

State of California

Public Utilities Commission
San Francisco

M E M O R A N D U M

Date: October 15, 2025

To: President Alice Reynolds
Commissioner Darcie Houck
Commissioner John Reynolds
Commissioner Karen Douglas
Commissioner Matt Baker
(Meeting of October 30, 2025)

From: Ian Culver, Legal Division
Cole Przybyla, Communications Division

Subject: Filing Comments on Federal Communications Commission *Notice of Inquiry* in WC Docket No. 25-253, In the Matter of Build America: Eliminating Barriers to Wireline Deployments

RECOMMENDATION:

CPUC Staff requests authority to file opening and/or reply comments on the Federal Communications Commission's (FCC) *Notice of Inquiry*, adopted on September 30, 2025, in WC Docket No. 25-253, In the Matter of Build America: Eliminating Barriers to Wireline Deployments to safeguard the continued ability of states and localities to impose reasonable public interest regulations on telecommunications providers, as set forth more fully herein. The FCC seeks comment on (1) the delays that providers encounter when seeking authorizations to access and use public rights-of-way to provide wireline telecommunications services; (2) the fees imposed on providers when seeking such authorizations; (3) the in-kind compensation requirements imposed on providers as a condition of accessing and using public rights-of-way; and (4) whether these fees, delays, and conditions prohibit or have the effect of prohibiting the provision of wireline telecommunications services in violation of section 253. The FCC also seeks comments on other types of requirements that have a prohibitive effect on wireline telecommunications deployments and services within the meaning of section 253.

BACKGROUND:

On September 30, 2025, the FCC adopted its *Notice of Inquiry* in WC Docket No. 25-253, In the Matter of Build America: Eliminating Barriers to Wireline Deployments (*NOI*). *NOI* calls for comments by November 17, 2025, with reply comments due by December 17, 2025.

The FCC sees the *NOI* as a next step following its 2018 *Moratoria Order*,¹ which declared that legal requirements that expressly or effectively prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities are unlawful under section 253, as well as its 2018 *Small Cell Order*.² The CPUC previously commented and replied to comments in the proceedings that led to 2018's *Moratoria Order* and *Small Cell Order* on June 15, 2017, and July 17, 2017.

The FCC poses many detailed questions and seeks analysis on the following broad topics: authorization delays, excessive fees, conditioning approvals on in-kind compensation, other types or categories of state or local requirements that commenters believe prohibit or have the effect of prohibiting the provision of wireline telecommunications service, and whether commingled facilities are subject to special requirements. In total, the *NOI* asks more than 200 questions.

For its opening comments, CPUC Staff recommend the CPUC address the FCC's statements regarding its purported legal authority.

- In Paragraph 56, the *NOI* tentatively concludes that the FCC retains the authority to offer generally applicable interpretations under section 253 and seek comment on that view.
- In Paragraph 57, the *NOI* seeks comment on the view that the FCC has the authority to adopt rules that codify standards for when state and local requirements create delays and impose fees that effectively prohibit the provision of wireline telecommunications services, including shot clocks, including the extent to which any rules adopted by the Commission would apply to intrastate telecommunications services.

¹ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 F.C.C. Rcd. 7705 (2018).

² *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 F.C.C. Rcd. 9088 (2018).

- In Paragraph 58, the *NOI* seeks comment on delegating authority to the Wireline Competition Bureau to resolve petitions seeking preemption under section 253(d).

Further, to the extent that commenters single out California state or local requirements or fees in their opening comments, CPUC Staff recommend the Commission reply to such comments as necessary to address inaccuracies or unfair characterizations of California's laws.

DISCUSSION:

CPUC Staff recommends the CPUC file opening comments and, if appropriate, reply comments in response to the *NOI* to ensure the FCC's adherence to 47 U.S.C. § 253 and to protect the rights of California and its localities under section § 253(b) and (c) 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" and "manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way."

The CPUC's previous comments in June and July 2017 included that § 253(d) only authorizes the FCC to preempt state and local rules through case-by-case adjudication and not categorical rulemaking. The FCC in the *NOI*, however, states that it continues to believe that the subsection does not limit its ability to define and provide an authoritative interpretation as to what constitutes a violation of subsection (a) and what qualifies for the subsection (b) or (c) exceptions under other sections of the Telecommunications Act of 1996 and that nothing in section 253 itself prevents it from declaring that a category of state or local laws is inconsistent with subsection (a). The FCC is encouraged by the fact that the *Moratoria Order* and *Small Cell Order* were affirmed by the United States Court of Appeals for the Ninth Circuit.³ CPUC Staff believe that the present situation is distinguishable.

CPUC Staff also recommend the CPUC respond to comments that inaccurately depict or mischaracterize legitimate state or local requirements.

In its opening comments, the CPUC should highlight its own efforts to facilitate wireline deployment by describing various of its programs such as the California Advanced Services Fund Broadband Infrastructure Grant Account, Federal Funding Account, and Broadband Equity, Access, and Deployment program. Indeed, the *NOI* asks at paragraph 21 "are there large-scale projects spurred by funding made available through the Commission's universal service programs, the Infrastructure Investment and Jobs Act,

³ *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

and/or other federal and state programs that could be significantly impaired by delays caused by the requirements of localities covered by the projects?” The CPUC should also note that, through General Orders like 95 and 128, the Commission has standardized rules about overhead and underground lines, such standardization benefiting providers that might otherwise be subject to different or contradictory local governmental rules.

Depending on the outcome of its investigation, the FCC may take steps toward preempting state and local laws that are important to Californians and within the exceptions of Section 253(b) and (c) of the Telecommunications Act of 1996.

While the *NOI* does not call out any specific state or local regulations, it is possible that commenters may bring up the CPUC’s wireline resiliency requirements. CPUC Staff recommend defending those requirements, if raised, as the threat of wildfire has only increased over the years since D.21-02-029.

CONCLUSION:

The CPUC should authorize CPUC Staff to file opening and/or reply comments on the *NOI* with particular attention to the FCC’s claims regarding its legal authority in Paragraphs 56-58 and protection of CPUC programs and policies, to include responding to others’ opening comments that inaccurately depict or mischaracterize legitimate state or local requirements.

Assigned Staff:

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