FCC Proposes New Rules to Streamline Permitting for Deployment of Broadband in Public Rights-of-Way—What You Need to Know

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EXECUTIVE SUMMARY

The Federal Communications Commission ("FCC") has released a Notice of Proposed Rulemaking ("NPRM") aimed at curtailing state and local requirements that constrain the deployment of modern high-speed wireline infrastructure used for broadband and other advanced services. The NPRM was adopted in a bipartisan vote, with Chairman Brendan Carr and Commissioners Anna Gomez and Olivia Trusty each issuing separate statements.

The proposed rules are part of the FCC's "Build America" agenda and would establish deadlines for processing permit applications, limit the fees that state and local governments can charge to actual costs, restrict in-kind compensation demands, and prevent localities from imposing additional requirements on wireline infrastructure that can also carry broadband services. **Comments on the FCC's proposals are due September 21, 2026, with replies due November 5, 2026**.

What is the background?

To reach consumers, providers of wireline telecommunications services must obtain authorizations and/or permits from state and local governments to access and use public rights-of-way ("ROWs"). ROW access also is needed for such providers to deploy broadband. This permitting process often involves protracted review of applications and significant fees to gain access to the ROW. While some state and local governments work efficiently with providers, others impose requirements that excessively delay approvals and extract exorbitant sums, rendering some broadband deployments infeasible or cost prohibitive.

What does the FCC propose?

The FCC proposes rules in four principal areas. First, the FCC proposes to establish a rebuttable presumption that a state or local government has effectively prohibited the provision of service if it fails to act on an authorization request within 120 days. The 120-day period would begin when a provider submits a written application or, if pre-application steps are required, when the provider takes the first mandatory procedural step. The FCC seeks comment on whether it should establish such a deadline, and if so, whether 120 days is the appropriate timeframe. The FCC also asks about a process for a state or local government to "rebut" the presumption and how the proposed deadline could be enforced.

Second, the FCC proposes to limit the fees that state and local governments may charge to a reasonable approximation of the government's actual, direct costs of managing the ROW in connection with a particular authorization, provided those costs are objectively reasonable, competitively neutral, and nondiscriminatory. The FCC also proposes to establish safe harbor fee levels that would be presumptively compliant with this standard. The FCC seeks comment on this approach and asks commenters to discuss what costs should be included or excluded under the "objectively reasonable" standard. The FCC also asks if there are certain types of fees that do not comport with a "cost-based standard" that should be categorically prohibited, such as fees based on gross revenues, fair market value of the ROW, or linear feet.

Third, the FCC proposes that the value of in-kind compensation demanded by state and local governments, such as requirements to install additional conduit, provide free fiber strands, or perform unrelated construction work must count toward any safe harbor fee levels adopted by the FCC. The FCC tentatively concludes that in-kind compensation demands can have a prohibitive effect on the provision of service in violation of the law. The FCC seeks comment on its conclusions, including how such in-kind compensation can be valued for purposes of determining "fair and reasonable compensation" for use of the ROW.

Fourth, the FCC proposes to prohibit state and local governments from imposing additional requirements on wireline telecommunications infrastructure deployments on the grounds that the infrastructure may also be used to provide broadband or other services on a commingled basis. The FCC reasons that state and local governments should not be permitted to impose additional or more onerous requirements when the infrastructure may be used to provide other services and seeks comment on the practical effects of adopting such a rule.

Why is the FCC proposing these rules?

The record developed thus far by the FCC shows that while some state and local governments have implemented effective and efficient permitting processes, many others are imposing requirements that cause deployments to be scaled back or abandoned altogether due to excessive delays, fees, or other onerous conditions. Examples include jurisdictions where permits take nine months or longer to process, cities requiring 13 different departments and 70 individuals to review a single application, and localities demanding per-linear-foot fees of $3.50 to $5.00.

The FCC also finds that barriers in one jurisdiction have a ripple effect, with excessive delays, fees, and conditions impacting a provider's ability to complete deployments in other jurisdictions. The FCC believes the proposed rules would provide certainty for providers, promote faster deployment of broadband infrastructure, and ensure that state and local permitting processes comply with Section 253 of the federal Communications Act, which prohibits state and local requirements from having the effect of prohibiting the provision of telecommunications services.

What is the FCC's legal authority?

The FCC tentatively concludes that it possesses authority under Sections 253, 4(i), 201(b), and 303 of the federal Communications Act to adopt these proposed rules. The FCC notes that its authority to address effective prohibitions under Section 253(a) is not limited to case-by-case preemption of specific state or local requirements and that many courts have allowed providers to challenge state and local requirements in federal court regardless of whether a petition is filed with the FCC. The FCC seeks comment on its tentative conclusions.

What are the Commissioners' views on the proposed rules?

Republican Chairman Carr emphasized the need for permitting reform as part of a two-part strategy for American communications leadership. He acknowledged that many state and local governments are working cooperatively with industry but noted that some jurisdictions continue to impose lengthy delays, excessive fees, and unpredictable processes that discourage deployment. He stated the NPRM also asks how the FCC can incentivize providers to act quickly on granted authorizations and to remove old facilities as they upgrade their networks.

Democratic Commissioner Gomez expressed support for accelerating broadband deployment but raised concerns about the FCC's authority under Section 253 to preempt state and local management of ROW. She questioned whether Congress intended to confer such broad preemption authority and noted that legislative history may support the view that states and localities should retain control over pricing access to their ROWs.

Republican Commissioner Trusty stated that clear rules can provide a more predictable framework for discussions between providers and permitting authorities, helping both sides reach workable solutions before disagreements escalate into litigation. She noted there are more than 90,000 local governments and more than 2,000 broadband providers nationwide, underscoring the many opportunities for interactions and the importance of consistent standards.

CONTACT

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please contact Angela F. Collins (counsel) at acollins@cahill.com or 202.862.8930; Veda Penmetsa (associate) at vpenmetsa@cahill.com or 202.862.8968, or email publicationscommittee@cahill.com.

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