

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers to)	
Infrastructure Investment)	
)	
Accelerating Wireless Broadband)	WT Docket No. 17-79
Deployment by Removing Barriers to)	
Infrastructure Investment)	

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby submits its reply comments in the above-captioned proceedings.¹

In these proceedings, WISPA has urged the Commission to remove regulatory barriers that impede the ability of fixed wireless broadband providers to deploy wireless and wireline network infrastructure to support broadband service.² WISPA noted that providers of fixed wireless broadband services are covered by Section 6409(a) of the Spectrum Act, but may not be covered by Sections 253 or 332 of the Communications Act of 1934, as amended (the “Act”) if the Commission determines that fixed wireless broadband services are not considered to be “telecommunications services.”³ WISPA explained that the Commission has authority under Sections 706(a) and 154(i) of the Act to ensure that all broadband providers, regardless of

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, FCC 17-37 (rel. Apr. 21, 2017) (“*Wireline NPRM*”); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79, FCC 17-38 (rel. Apr. 21, 2017) (“*Wireless NPRM*”). The Wireless Telecommunications Bureau extended the deadline for filing Reply Comments regarding the *Wireless NPRM* to July 17, 2017. See *Order*, DA 17-525 (rel. May 26, 2017).

² See WISPA Comments, WC Docket No. 17-84 (filed June 15, 2017) (“WISPA Wireline Comments”); WISPA Comments, WT Docket No. 17-79 (filed June 15, 2017) (“WISPA Wireless Comments”).

³ WISPA Wireline Comments at 2; WISPA Wireless Comments at 2.

regulatory classification, are able to enjoy the benefits of Sections 253 and 332.⁴ WISPA urged the Commission to exercise such authority and suggested ways that the Commission can address the higher costs and disproportionate burdens that small businesses incur, for the ultimate benefit of consumers that reside on the wrong side of the digital divide.

The record developed in these proceedings makes clear that the Commission has broad statutory authority to remove regulatory barriers to the deployment of fixed broadband networks, even if broadband Internet access service is restored to “information service” classification. In addition to WISPA, several commenters agreed that the Commission has and should exercise its authority pursuant to Section 706 and other statutory provisions.

Section 706

Sprint emphasized that Congress has made clear that the Commission has Section 706 authority to address barriers imposed by local governments, such as access to rights-of-way, excessive fees, and long delays.⁵ Sprint stated that:

The Congressional mandate to the FCC to remove barriers to infrastructure investment is unequivocal. Section 706(a) of the Telecommunications Act requires the FCC ‘to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans’ by ‘other regulating methods that remove barriers to infrastructure investment.’⁶

More specifically, Charter Communications explained that the Commission can rely on Section 706 to preempt duplicative and unnecessary fees imposed on broadband providers.⁷ Charter stated that:

Section 706(a) is written in a way that strongly suggests that it at least provides the Commission with *deregulatory* authority. Its directive for the Commission to ‘encourage the deployment’ of advanced telecommunications capability by

⁴ WISPA Wireline Comments at 2-3; WISPA Wireless Comments at 2-3.

⁵ Sprint Corporation Comments, WT Docket No. 17-79 and WC Docket No. 17-84 (filed June 15, 2017) at 37-45.

⁶ *Id.* at 36.

⁷ Charter Communications, Inc. Comments, WT Docket No. 17-19 and WC Docket No. 17-84 (filed June 15, 2017) (“Charter Comments”) at 32-33.

‘utilizing’ ‘regulating methods that remove barriers to infrastructure investment,’ strongly suggests an intent to empower the Commission to displace existing regulations that operate as barriers to broadband deployment.⁸

Likewise, Comcast Corporation asserted that the Commission has authority under Section 706 to prohibit permitting processes that are inefficient and duplicative and to prevent States and localities from imposing conditions unrelated to the deployment of broadband facilities.⁹

CTIA asserted that the Commission has authority to adopt a “deemed granted” remedy to siting applications not covered by Section 6409(a) “using its broad authority to adopt rules to carry out the objectives of the Communications Act, and to facilitate broadband deployment under the Telecommunications Act.”¹⁰

WISPA strongly agrees with these commenters that Section 706 provides the Commission with statutory authority to remove regulatory barriers to the deployment of all broadband services, regardless of whether broadband Internet access service is classified as an information service or a telecommunications service.

Section 230

WISPA also agrees with Charter that the Commission can “rely on its general authority to preempt state and local regulation that conflicts with the Commission’s exercise of its regulatory authority over interstate services.”¹¹ Charter explained that the Commission has a long-standing policy of protecting the Internet and services provided over it from regulation and preempting conflicting state and local regulations. As Charter stated, this policy is reinforced by Section 230 of the Act, which expresses that it is the national policy to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services,

⁸ *Id.* (emphasis in original).

⁹ Comcast Corporation Comments, WC Docket No. 17-84 and WT Docket No. 17-79 (filed June 15, 2017) (“Comcast Comments”) at 6-10.

¹⁰ CTIA Comments, WT Docket No. 17-79 and WC Docket No. 17-84 (filed June 15, 2107) at 40 (citations omitted).

¹¹ Charter Comments at 29.

unfettered by Federal or State regulation.”¹² Charter further explained that exercising preemptive authority pursuant to the Commission’s general authority and Section 230 would allow the Commission to “exercise its preemptive powers irrespective of whether BIAS remains classified as a ‘telecommunications service’ or is classified as an ‘information service.’”¹³

Section 253

WISPA also agrees with commenters that the Commission has authority under Section 253 to preempt measures that inhibit broadband deployment, even if the Commission restores broadband to information service classification.¹⁴ WISPA supported the Commission’s preliminary view, as expressed in the *Wireline NPRM*, that restrictions on broadband deployment may effectively prohibit the provision of telecommunications services in contravention of Section 253.¹⁵

Tekify Fiber, an Internet service provider in California, explained that it has had difficulty securing rights to utilize public rights-of-way.¹⁶ It asserted that the Commission can use Section 253 to preempt local and state laws that inhibit broadband deployment, including laws that require broadband-only providers to obtain a franchise.¹⁷

Comcast and ITTA agreed with WISPA and asserted that the Commission’s view is correct, regardless of regulatory classification.¹⁸ Comcast observed that the “multipurpose broadband infrastructure deployed by broadband providers like Comcast facilitates the provision of *numerous* services, *including* telecommunications services.”¹⁹ Comcast explained that its

¹² *Id.* at 30.

¹³ *Id.* at 32.

¹⁴ *See, e.g.*, Charter Comments at 25-26; Comcast Comments at 15-16; ITTA – The Voice of America’s Broadband Providers Comments, WC Docket No. 17-84 (filed June 15, 2017) (“ITTA Comments”) at 35-36.

¹⁵ WISPA Wireline Comments at 4.

¹⁶ *See* Comments of Tekify Fiber & Wireless, WC Docket No. 17-84 (filed Jun 9, 2017).

¹⁷ *See id.* at 1.

¹⁸ ITTA Comments at 35-36; Comcast Comments at 15-16.

¹⁹ Comcast Comments at 15-16 (emphasis in original).

commercial and institutional customers, such as schools and libraries, use Comcast’s broadband infrastructure for data transport, while certain wholesale customers use the infrastructure for long distance transport and termination service. Therefore, where “cable providers deploy broadband infrastructure for these types of telecommunications services, when states and localities raise barriers to broadband deployment, they materially inhibit the offering of such telecommunications services in those areas.”²⁰ Comcast added that because “broadband infrastructure supports the deployment and use of numerous services, including telecommunications services,” “state and local requirements that impede the deployment of broadband facilities frustrate Congressional intent and unambiguous federal policy to encourage and facilitate the deployment of these networks and the services they enable.”²¹ Accordingly, under Section 253 and Congressional policy, “the Commission can and should take reasonable steps to address state and local processes that unnecessarily impede broadband deployment, *regardless of the classification of broadband Internet access service.*”²²

Charter also discussed that the “classification of BIAS as an information service should not foreclose the Commission from acting under Section 253.”²³ Charter noted that “licensing fees on broadband services deter investment and buildout in broadband facilities,” and as such, “they also have a significant effect on the offering of telecommunications services over the same facilities, supporting the exercise of the Commission’s Section 253 authority whether BIAS itself retains a ‘telecommunications’ classification or not.”²⁴

²⁰ *Id.* at 16.

²¹ *Id.* at 6.

²² *Id.* (emphasis added).

²³ Charter Comments at 26.

²⁴ *Id.*

WISPA also agrees with AT&T that Section 253 applies to “all restrictions that affect” “mixed-used” broadband facilities that are used to provide both information services and telecommunications services.²⁵ AT&T correctly noted that:

Limiting § 253 to regulations that affect telecommunications services exclusively would lead to the anomalous conclusion that the Commission’s jurisdiction over state and local regulation of broadband facilities would ebb and flow depending on which mix of services is offered over those facilities at any given time. Such a result would also require local governments to evaluate the mix of services before regulating, which are determinations they do not have the expertise or authority to make.²⁶

WISPA respectfully submits that the record demonstrates that the Commission has legal authority and is on sound legal footing to preempt State and local barriers to the deployment of broadband service, even if it is reclassified as an information service, and that there are sound public policy reasons for the Commission to exercise that authority. Consistent with the record, WISPA urges the Commission to rely on Section 706 and the other sources of legal authority discussed herein to ensure that all broadband providers, regardless of regulatory classification, do not face regulatory barriers to the deployment of broadband infrastructure to all Americans.

²⁵ Comments of AT&T Services, Inc., WT Docket No. 17-79 and WC Docket No. 17-84 (filed June 15, 2107) at 73-74.

²⁶ *Id.*

Conclusion

WISPA respectfully requests the Commission to take action in these dockets consistent with the views expressed herein.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

July 17, 2017

By: */s/ Alex Phillips*, President
/s/ Mark Radabaugh, FCC Committee Chair

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