FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Build America: Eliminating Barriers to Wireless Deployments	)))	WC Docket No. 25-276

REPLY COMMENTS OF
THE FREE STATE FOUNDATION[1]

These reply comments are submitted in response to the initial comments filed in this proceeding regarding its Notice of Proposed Rulemaking[2] proposing reforms to free towers and other wireless infrastructure from regulatory burdens imposed at the state and local level. At bottom, the proposals in this proceeding go right to the heart of enabling the prompt deployment of advanced broadband wireless services that is essential to benefiting consumers, promoting economic growth, and protecting America's preeminent position of 5G wireless leadership. In other words, implementing these proposals is key to the success of the FCC's "Build America" program.

In these reply comments, we join with commenters in recommending that the Commission adopt its proposals, previously outlined in the *2020 Declaratory Ruling*, to codify rules regarding concealment elements and siting conditions. We also join with commenters in recommending that the Commission extend to macro cell towers and other wireless infrastructure the same standards the agency adopted in the *2018 Small Cell Order* regarding effective prohibitions of wireless services, including the requirement that application fees be reasonable

[1] These comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Adjunct Senior Fellow. The views expressed do not necessarily represent views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.
[2] Build America: Eliminating Barriers to Wireless Deployments, WT Docket No. 25-276, Notice of Proposed Rulemaking ("Notice") (released Sept. 30, 2025).

and cost-based. And the agency should preempt revenue-based fees because they are unrelated to cost.

Additionally, the Commission should proactively exercise its preemptive authority under Section 253 and institute its proposed "rocket docket" to review and preempt local regulations that are contrary to federal law, including impermissible moratoria on wireless infrastructure permits that are identified in the Notice. Implementing these necessary reforms will benefit not only users of licensed spectrum but also users of unlicensed wireless spectrum because of the way in which both work in conjunction with each other to deliver 5G services to consumers.

The Commission's proceeding presents a timely opportunity to achieve important permitting reforms for next-generation wireless services. The Trump Administration and members of Congress, rightly, have placed a priority on achieving permitting reform in order to promote economic opportunity, market competition, technological innovation, and job growth. In the communications service context, the Commission has for years recognized that the time delays and financial costs of accessing and deploying infrastructure are significant roadblocks to the deployment of next-generation mobile wireless services. In response to those concerns, the Commission has adopted several reforms that have reduced local regulatory impediments to constructing wireless facilities, including the *2020 Declaratory Order* and *2018 Small Cell Order.* Those reforms and others have helped in reducing permit processing obstacles and promoting 5G wireless infrastructure upgrades and new deployments. Wireless broadband access and the number of wireless facilities serving Americans are far higher than several years ago.

However, the work that the Commission undertook in the *2020 Declaratory Order* and the *2018 Small Cell Order* remains unfinished. The Notice and comments identify local regulations and excessive fees that delay or obstruct wireless network facility construction. Rural

areas still lag behind urban areas in wireless broadband access, with service gaps remaining. Moreover, if multi-billion-dollar subsidies such as the much-delayed Broadband Equity Access and Deployment (BEAD) program are to be at all successful in closing remaining coverage gaps, taxpayer dollars must be put directly to work building out networks to reach all Americans without the delay that so often currently impedes deployment.

Consistent with views expressed in comments by the Free State Foundation in the *2020 Declaratory Order* proceeding,[3] we agree with commenters that the Commission should codify that ruling's definition of concealment elements as "elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station" that can be "defeated" when "the proposed modification… cause[s] a reasonable person to view the structure's intended stealth design as no longer effective after the modification."[4]

Similarly, we agree with commenters that the Commission should codify the *2020 Declaratory Ruling*'s determination that any siting approval condition—including any condition related to aesthetics or designed to address the visual impact of a facility— cannot be used to prevent modifications that are specifically allowed under Section 1.6100(b)(7)(i)-(iv).[5]

We share the view of other commenters that codifying the rules implementing the Spectrum Act, as well as the guidance and examples contained in the *2020 Declaratory Order*, will provide local governments and wireless infrastructure providers with greater legal certainty and help decrease disputes in the permitting process.[6] Also, we concur with commenters that the

---

[3] Comments of the Free State Foundation, Implementation of State and local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, et al., WT Docket No. 19-250, RM-11849; WC Docket No. 17-84 (Oct. 29, 2019), at: https://freestatefoundation.org/wp-content/uploads/2019/10/FSF-Comments-%E2%80%93-Obligation-to-Approve-Modification-Requests-Under-Section-6409a-102919.pdf.

[4] *See*, *e.g.*, Comments of AT&T, at 5-7; CTIA, at 7-8; Comments of T-Mobile, at 6-7. *See also* Notice, at ¶ 20.

[5] *See, e.g.*, Comments of AT&T, at 7-8; Comments of CTIA, at 8-9; Comments of T-Mobile, at 7-9. *See also* Notice at ¶ 23.

[6] *See, e.g.*, Comments of AT&T, at 8; Comments of CTIA, at 8; Comments of T-Mobile, at 7.

Ninth Circuit's 2024 ruling in *League of Cities of California v. FCC* invalidated the *2020 Declaratory Order* concealment provision and siting approval conditions provision only for procedural reasons and not for substantive reasons.[7] The court ruled that those provisions constituted "legislative rules" that required notice-and-comment rulemaking.[8] By re-adopting those provisions via a rulemaking in this proceeding, the agency would satisfy the procedural requirements identified by the court and better effectuate Congress's intent in the Spectrum Act that collocations and other small modifications of existing wireless infrastructure get streamlined permit processing and not be delayed or prohibited by unnecessary local restrictions.

Additionally, and consistent with views expressed in comments filed by the Free State Foundation in the *2018 Small Cell Order* proceeding,[9] we agree with commenters in this proceeding that the Commission should extend limits on application fees for deploying small cells to macro cell towers and other wireless facilities.[10] The agency should adopt a rule that excessive fees for processing permits for macro cell towers and other wireless infrastructure above a reasonable approximation of costs for the applicable type of facility "have the effect of prohibiting" services under Sections 253 and 332(c)(7)(B)(i)(II) and that fall outside of the scope of "fair and reasonable compensation" under Section 253(c).[11] To facilitate determinations of objectively reasonable approximate costs, the agency should establish safe harbor amounts for all total fees charged for macro cell towers and for other types of wireless facilities. Fees that are equal to the safe harbor amounts would be presumptively fair and reasonable compensation, and

---

[7] *See, e.g.*, Comments of AT&T, at 6; Comments of CTIA, at 7-8; Comments of T-Mobile, at 6.
[8] *See* Notice at ¶ 11 (citing 118 F.4th 99, at 1024-28, 1030-31).
[9] *See* Comments of the Free State Foundation, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (Jun. 15, 2017), at: https://freestatefoundation.org//wp-content/uploads/2019/08/FSF-Comments-Re-Accelerating-Wireless-Broadband-Deployment-by-Removing-Barriers-to-Infrastructure-Investment-061517.pdf.
[10] *See, e.g.*, Comments of AT&T, at 12-15; Comments of CTIA, at 17-21; Comments of T-Mobile, at 18-20
[11] *See 2018 Small Cell Order*, at ¶¶ 50, 65, 70.

all fees that exceed the safe harbor level would be unfair and unreasonable—unless the local government proffers evidence to rebut the presumption.

The same economic concerns about excessive fees inhibiting deployment of small cells are also applicable to deployment of macro cell towers and other wireless facilities. Indeed, high fees harm the business case for all wireless facilities deployments and network upgrades, draining the limited financial resources of providers and inhibiting consumer access.[12] Moreover, nothing in Section 253 or Section 332(c)(7)(B)(i)(II) requires fees be treated differently for small cells compared to other types of facilities, and nothing in the text of those provisions bars the Commission from applying the same standard to all facility types.[13] We also agree with commenters that the Commission should preempt all gross revenue-based permitting fees because such fees are necessarily unrelated to costs,[14] including the types of local revenue-based fees specifically identified in the Notice.[15]

We disagree with commenters who argue that the Commission lacks legal authority to interpret Section 253 or 332(c)(7)(B)(i)(II) following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* (2024).[16] The agency's authority to make such interpretations and their preemptive force are based on the text of Section 253(d) and 332(c)(7)(B)(i)(II), and not on the now-discarded "*Chevron* doctrine." In any event, the Commission's rules are entitled to "*Skidmore* deference."[17]

Finally, we reiterate our longstanding view that the Commission should proactively exercise its preemptive authority under Sections 253 and 332(c)(7)(B)(i)(II) upon the filing of a

[12] *See, e.g.*, Comments of AT&T, at 15.
[13] *See, e.g.*, Comments of CTIA, at 14; Comments of T-Mobile, at 11.
[14] *See, e.g.*, Comments of CTIA, at 18; T-Mobile, at 19-20.
[15] *See* Notice, at ¶ 51.
[16] *See, e.g.*, Comments of Arlington, TX, *et al*., at 2, 4-6.
[17] See *Skidmore v. Swift & Co.*, 324 U.S. 134 (1944).

petition or by initiating notice-and-comment proceedings *sua sponte*.[18] Accordingly, we agree with commenters that the Commission should institute its proposed "rocket docket" to review petitions challenging local restrictions and preempt classes of local regulations that are contrary to federal law. In exercising its preemptive authority, we agree with other commenters that the types of specific local regulations identified in the Notice that constitute impermissible moratoria on wireless infrastructure permits should be preempted.[19] Exercising its preemptive power in this manner can reduce legal uncertainty and reduce or avoid costly and protracted litigation. We therefore disagree with commenters who suggest the Commission lacks such preemptive power.[20] The Commission indeed possesses such authority, including under Sections 253 and 332(c)(7)(B)(i)(II), to preempt classes of local regulation that run contrary to statutory terms. The Ninth Circuit's decision in *City of Portland v. FCC*, which mostly upheld the *2018 Small Cell Order*, recognized the agency's preemptive authority.

[18] See, e.g., Comments of the Free State Foundation, Build America: Eliminating Barriers to Wireline Deployment, WT Docket No. 25-253 (Nov. 18, 2025), at 9, available at: https://freestatefoundation.org/wp-content/uploads/2025/11/FSF-Comments-Eliminating-Barriers-to-Wireline-Deployments-Final-111825.pdf.
[19] *See* Notice, at ¶ 67.
[20] *See, e.g.*, Comments of Arlington, TX, *et a*l., 4-14; Co. Comm. & Util. Alliance, *et al*., at 20-24.

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

Randolph J. May
President

Seth L. Cooper
Adjunct Senior Fellow

Free State Foundation
P.O. Box 60680
Potomac, MD 20854

January 15, 2026