenters have suggested that some providers do not complete deployments after authorization approvals have been issued. They argue that this results in a waste of financial and administrative resources. If the Commission were to adopt a rule that requires state or local governments to act on wireline authorizations within 120-days to avoid a presumption that they have violated Section 253, are there steps that the Commission could also take to incentivize providers to act quickly on those authorizations so that state and local governments have more certainty that the deployments will be completed and that their resources are being correctly applied? Are there formal requirements that the Commission should consider, and if so, could they be adopted under Section 253 or another source of authority?

B. Establishing a Standard for State and Local Fees That Complies With Section 253

The courts and the Commission have long applied Section 253 of the Act to limit fees charged by state and local governments that impose prohibitive financial burdens on the provision of wireline telecommunications services and the deployment of wireline telecommunications infrastructure. Despite this precedent, the record developed in response to the *2025 Notice of Inquiry* shows 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 rights-of-way. The record makes clear that state and local governments assess these fees without regard to the financial burden they create for the provider and its ability to provide service. For instance, Crown Castle reports that it is either stuck at an impasse or has been forced to walk away from projects planned for municipalities in Alabama, Washington, and Arizona due to excessively high fees that have ''caused [the] projects to be uneconomical.'' INCOMPAS similarly asserts that above-cost fee requirements set by cities in Arizona, Oregon, New Mexico, California, and New Mexico, including gross-revenue and per-linear-foot fees, have ''led [its] members to abandon planned projects in those localities as uneconomic.'' T-Mobile, meanwhile, claims that non-cost-based fees ''can and have caused our fiber partners to abandon deployment projects,'' citing as examples a Minnesota city's ''$160 fee for any structure (*i.e.,* handholds, vaults, terminal boxes, etc.) that the company install[s]'' and an Ohio municipality's high per-linear-foot fees. USTelecom also states that some of its members have abandoned or scaled back projects due to excessive fees, including one project for which a city in Minnesota sought close to $30,000 in per-linear foot fees for a single block.

While these and other examples in the record of providers canceling, delaying, or scaling back projects raise serious concerns about the fees being assessed by state and local governments for wireline telecommunications deployments, those concerns are amplified when considering the impact of excessive fees on a regional or national basis. As NCTA states, when ''any given locality's unreasonable permitting fees and conditions sap a disproportionate share of a provider's available capital for a particular multi-jurisdictional deployment project, that locality may be effectively prohibiting the provider's ability to follow through on its plan to extend its network to other jurisdictions.'' Accordingly, even if many state and local governments charge fees that are not excessive, the ones that do can cause prohibitive effects that reach beyond their jurisdictional boundaries.

To ensure that excessive fees do not effectively prohibit the provision of wireline telecommunications services in violation of Section 253 of the Act, either within the jurisdiction where they are charged or in the aggregate, we propose to adopt a rule that codifies a cost-based standard for the fees that state and local governments may collect in connection with authorizations to access and use public rights-of-way to provide such services and to deploy wireline telecommunications infrastructure. Specifically, we propose that state and local fees be limited to a reasonable approximation of the government's actual and direct costs of managing its public rights-of-way in connection with a particular wireline telecommunications authorization, provided that those costs are objectively reasonable, competitively neutral, and nondiscriminatory. We propose to codify a presumption that state and local fees do not impose financial burdens that violate Section 253(a) and constitute ''fair and reasonable compensation'' within the meaning of Section 253(c) when they comport with this standard. As we did in the context of Small Wireless Facilities, we propose to adopt safe harbor fee levels, with fees that fall within the safe harbor levels deemed presumptively compliant with our proposed fee standard. We propose and seek comment on additional measures to implement this fee standard below.

Cost-Based Fee Standard. In the *Small Cell Order,* the Commission established a cost-based standard for fees that state and local government may assess for authorizations to deploy Small Wireless Facilities. In doing so, the Commission reviewed a line of judicial precedent that: (1) found excessive fees can violate Section 253(a); and (2) supported an interpretation of Section 253(c) that requires ''fair and reasonable compensation'' to be cost-based. For instance, in *City of White Plains,* the Second Circuit examined an ordinance that charged providers a monthly fee of five percent of annual gross revenues. Although the Second Circuit did not resolve whether the term ''compensation'' limited fees to costs, the court observed that Section 253(c) ''requires compensation to be reasonable essentially to prevent monopolistic pricing by towns,'' as ''[w]ithout access to local government rights-of-way, provision of telecommunications service using land lines is generally infeasible, creating the danger that local governments will exact artificially high rates.'' The court noted that ''compensation is . . . sometimes used as a synonym for costs,'' but ultimately did not resolve whether fair and reasonable compensation is ''limited to cost recovery, or whether it also extends to a reasonable rent,'' relying instead on the fact that ''White Plains has not attempted to charge Verizon the fee that it seeks to charge TCG'' to determine that the fee failed the ''competitively neutral and nondiscriminatory'' standard in Section 253(c). Similarly, in *Municipality of Guayanilla,* the First Circuit held that Section 253(a) preempted a municipal ordinance charging a monthly fee of five percent of annual gross revenues, concluding that the fees placed such a ''significant burden'' on providers that they impermissibly ''strain[ed the] ability to provide telecommunications services.'' It found that Section 253(c) did not save the fee requirement because the fees lacked a nexus with ''the actual use of the rights of way, . . . an essential part of the equation'' in determining whether the fees were ''fair and reasonable compensation as opposed to monopolistic pricing.'' Due to this case-specific finding, the First Circuit determined that it ''need not decide whether fees imposed on telecommunications providers by state and local governments must be limited to cost recovery'' to comply with the statute. The First Circuit also noted that the inquiry under Section 253 is not limited to the impact that a fee has on the deployment in the jurisdiction that imposes the fee, but the aggregate effect of fees when totaled across all relevant jurisdictions. And in *City of Santa Fe,* the Tenth Circuit preempted an ordinance enabling the City of Santa Fe, New Mexico, to charge an annual rent of $6,000 for a single 12′x18′ block of concrete, which it deemed to be a prohibitive financial burden. The Tenth Circuit reasoned that it was ''sufficient [under Section 253(a)] to show that the rental provisions [were] prohibitive because they create[d] a massive increase in cost'' for the provider, and after noting that the city had conceded that its rent requirement was not cost based, concluded that the requirement did not constitute ''fair and reasonable'' compensation under Section 253(c) pursuant to the ''totality of the circumstances'' test adopted by some federal circuits. We acknowledge, too, that some courts have upheld gross-revenue fees.

These cases—each of which interpreted Section 253 in the context of wireline telecommunications services—did not conclusively determine that Section 253(c) requires state and local fees to be cost-based. They do, however, support a conclusion that the best reading of Sections 253(a) and (c) is that Congress intended to limit state and local fees to prevent governments from using their control over public rights-of-way to extract exorbitant sums from providers, thereby increasing providers' costs, lowering their profitability, and effectively prohibiting their ability to provide and expand their telecommunications services. This is clear from the statutory text, which requires state and local fees to be limited to what is ''fair and reasonable'' for ''use of public rights-of-way,'' imposed on a ''competitively neutral and nondiscriminatory'' basis, and disclosed publicly. This qualifying language expressly limits the fees that state and local governments may charge and thus stands in opposition to a reading of the statute that would entitle state and local governments to charge profit-driven fees. The Ninth Circuit concurred with this reading of the statute in City of Portland, stating that Section 253(c) ''requires that compensation be 'fair and reasonable;' this does not mean that state and local governments should be permitted to make a profit by charging fees above costs'' where the Commission has reasonably determined that the aggregate effect of such fees is to effectively prohibit the provision of telecommunications services. The Ninth Circuit thus upheld the Commission's adoption of a cost-based approach for fees assessed in connection with authorizations to deploy Small Wireless Facilities, deeming the approach of the *Small Cell Order* ''consistent with the language and intent of Section 253(c).''

Consistent with this precedent, we tentatively conclude that: (1) a state or local government does not effectively prohibit the provision of wireline telecommunications services in violation of Section 253(a) if it merely requires a provider to bear the government's actual and direct costs of authorizing the provider to use the public rights-of-way in its jurisdiction to provide service or deploy infrastructure; and (2) fees that recover more than such costs do not constitute ''fair and reasonable compensation'' under Section 253(c). Consistent with these tentative conclusions, we propose to adopt a rule that limits state and local government fees for authorizations required to provide wireline telecommunications services and deploy wireline telecommunications infrastructure to those that are a reasonable approximation of the government's costs of managing the public rights-of-way in connection with a particular authorization. We seek comment on this approach.

Do commenters agree that the interpretations of Section 253 set forth above are the best reading of the statute? If so, what additional authorities exist to support those interpretations? If not, what authorities support an argument that the best reading of ''fair and reasonable compensation'' under Section 253(c) is that state and local governments may extract profits in exchange for granting access to public rights-of-way to provide wireline telecommunications services? For instance, do commenters agree with the local governments that argue that the best reading of ''fair and reasonable compensation'' under Section 253(c) is that state and local governments may charge market-based rates?

Do commenters agree that a cost-based fee standard is appropriate in the context of wireline telecommunications services? In the *Small Cell Order,* the Commission concluded that ''infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure,'' and that ''fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere.'' The Commission further concluded that the ''regulatory uncertainty created by such effectively prohibitive conduct creates an appreciable impact on resources that materially limits plans to deploy service.'' In reaching these conclusions, the Commission deemed it appropriate to consider ''the aggregate effects of fees imposed by individual localities,'' stating that it had to ''consider the marketplace regionally and nationally and thus . . . consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve[d] or potentially would serve.'' Opting to proceed incrementally based on the record before it on 5G deployments, which require the installation of many closely spaced small cells to ensure reliable services, the Commission determined that ''fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service insolation, will have the effect of prohibiting wireless service when the aggregate effects are considered.'' Thus, the Commission concluded that Section 253 precludes non-cost-based fees for the deployment of Small Wireless Facilities because such fees can prohibitively increase the financial burdens of a single deployment and be prohibitive when the cumulative effect of state and local fees is considered on a national or regional basis.

As noted above, the record developed in response to the *2025 Notice of Inquiry* indicates that excessive fees are also having a prohibitive effect on wireline telecommunications deployments in the jurisdiction where they are assessed and in the aggregate, when the financial burdens of deploying in one jurisdiction requires a provider to divert resources from planned deployments in another. Do commenters agree with that tentative conclusion? If not, why not? And if commenters do agree that excessive fees are having a prohibitive effect, as indicated in the record developed in response to the *2025 Notice of Inquiry,* do commenters agree that the same rationales for adopting a cost-based standard in the *Small Cell Order* apply to wireline telecommunications deployments? Do commenters believe that limiting state and local governments to the recovery of their costs would remedy the prohibitive effects of excessive fees identified in the record?

We also seek comment on the effect of limiting fees to the recovery of costs on state and local governments. The record shows that some states, such as Missouri and Ohio, have already enacted statutes that limit the compensation that localities may collect for use of their public rights-of-way to actual costs. Are there other states that have done so as well? If so, which states? Are there localities that have adopted cost-based fee schedules? If so, how many have done so and can commenters identify the regulations that establish the cost-based fees? We note that some local government commenters have indicated that they do not fundamentally oppose requiring fees to be cost-based; rather, their concern is primarily about whether and how those fees will be capped. Does that reflect the view of other state and local governments? Stated differently, would more state and local governments support a cost-based fee standard if mechanisms were in place to ensure that they are able to recoup the actual costs they incur due to a particular authorization (*e.g.,* safe harbors, the ability to rebut a presumption that a fee is excessive in a particular case)?

We seek comment on additional concerns raised by state and local commenters. For instance, some governments assert that a cost-based standard would disrupt local budgets. Others, like the City of Dallas, argue that this may result in property tax increases for residents in order to recapture lost revenue. We believe that this argument is inconsistent with the text of Section 253(c), which, as explained above, contains language that limits state and local fees to fair and reasonable compensation for use of public rights-of-way, indicating an intent by Congress to prevent state and local governments from using their control over public rights-of-way as a profit generator that prohibitively increases the financial burdens of telecommunications deployments. Accordingly, we believe that any adjustments to local budgets that may be needed as a result of limiting state and local fees as proposed herein would be a necessary consequence of complying with the mandates of the statute. As detailed below, we propose to establish safe harbors for fees that would presumptively comply with a cost-based standard under Section 253 and seek comment on the data that the

Commission should consider to set such safe harbors. It may be that, after considering that data, the Commission sets safe harbors that are consistent with the fees assessed by many jurisdictions for authorizations to access and use public rights-of-way to provide wireline telecommunications services. Accordingly, at this time, any argument that state and local governments may lose revenue due to a rule establishing a cost-based fee standard is speculative. We seek comment on these views, and how much state and local fees might change if we were to adopt the proposed cost-based standard. Given that some state and local governments assert that limiting fees to cost-based recovery will have a significant economic impact on their jurisdictions, we assume that those governments have balance sheets, projections, and other financial reports that set forth how much they collect in authorization fees, the costs that those fees cover, the net revenue that is applied to other governmental purposes, what those purposes are, etc. Are these data points that state and local governments can submit to the Commission, both to assist our consideration of the economic-impact arguments asserted by commenters and to evaluate whether any fee safe harbors established by the Commission would sufficiently compensate state and local governments for their costs? Is the data available via public sources?

Some government commenters also argue that limiting fees to cost-based recovery would constitute a Fifth Amendment taking and that ''compensation'' requires recovery of fair market value. As an initial matter, we note that the Ninth Circuit rejected similar arguments when it upheld the cost-based fee standard adopted in the *Small Cell Order,* concluding that no regulatory taking within the meaning of the Fifth Amendment took place because the Commission's standard allowed state and local governments to recover their actual costs of providing access to public rights-of-way pursuant to Section 253(c). The court pointed to the U.S. Supreme Court's decision in *FCC* v. *Florida Power Corp.,* which found that ''it is . . . settled beyond dispute that the regulation of rates chargeable from the employment of private property devoted to public uses is constitutionally permissible'' and that ''[s]o long as the rates set are not confiscatory, the Fifth Amendment does not bar their imposition.'' Here, we do not even seek to set rates for right-of-way access, but merely to establish a standard that ensures such fees comply with Section 253 in the context of wireline telecommunications services. Further, the standard we seek to establish would expressly allow state and local governments to recover their actual costs. Accordingly, we do not believe our proposed standard implicates the Fifth Amendment. Even if it were otherwise, it remains unclear how ''fair and reasonable'' compensation under Section 253(c) could be based on ''fair market value'' given that public rights-of-way are not assets freely bought and sold in a ''market,'' but are more accurately described as subject to monopolistic control by state or local governments. In such circumstances, actual costs or other readily discernable amounts have been deemed reasonable proxies for estimating just compensation. We seek comment on these views. Do commenters agree that our proposed fee standard does not implicate the Fifth Amendment? If not, on what basis could state and local governments argue that an uncompensated taking will occur under the Fifth Amendment if they are limited to compensation for the costs they incur due to a provider's use of public rights-of-way?

Some government commenters also express concern that requiring fees collected in connection with the provision and deployment of wireline telecommunications services to be cost-based may lead to preferential treatment of telecommunications providers over other users of the public rights-of-way (*e.g.,* electric and other utilities). While it is not clear from the current record whether this is true, we note that Congress had a specific objective when it enacted Section 253: to remove state and local barriers to the deployment of telecommunications services and promote the rapid deployment of new telecommunications technologies. Accordingly, any preference favoring telecommunications deployments that may be perceived pursuant to the implementation of the statute is one directed by Congress. Do commenters agree? Is there a legal basis for concluding that state and local fees for wireline telecommunications authorizations may not be limited to the recovery of costs under Section 253 if other users of public rights-of-way are charged above-cost fees? Do commenters agree that Congress may enact statutes that result in different users of state and local public rights-of-way being subject to different fees or other requirements?

Objectively Reasonable Costs. In addition to limiting fees for wireline telecommunications authorizations to a reasonable approximation of the costs incurred by a state or local government for managing their public rights-of-way in connection with a particular authorization, we propose to limit the costs that may be recovered to those that are objectively reasonable. We seek comment on the costs that should be included or excluded under this standard.

To start, we propose that state and local governments be limited to recovering the actual and direct costs that they incur to manage the public rights-of-way with respect to the provider's access and use of the right-of-way. By ''direct costs,'' we mean expenses that can be directly traced to a provider's application to access and use a public rights-of-way, and would not have been incurred but for the provider's access and use of the public right of way. By ''actual costs,'' we mean costs that can be substantiated by invoices or other documentation and are not hypothetical or speculative. We believe this approach is consistent with the text of the statute, which states that ''fair and reasonable compensation'' may be required ''from telecommunications providers . . . for use of public rights-of-way on a nondiscriminatory basis.'' We believe the best reading of that language is that Congress intended state and local governments to recover the costs they actually incur due to the direct use of public rights-of-way by a particular provider, and not costs associated with management of the public rights-of-way generally or that were incurred due to uses of the public rights-of-way by other entities. We seek comment on this view. Do commenters agree that state and local governments would collect ''fair and reasonable compensation'' if they recover the actual and direct costs that they incur due to a provider's specific use of a particular right-of-way? If so, what would those costs include? For instance, would they include the costs of processing the provider's application to access the right-of-way, and what do those costs include (*e.g.,* labor hours)? Would they include costs associated with monitoring the provider's deployment of facilities, and what do those costs include (*e.g.,* inspections, surveys)? Are there other actual and direct costs that should be included as objectively reasonable? Are there certain costs that are arguably incurred due to a provider's specific use of a public right-of-way, but should be excluded from any measure of objectively reasonable costs because they are inherently excessive or unnecessary? For instance, should exorbitant fees charged by consultants retained by state and local governments be excluded?

Some commenters suggest that state and local governments should be permitted to recover modest overhead costs under Section 253, such as joint and common costs for the administration and upkeep of public rights-of-ways or intergovernmental coordination when reviewing deployment projects. Do other commenters agree? If the Commission were to allow for such recovery, what joint and common costs should be included and how should they be allocated among users of the public rights-of-way? For instance, how should joint and common costs be allocated if a local government conducts a routine inspection of a public right-of-way that contains wireline telecommunications, electric, and water main infrastructure? Should state and local governments be required to employ a particular allocation method for joint and common costs based on relative usage of the public rights-of-way or the degree to which a provider benefits from the cost-imposing activity to determine the portion of joint and common costs that can be recovered from each provider using the right-of-way? Would a recovery of joint and common costs be consistent with the best reading of Section 253?

Safe Harbors. We propose to establish one or more safe harbors, with state and local fees for wireline telecommunications authorizations set at or below the safe harbor level presumptively deemed compliant with Section 253(a) and ''fair and reasonable compensation'' under Section 253(c). Under this approach, the Commission would not automatically preempt any and all state and local fees that are not cost-based, but instead adopt a presumption that fees that fall within the safe harbors are ''so clearly reasonable that justification [is] not necessary.'' Thus, state and local governments would not be required to establish the cost basis for each fee assessed for a wireline telecommunications authorization unless they seek to charge a fee that exceeds any applicable safe harbor limit. In such cases, the fee higher than the safe harbor limit would be deemed to violate Section 253 unless the state and local government can show that it only recovers the government's actual and direct costs incurred due to the provider's access and use of the public rights-of-way, and that those costs are objectively reasonable, competitively neutral, and nondiscriminatory.

We seek comment on this approach. Providers that responded to the *2025 Notice of Inquiry* generally support the establishment of safe harbors as a means of preventing excessive fees—bound by no limits—from curtailing and delaying deployments in violation of the statute while ensuring that state and local governments receive compensation for the actual and directs costs that they incur due to those deployments. Do other commenters agree? Does the wireline context pose unique considerations that make safe harbors unsuitable, and if so, how? Do safe harbors limit the flexibility of state and local governments to capture actual, objective costs? Would establishing safe harbors help state and local governments avoid setting fees that could have a prohibitive effect in violation of Section 253? Would safe harbors deter unnecessary disputes and litigation? Would safe harbors provide certainty for providers seeking to deploy wireline projects? Would failure to establish safe harbors in the wireline context place additional demands on state and local governments by requiring them to demonstrate the cost basis for all fees?

We seek comment on how the Commission should set fee safe harbors in the context of authorizations to provide wireline telecommunications services. In the *Small Cell Order,* the Commission established safe harbors after reviewing small cell legislation in twenty states, a sample of local legislation from municipalities in states that had not yet passed small cell legislation, the Commission's pole attachment rate formulas, and comments in the record, which included cost surveys and other analyses. Some commenters responding to the *2025 Notice of Inquiry* advocated that the Commission take a similar approach to set safe harbors in the context of wireline telecommunications services, but we did not receive the suggested data sets in comments or specific safe harbor proposals. Accordingly, we request such data and proposals now. If commenters argue that we should look to existing state and local fees for the provision of wireline telecommunications services to establish safe harbors that would apply on a national scale, what specific state and local fees should we review? We request a complete set of citations for any and all state and local regulations, ordinances, fee schedules, or other sources of fee data that commenters believe we should consider. Given that fees are often memorialized in right-of-way agreements for wireline telecommunications services, we request that commenters submit copies of such agreements executed with state and local governments across the country together with a spreadsheet summarizing and comparing the relevant fee provisions. To the extent that commenters argue that certain fee demands by state and local governments are excessive and thus should not be considered when setting safe harbors, we ask that commenters specifically identify the source of those fees (*e.g.,* the specific local ordinance or right-of-way agreement) and an explanation for why those fees fail to reflect the actual and direct costs incurred by the state and local government due to the provider's access and use of the public right-of-way. We ask that commenters submit cost surveys and other analyses demonstrating the actual and direct costs that state and local governments incur when acting on applications to access and use public rights-of-way to provide wireline telecommunications services, and explanations for why those costs may differ between different types of projects (*e.g.,* based on the scope of the build, whether it involves trenching or aerial deployments), location (*e.g.,* geography, topography, population density), or other factors. We ask that commenters propose how the Commission should take such variables into consideration when establishing safe harbor fee levels.

Taking into consideration any relevant data sources and the varying nature of wireline telecommunications deployments, we ask that commenters propose specific safe harbor fee levels for the Commission's consideration, including a structure for how any fee level should apply. For instance, should the Commission consider adopting one safe harbor that encompasses the sum of all actual and direct costs incurred by a state or local government in connection with a provider's use of their public rights-of-way to provide telecommunications services, irrespective of how such costs may be recovered through different fees, *i.e.,* if a jurisdiction requires a right-of-way agreement fee, an excavation permit fee, and a road closure fee, they all presumptively comply with Section 253 provided that the total tally does not exceed an outer-bound fee level? Or should the Commission consider applying a structure similar to the one adopted in the *Small Cell Order,* with different safe harbors applying to different types of fees and facility deployments? The *Small Cell Order* established safe harbors of ''$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (*i.e.,* not a collocation) intended to support one or more Small Wireless Facilities'' and ''$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.'' Would a different structure be more appropriate? For instance, should safe harbors differ by the type or size of jurisdiction? Should the safe harbors vary based on other factors? We ask that commenters identify the data that supports their safe harbor proposals.

Competitively Neutral and Nondiscriminatory. We tentatively conclude that to be competitively neutral and nondiscriminatory as required by Section 253(c), any fee charged to one provider of wireline telecommunications services may not be materially higher than those charged to other providers of wireline telecommunications services for similar uses of the public rights-of-way. We believe this tentative conclusion is consistent with determinations by both courts and the Commission that imposing requirements on one provider that are not imposed on similarly situated providers is inconsistent with the statutory text of Section 253(c), and seek comment on that view. Do commenters agree with our interpretation of the statute? Is a different interpretation a better reading of the statute? What are the real-world implications of applying this standard in the context of wireline telecommunications services? For instance, would it be easy to assess whether two different providers of wireline telecommunications services are being charged materially similar fees for deployments when their builds are of a different scope, utilize different deployment methods (*e.g.,* aerial versus buried), or involve different technologies? Should fees be assessed in a technologically neutral manner to ensure they are not discriminatory, or do different technologies result in state and local governments incurring different costs that would justify different fees? What other factors should the Commission evaluate to determine when fees are competitively neutral and nondiscriminatory?

Section 253(c) requires that fair and reasonable compensation collected by state and local governments be ''publicly disclosed.'' Some commenters suggest that state and local governments are not complying with this statutory directive. We seek comment on whether the Commission should ensure compliance by adopting a requirement that state and local governments publicly disclose any fees they collect in connection with an authorization to access and use public rights-of-way to provide wireline telecommunications services in a particular manner. Would the Commission have authority to adopt such a rule? If the Commission adopts such a rule, in what form should public disclosures take place? Is it sufficient if state and local governments post a table on their websites or another publicly accessible platform listing the fees they have collected in connection with approved authorizations? Is it sufficient if state and local governments maintain a list of all fees that they have collected and provide it to anyone from the public on request? Should we require that state and local governments establish and publicly disclose fees in advance of the imposition of the fee for a particular application? Should we require that state and local governments describe the costs included in the fees they impose with sufficient detail to permit providers and the Commission to evaluate whether the fees comport with the ''fair and reasonable'' and ''competitively neutral and nondiscriminatory'' requirements of Section 253(c)? Is there other information that should be included in the disclosures? Should state and local governments be required to publicly disclose fees in a manner that is accessible to all providers on equal terms? To the extent state and local governments are currently complying with the statutory public disclosure requirement, how are the public disclosures being made?

Section 253(b) Savings Clause. We seek comment on whether our proposed fee standard is consistent with the best reading of the savings clause in Section 253(b), which preserves a state's ability to ''impose . . . 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.'' Would limiting the fees that state and local governments may recover to a reasonable approximation of their objectively reasonable costs impact a state's ability to perform these tasks? If so, how? Would commenters recommend any adjustments to our proposed fee standard to address any negative impacts? Is the question of Section 253(b)'s application to our proposed fee standard moot, given that we propose to adopt a presumption that state and local governments do not effectively prohibit the provision of wireline telecommunications services if they comply with it (*i.e.,* if there is no prohibitive effect within the meaning of Section 253(a), the savings clause in Section 253(b) is irrelevant)? What else should the Commission consider when evaluating whether our proposed fee standard implicates the Section 253(b) savings clause?

Prohibited Fee Types. We seek comment on whether the Commission should adopt a rule that prohibits state and local governments from recovering certain types of fees that may not comport with the cost-based standard we propose above. For instance, some providers have suggested that it would be inconsistent with a cost-based fee standard for state and local governments to assess fees based on a provider's gross revenue, the asserted fair market value of public rights-of-way, the linear feet of a wired deployment, or to collect fees on a recurring versus one-time basis (*e.g.,* recurring use fees in a right-of-way agreement). Do other commenters agree? Are fees assessed based on gross revenue, a valuation of rights-of-way, or linear feet reflective of the costs that a state or local government incurs due to a providers' access and use of public rights-of-way to provide wireline telecommunications services? Or do such fee measures generate revenue for state and local governments irrespective of their costs? Are recurring right-of-way use fees charged to recover costs that state and local governments may incur due to a provider's access and use of public rights-of-way on an ongoing basis, *i.e.,* does an annual use fee recover costs that the state or local government incurs during the year that it is charged, even after the deployment and installation of facilities is complete? Or do state and local governments recover their costs via the initial collection of authorization fees, such that use fees collected after the deployment is complete are profit? In the *Small Cell Order,* the Commission noted that gross revenue fees generally are not based on the costs associated with an entity's use of public rights-of-way, but acknowledged that ''a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein.'' Accordingly, under the standard adopted in the *Small Cell Order,* ''[i]f all these criteria are met, the fee would not be preempted.'' Is the same true in the context of wireline telecommunications services? If so, should the Commission refrain from prohibiting the use of certain fee measurements provided that the fee collected ultimately complies with any cost-based standard and safe harbors adopted by the Commission?

Application to Government-Owned Structures. We seek comment on whether the fee standard we propose to adopt above should apply to applications to attach wireline telecommunications facilities to government-owned infrastructure in public rights-of-way or whether a different standard should apply. The record developed in response to the *2025 Notice of Inquiry* suggests that providers of wireline telecommunications services pay excessively high fees when they seek to attach facilities to government-owned poles and conduit. As discussed above, the mandates of Section 253 apply when providers seek to access and use government-owned infrastructure in public rights-of-way; thus, state and local governments may not charge fees that effectively prohibit the provision of wireline telecommunications services in violation of Section 253(a) and may only charge fair and reasonable compensation that is competitively neutral and nondiscriminatory, consistent with Section 253(c). Accordingly, we tentatively conclude that any cost-based fee standard adopted by the Commission for authorizations to provide wireline telecommunications services should apply when a provider of wireline telecommunications services seeks to attach to government-owned infrastructure in public rights-of-way. We seek comment on that view and how the Commission should implement that approach.

For instance, some state and local government commenters argue that there are concerns specific to government-owned infrastructure that differ from other requests to access public rights-of-way, such as the need to conduct engineering reviews of poles. These commenters argue that such differences weigh against limiting the fees that state and local governments can collect, whether generally or in the same manner upheld by the Ninth Circuit in the context of Small Wireless Facilities. Do other commenters agree? To the extent these concerns indicate that a state or local government incurs greater costs when a provider seeks to access poles or conduit in public rights-of-way, could those concerns be addressed by establishing safe harbor fee levels consistent with those higher costs? If so, we request that commenters submit data to the Commission demonstrating how the Commission should establish safe harbors for attachments to government-owned poles and conduit to ensure that they reflect a reasonable approximation of the actual and direct and objectively reasonable costs incurred by state and local governments when providers of wireline telecommunications services seek access. We request data demonstrating the actual and direct costs of, for example, conducting inspections and performing engineering reviews. To the extent variables such as location or geography can affect costs, we seek data highlighting their impact on costs and how state and local governments account for these differences in the fees they impose. We request that commenters submit specific proposals for safe harbors that the Commission should consider adopting in this context.

Some commenters argue that the Commission would impermissibly circumvent Section 224 by preempting a state or local law applicable to government-owned poles and conduit under Section 253. The Commission rejected this argument in the *Small Cell Order,* noting that ''[s]ome have argued that Section 224 of the Communications Act's exception of state-owned and cooperative-owned utilities from the definition of 'utility' . . . suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. . . . Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply.'' As noted above, the Ninth Circuit upheld the Commission's application of Section 253 to government-owned structures in public rights-of-way in *City of Portland.* Accordingly, we reiterate our prior conclusion that Congress's choice to exclude government-owned poles and conduit from regulation under Section 224 does not indicate an intent to remove such infrastructure from the scope of Section 253, which expressly reaches any state or local statute, regulation, or legal requirement that has a prohibitive effect on the provision of telecommunications services.

Enforcement. We propose that any state and local government fees that exceed a fee standard adopted by the Commission for wireline telecommunications services be presumed to have a prohibitive effect that violates Section 253(a) and fail to constitute fair and reasonable compensation under Section 253(c). Under this approach, providers would be permitted to seek preemption of the fees through a petition to the Commission under Section 253(d), and state and local governments would be permitted to rebut the presumption by demonstrating that the fees recover the actual, direct, and objectively reasonable costs they incurred due to the provider's access and use of the public right-of-way to provide wireline telecommunications services and are competitively neutral and nondiscriminatory. We seek comment on our proposal. What would be the impact of the Commission preempting fees that do not comply with the proposed cost-based standard? Would the potential for preemption by the Commission incentivize providers to proactively adopt fees that comport with any safe harbor fee levels adopted by the Commission, thereby reducing the need for litigation in any forum? Are there any other benefits or consequences of this proposed approach?

We also seek comment on whether a fee standard adopted by the Commission for wireline telecommunications services under Section 253 could be enforced through actions initiated in court. We expect that, at a minimum, any fee standard adopted by the Commission would act as persuasive authority for courts considering challenges under Section 253. Would federal district courts be bound to follow a fee standard adopted by the Commission?

C. Requiring In-Kind Contributions To Comply With Section 253

The record developed in response to the *2025 Notice of Inquiry* shows that providers of wireline telecommunications services are often required to supply various forms of in-kind compensation to state and local governments as a condition for obtaining authorizations to access and use public rights-of-way. The record demonstrates that these requirements often do not relate to or far exceed the costs of a provider's actual use of the public rights-of-way. Such required in-kind compensation can significantly increase the cost of wireline deployments in a manner that results in projects being delayed or even canceled. We therefore tentatively conclude that in-kind compensation demands can have a prohibitive effect on the provision of wireline telecommunications services in violation of Section 253(a) and thus are subject to preemption unless they constitute objectively reasonable compensation under Section 253(c), consistent with the cost-based fee standard we propose above, and are imposed in a competitively neutral and nondiscriminatory manner. Under this approach, the cost or value of any in-kind compensation requirements imposed by state and local governments as a condition of issuing authorizations to access and use public rights-of-way to provide wireline telecommunications services must count toward any safe harbor fee levels adopted by the Commission to implement our proposed cost-based fee standard. For example, if a municipality could collect $3,000 in compensation for costs incurred due to a particular wireline project pursuant to safe harbor fee levels adopted by the Commission, and the municipality requires the provider to install additional conduit for municipal use at a cost of $1,200 to the provider, then that $1,200 of in-kind compensation would be deducted from the $3,000 compensation limit. The municipality would be presumed to have complied with Section 253 provided that: (1) it collects no more than $1,800 in fees from the provider; or (2) it can demonstrate that the actual and direct costs that it incurred due to the wireline project exceeded the $1,200 in in-kind compensation received and the fees that it collected in excess of $1,800. Similarly, if the municipality were to charge $2,800 in fees, then it could demand no more than $200 in in-kind compensation.

We seek comment on this proposal. We believe our tentative conclusion to be consistent with the findings of courts considering this issue. Does other legal authority support our tentative conclusion? Does contrary precedent exist? Would our proposal sufficiently remedy the prohibitive effects that excessive in-kind contributions have on deployments? How should the Commission approach the valuation of in-kind compensation for the purposes of determining whether it has been appropriately applied toward the overall compensation collected by state and local governments? As suggested in the example above, should it be based on the actual costs incurred by the provider in supplying it (*e.g.,* labor, materials)? Should it be based on any applicable market value (*e.g.,* what the government would have had to pay to purchase equipment)? Is there another method of valuation we should consider? At what point does work such as street or curb restoration stop being a reasonable cost that a provider should incur for the work it performs in public rights-of-way and become in-kind compensation? Does restoration have to be limited to exactly what existed before the provider commenced work? If an installation requires a limited street cut, does restoration of the road beyond that cut constitute in-kind compensation? Does requiring providers to do additional work to install curb ramps and other accessibility features or additional signage that did not previously exist constitute in-kind compensation? What kind of documentation should be required to substantiate the value of in-kind compensation? Who should bear the burden of proof during a dispute of in-kind valuation? Should the Commission require public disclosure of in-kind contribution requirements, and in what manner?

The Commission has addressed in-kind compensation in the context of cable franchise fees, as defined by section 622(g) of the Act. Specifically, the Commission has found that cable franchise fees ‘‘can encompass both monetary payments imposed by a franchising authority or other governmental entity on a cable operator, as well as ‘in-kind' payments—*i.e.,* payments consisting of something other than money, such as goods and services—that are so imposed,'' and determined that specific types of cable-related, in-kind contributions are franchise fees subject to the 5% statutory cap under section 622(b) of the Act.

Are there types of in-kind compensation that impose costs on providers that cannot be easily assigned a value? For instance, some commenters express concerns about municipalities that effectively require providers to subsidize their competitors by requiring them to install infrastructure that the municipality then leases out to other providers. How should such requirements be addressed? Could this be a basis for state and local governments to waive or significantly lower the fees they demand from providers? What would happen if a provider simply refused to install infrastructure that could or would be used by a competitor? Could state or local governments use the opportunity created by the provider's deployment to purchase and install additional facilities itself, rather than imposing the obligation on the provider? Do these requirements promote beneficial ‘‘dig once'' policies, and if so, how should the Commission take that into account? Are there other forms of in-kind compensation that drive up costs for providers in a manner that implicates Section 253 but cannot be assigned a value? Are there types of in-kind contributions that are so onerous that they prohibit the provision of wireline telecommunications irrespective of whether their monetary costs would exceed our fee standard?

Some commenters request that we determine that in-kind requirements that have no bearing on a provider's use of public rights-of-way are prohibited by Section 253. While we do not propose outright prohibitions on specific types of in-kind compensation at this time, we reiterate that Section 253(c) only allows state and local governments to collect fair and reasonable compensation ‘‘for use of public rights-of-way.'' For this reason, the Commission and courts have already recognized that demands for compensation that effectively prohibit the provision of telecommunications services in violation of Section 253(a) and are unrelated to a provider's use of public rights-of-way may not be saved from preemption by Section 253(c). We therefore tentatively conclude that, if in-kind compensation demands are unrelated to a provider's use of public rights-of-way and increase the costs of deployment in a manner that effectively prohibits the provision of wireline telecommunications service within the meaning of Section 253(a), they are likely to be preempted if challenged before the Commission or in court. We seek comment on this view and whether commenters believe it is necessary for the Commission to codify a rule that memorializes these statutory standards. Are there in-kind compensation demands that are unrelated to a provider's use of public rights-of-way but are permissible under the statute because they do not effectively prohibit the provision of telecommunications services under Section 253(a)? Are the questions of whether an in-kind compensation demand is related to use of public rights-of-way so case specific that they should be resolved via individual adjudications versus a generally applicable rule? How should the Commission define what it means for an in-kind compensation demand to be ‘‘related'' to a provider's use of the right-of-way? Does making spare conduit or dark fiber strands available ‘‘relate'' to the use of the right-of-way in the same way mitigation measures like repaving roads or restoring curbs do, or do such demands more closely resemble requirements such as providing a municipality with free services or other donations? Are any of these examples more or less objectionable with respect to how they relate to a provider's use of the right-of-way? Should Commission establish an exception for in-kind compensation that is voluntarily negotiated?

We also seek comment on whether state and local governments demand in-kind compensation that has a prohibitive effect that violates Section 253(a) and would not qualify as ‘‘fair and reasonable compensation'' under Section 253(c), but may nonetheless be saved from preemption under Section 253(b). If so, what types of in-kind compensation meet the criteria of Section 253(b) and how should the

Commission consider Section 253(b) when evaluating the above proposal?

D. Applying the Deadline and Fee Standard to Commingled Facilities

We propose to adopt a rule that prohibits state and local governments from effectively prohibiting the provision of wireline telecommunications services by imposing additional requirements on wireline telecommunications infrastructure that can also be used to provide other services. Specifically, we propose to codify a presumption that a state or local government has violated Section 253 if it imposes requirements that exceed any limits on processing timelines and fees adopted by the Commission for wireline telecommunications authorizations on the grounds that the provider may provide other services over the same infrastructure on a commingled basis. We seek comment on this proposal.

We note that the Commission clarified in 2019 that the Act prohibits franchising authorities from charging cable operators duplicative fees—for example, a cable franchise fee and a ''broadband access fee''—for use of public rights of way. Section 622(a) of Title VI the Act states that any cable operator may be required under the terms of any franchise agreement to pay a franchise fee. Section 622(b) provides that ''[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.'' In 2019, the Commission observed that ''Title VI does not permit franchising authorities to extract fees or impose franchise or other requirements on cable operators insofar as they are providing services other than cable services'' and preempted ''(1) any imposition of fees on a franchised cable operator or any affiliate using the same facilities franchised to the cable operator that exceeds the formula set forth in section 622(b) of the Act . . . whether styled as a 'franchise' fee, 'right-of-access' fee, or a fee on non-cable (*e.g.,* telecommunications or broadband) services, and (2) any requirement that a cable operator with a Title VI franchise secure an additional franchise or other authorization to provide non-cable services via its cable system.''

The record developed in response to the *2025 Notice of Inquiry* shows that in today's marketplace, wireline telecommunications infrastructure commonly transports both telecommunications and non-telecommunications services. 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. As USTelecom observes, ''[p]roviders build and operate integrated fiber networks that simultaneously carry both telecommunications traffic and broadband traffic.'' 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. This is a principle that has been recognized by the Commission for almost twenty years, dating back to when the Commission concluded that ''Section 332(c)(7)(B) would continue to apply to wireless broadband internet access service that is classified as an 'information service' where a wireless service provider uses the same infrastructure to provide its ''personal wireless services'' and wireless broadband internet access service.'' As the Commission observed then, ''classifying wireless broadband internet access services as 'information services' will not exclude these services from the section 332(c)(7) framework when a wireless provider's infrastructure is used to provide such services commingled with 'personal wireless service.' Commingling services does not change the fact that the facilities are being used for the provisioning of personal wireless services.'' These conclusions were similar to the view taken by the U.S. Supreme Court in *National Cable & Telecommunications Ass'n* v. *Gulf Power Co.,* which concluded that a pole attachment by a cable operator does not cease to be such for the purposes of Section 224 of the Act if it is someday also used to provide high-speed internet access. Indeed, any other approach would seem in tension with the express text of the statute, which provides that ''[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'' Accordingly, if a provider seeks to deploy infrastructure that enables the ability to provide telecommunications services, no state or local requirement may prohibit or have the effect of prohibiting it, regardless of whether the provider offers other services on a commingled basis. We seek comment on these tentative conclusions.

The record indicates that some state and local governments impose additional or more onerous requirements on providers seeking authorizations to deploy wireline telecommunications infrastructure when that infrastructure may be used to provide other services on a commingled basis. The record further suggests that these additional or more onerous requirements, such as state rate regulation of broadband, frustrate the ability of providers to offer wireline telecommunications services, with deployments facing delays or cancelation. In view of this, we propose to adopt a presumption that a state or local government violates Section 253 if it imposes requirements that exceed any limits on processing timelines and fees adopted by the Commission for wireline telecommunications authorizations on the basis that the wireline telecommunications infrastructure may be used to provide other services. We seek comment on this proposal and these views.

How common is it for state and local governments to impose additional review or fee requirements on wireline telecommunications authorization requests because the provider may also offer broadband or other services? Can providers offer additional examples of the prohibitive effect of these additional requirements, *e.g.,* examples of specific deployments that have been postponed, scaled back, or canceled, whether in the jurisdiction where the additional requirements are applied or because additional requirements imposed in one jurisdiction precludes a build from proceeding in another? Are there legitimate reasons for a state or local government to require more time to review an authorization request if additional services are offered over the wireline telecommunications infrastructure? Do the actual and direct costs incurred by a state or local government increase if wireline telecommunications infrastructure is also used to provide other services?

What would be the practical effect of adopting the proposed rule? For instance, to the extent state and local governments have enacted specific procedures and fees applicable to the deployment of broadband infrastructure, would those requirements be deemed compliant with Section 253 provided that they are no more onerous than the requirements applicable to wireline telecommunications services? What types of additional regulatory restrictions on broadband deployments (*e.g.,* engineering requirements or facility-placement rules) would be preempted if the Commission adopted its proposed rule? What else should the Commission consider while evaluating this proposal?

E. Unused Facilities in Public Rights-of-Way

Some state and local government commenters ask 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. While we do not propose to adopt measures that would do so, we take this opportunity to seek comment on the extent to which unused wireline telecommunications facilities remain buried or installed in public rights-of-way and whether there are steps the Commission could take under Section 253 or any other authority to incentivize providers to remove such facilities as they upgrade their networks and complete additional deployments. Are there currently state and/or local laws that require providers to remove unused facilities? If so, do providers comply with those laws, and if not, why not? Do providers maintain their own procedures for removing old, unused facilities? In general, what are the obstacles to removing unused facilities from state and local rights-of-way and how can they be addressed?

F. Legal Authority

We tentatively conclude that the Commission possesses authority under Sections 253, 4(i), 201(b), and 303 of the Act to make findings concerning what constitutes a violation of Section 253(a) and what qualifies for the Section 253(b) or (c) exceptions, and to adopt regulations that enable the Commission to better effectuate its authority under Section 253(d) to preempt statutes, regulations, or legal requirements that violate Sections 253(a) or (b). We tentatively conclude that the Commission's authority to address effective prohibitions as described in Section 253(a) is not limited to case-by-case consideration (or, where appropriate, preemption) of specific state or local legal requirements. We note that many courts have not construed Section 253(d) as establishing an exclusive method of enforcing Section 253, as evidenced by the fact that they have allowed providers to challenge state and local requirements in federal court, regardless of the availability of the Commission as a forum to resolve petitions. We seek comment on these tentative conclusions. We also seek comment on additional sources of authority under which the Commission could preempt state and local requirements that impose excessive permitting delays and fees.

Some state and local government commenters argue that ''Congress expressly withheld from the Commission authority to preempt . . . requirements that fall within the scope of Section 253(c).'' This argument has previously been made by state and local governments challenging the ability of the Commission to preempt state and local requirements under Section 253 and has been rejected. As the Commission has explained, if this argument were viable, ''any party could avoid preemption or the Commission's jurisdiction simply by invoking section 253(c) as a defense, 'creating a procedural oddity where the appropriate forum would be determined by the defendant's answer, not the complaint.' ''

II. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Notice of Proposed Rulemaking* (*Notice*) assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice.* The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy. In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In the *Notice,* pursuant to congressional direction found in the Telecommunications Act of 1996, which sought to spur rapid deployment of new telecommunications technologies in part by reducing regulation, we continue efforts by the Commission to eliminate barriers to the provision of wireline telecommunications services. Such barriers include state and local statutes, regulations, excessive fees, and other legal requirements that can constrain providers attempting to deploy wireline telecommunications infrastructure and provide wireline telecommunications services. We seek comment on proposals that would codify presumptions for when state and local requirements for obtaining authorizations prohibit, or have the effect of prohibiting, wireline telecommunications services in violation of Section 253 of the Communications Act of 1934. Specifically, we propose establishing a deadline for state and local governments to act on wireline telecommunications authorizations requests; establishing a standard for state and local fees that complies with Section 253; requiring in-kind contributions to comply with Section 253; and applying the deadline and fee standard to commingled facilities that carry both telecommunications services and other kinds of services. Further, we seek comment on our legal authority to establish such presumptions and on whether any rules promulgated by the Commission would have a binding effect on the courts.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 4(i), 253, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 253, 303, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, ''small organizations'' are not-for-profit enterprises that are independently owned and operated and not dominant their field. While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, ''small governmental jurisdictions'' are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

The rules proposed in the *Notice* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Where available, we also provide additional information regarding the number of potentially affected entities in the industries identified below.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated industry (footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	% Small firms
Electric Power Generators, Transmitters and Distributors	2211	250–1000	2,626	2,103	80.08
Natural Gas Distribution	221210	1,150 employees	432	354	81.94
Water Supply and Irrigation Systems	221310	$41 million	3,887	2,988	76.87
Wired Telecommunications Carriers	517111	1,500 employees	3,403	3,027	88.95
Wireless Telecommunications Carriers (except Satellite)	517112	1,500 employees	1,184	1,081	91.30
All Other Telecommunications	517810	$40 million	1,673	1,007	60.19
Computer Infrastructure Providers, Data Processing, Web Hosting, and Related Services.	518210	$40 million	12,054	8,895	73.79
Engineering Services	541330	$25.5 million	47,367	37,363	78.88

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2025 Universal service monitoring report telecommunications service provider data (data as of December 2024)	SBA size standard (1,500 employees)		
Affected entity	Total number FCC Form 499A filers	Small firms	% Small entities
Competitive Local Exchange Carriers (CLECs)	4,049	3,853	95.16
Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	920	78.30
Interexchange Carriers (IXCs)	112	92	82.14
Local Exchange Carriers (LECs)	5,224	4,773	91.37
Operator Service Providers (OSPs)	26	24	92.31
Other Toll Carriers	72	69	95.83
Wired Telecommunications Carriers	4,971	4,531	91.15
Wireless Telecommunications Carriers (except Satellite)	608	522	85.86

TABLE 3—CABLE ENTITIES DATA

Cable entities	Size standard	Total firms	Small firms	% Small firms in industry
Cable System Operators (Telecom Act Standard), Small Cable Operator.	Serves fewer than 498,000 subscribers, either directly or through affiliates.	530	524	98.87
Cable Companies and Systems (Rate Regulation), Small Cable Company.	Serves 400,000 or fewer subscribers nationwide	530	523	98.51
Cable Companies and Systems (Rate Regulation), Small Cable System (headends).	Serves 15,000 or fewer subscribers	4,545	3,965	87.24

D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

Small governmental jurisdictions are likely to incur new costs in order to expedite review of wireline authorizations and to comply with the proposals in the *Notice,* if adopted. Other proposed rules may result in changes to state and local governments' administrative procedures. However, our proposals, if adopted, may reduce the time and expense for small and other service providers attempting to obtain authorizations for accessing and using state and local public rights-of-way to provide wireline telecommunications service.

In the *Notice,* the Commission seeks comment on proposals that, if adopted, offer clarification as to when a state or local statute, regulation, or legal requirement prohibits or effectively prohibits the provision of wireline telecommunications service, potentially reducing barriers to entry for the latter and enabling small entities to avoid unnecessary legal and administrative costs. Specifically, we propose to require that state and local governments act upon applications for authorizations to access and use public rights-of-way to provide wireline telecommunications services or deploy wireline telecommunications infrastructure within 120 days of a submission by a provider.

Although these tasks, including, *e.g.,* application review and public safety inspections, would be performed irrespective of any proposed deadline, some small governmental jurisdictions may need to act on timelines shorter than those currently being followed. As such, the Commission proposes to establish a rebuttable presumption that would enable small governmental jurisdictions to offer evidence that its timelines, fees, and other associated requirements do not prohibit or effectively prohibit the provision of wireline telecommunications services, or that they fall within the scope of Section 253's savings clauses. This evidence may include, for example, data that demonstrates that a state or local government's fees relate to its actual, direct, and objectively reasonable costs for the provider to access and use the right-of-way. Although we expect small governmental jurisdictions already keep such records, the *Notice's* proposals may necessitate more diligent recordkeeping and the need to report to the Commission any such evidence in the event a state or local requirement is challenged under Section 253(d).

We also propose to limit fees that state and local governments may collect to a reasonable approximation of the government's actual and direct costs of managing its public rights-of-way in connection with a particular wireline telecommunications authorization. Further, we propose that in-kind compensation received by state and local governments be subject to preemption. Finally, we propose that state and local governments be prohibited from exceeding the deadline for processing authorizations or any safe harbor fee levels that may be adopted on the grounds that the provider's wireline telecommunications infrastructure is capable of providing other services such as broadband internet access service.

E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities

The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities. The discussion is required to include alternatives such as: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

In the *Notice,* the Commission seeks comment on a number of alternatives designed to codify standards for when small governmental jurisdictions must act on authorization requests to deploy wireline telecommunications infrastructure and provide wireline telecommunications services. The Commission also seeks comment on establishing standards for what types of fees state and local governments may charge providers seeking such authorizations. Further, the Commission proposes to apply these standards to commingled facilities, *i.e.,* wireline facilities that can be used to provide both telecommunications and other services. The Commission also seeks comment on alternatives such as setting timelines for small governmental jurisdictions to comply with Section 253 beyond the proposed 120 days, and whether this time period should start when a provider requests authorization or at some other point, or should be extended if the government entity cannot act on a provider's application because it is incomplete or otherwise deficient. Additionally, the Commission seeks comment on limiting the scope of authorization requests that a small governmental jurisdiction must act on concurrently, and establishing bases for rebutting any presumption that a small governmental jurisdiction has violated Section 253 of the Act. This may be contingent on how rights-of-way are granted (*i.e.,* by permit or contract), whether multiple authorizations are required to enable a provider to deploy service, or other factors that may increase the complexity of review. Additionally, the Commission considers different approaches to cost-based fees and alternative fee standards. These include safe harbors, which would permit small governmental jurisdictions to charge fees under a certain threshold that would be presumed reasonable under Section 253. The Commission also seeks comment on allowing overhead costs such as joint and common costs. Relatedly, the Commission seeks comment on in-kind compensation demands, such as requirements that providers make spare conduit available or to repair street curbs damaged in the process of deploying wireline telecommunications infrastructure, and whether it should enable small governmental jurisdictions to impose certain kinds of in-kind compensation requirements, or whether some demands (such as those related to public safety) should not be considered in-kind compensation at all.

In evaluating the proposals in the *Notice,* the Commission will fully consider the economic impact on small entities as it evaluates the comments filed, including comments related to costs and benefits. Alternative proposals and approaches from commenters will further develop the record and could help the Commission further minimize the economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IV. Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 253, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 253, 303, and 403, that this *Notice of Proposed Rulemaking* hereby *is adopted.*

It is further ordered that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this *Notice of Proposed Rulemaking* on or before 45 days after publication in the **Federal Register**, and reply comments on or before 90 days after publication in the **Federal Register**.

It is further ordered that the Commission's Office of the Secretary, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for the Small Business Administration (SB) Office of Advocacy.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2026–16196 Filed 8–6–26; 8:45 am]

BILLING CODE 6712–01–P