

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**Free Press Request To Review Form 477** ) **WC Docket No. 10-75**  
**Data and Request For Protective Order** )

**To: The Commission**

**Reply Comments**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its clients licensed to provide Commercial Mobile Radio Service (“CMRS”) and on behalf of its Independent Local Exchange Carrier (“ILEC”) clients, listed on Attachment A hereto (the “Blooston Rural Carriers”) and pursuant to the Commission’s Public Notice, DA 10-466, released March 19, 2010,<sup>1</sup> hereby replies to the Joint Comments filed by The New America Foundation, *et al.*,<sup>2</sup> (collectively “New America”) and the comments filed by Media Alliance<sup>3</sup> in the referenced proceeding, which urge the Commission to grant Free Press’ request for access to confidential and competitively sensitive FCC Form 477 data. As demonstrated below, the confidential information contained in the FCC Form 477 reports must be protected, and neither Free Press nor the

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<sup>1</sup> The Public Notice specifies a May 4, 2010 filing deadline for reply comments.

<sup>2</sup> The Joint Commenters are The New America Foundation, The Donald McGannon Communication Research Center at Fordham University, The Social Science Research Council, Professor Sandra Braman of the University of Wisconsin-Milwaukee, Professor Adam Candeub of the Michigan State University College of Law, Dean Michael X. Delli Carpini of the Annenberg School of Communication at the University of Pennsylvania, Professor Robert Entman of the George Washington University, Professor Matthew Hale of Seton Hall University, Professor Marty Kaplan of The Norman Lear Center at The Annenberg School for Communication at The University of Southern California, and Professor Danilo Yanich of the University of Delaware.

<sup>3</sup> Media Alliance submitted a brief, seven sentence e-mail comment.

two supporting commenters have justified violating this confidentiality. In support hereof, the following is shown:

### Statement of Interest

1. The Blooston Rural Carriers are Tier III CMRS carriers licensed by the Commission to provide cellular service and Broadband PCS service in rural areas and rural ILECs. As such, they file FCC Form 477 data with the Commission and routinely request that this competitively sensitive information, submitted by mandate of the Commission, be accorded confidential treatment and withheld from public disclosure. Accordingly, they have a direct economic interest in the outcome of the issues raised by Free Press' request.

### Argument

2. Of the thirteen Comments filed in this proceeding, only New America and Media Alliance support grant of the Free Press request. All others oppose the request.<sup>4</sup>

3. According to Media Alliance, "the knowledge of *who subscribes* to high-speed internet should not be classified or viewed as sensitive information;" (emphasis added) and "[h]igh-speed internet profiles cannot be considered top secret."

4. New America takes a somewhat different approach. According to New America, granting the Free Press "request will facilitate the kind of rigorous analysis by interested stakeholders that is essential to representative policymaking."<sup>5</sup> New America

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<sup>4</sup> Opposing Comments were filed by (a) The American Cable Association, The Independent Telephone & Telecommunications Alliance, The National Telecommunications Cooperative Association, The Organization for the Promotion and Advancement of Small Telecommunications Companies, The United States Telecom Association, and Western Telecommunications Alliance (joint comments), (b) CTIA-The Wireless Association, (c) The National Cable and Telecommunications Association, (d) The Wireless Communications Association International, Inc., (e) Verizon and Verizon Wireless, (f) AT&T, Inc., (g) Qwest Communications International, Inc., (h) COMPTTEL, (i) Laurence Brett Glass d/b/a LARIAT, (j) James C. Follansbee, and (k) Pamela Follansbee.

<sup>5</sup> New America Comments, pg. 1.

develops this point by arguing the seemingly common sense (though likely inaccurate) notion that better policymaking results are achieved by having more and more qualified people analyze even greater amounts of data, with the results submitted to the regulators who will (presumably) use the results of these studies in devising policy. New America, citing *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), goes on to argue that the Commission's standards for granting access to confidential and competitively sensitive data are impermissibly strict, and that "an open proceeding" should be initiated to assess confidentiality claims; and that, as an interim measure, the Commission should engage in some form of "managed public disclosure" of the Form 477 data under guidelines established by NTIA's 2009 Broadband Transparency Workshop.<sup>6</sup>

5. These arguments are not persuasive. First, while Free Press, Media Alliance and New America may be frustrated by, and find fault with, the Commission's own internal analyses of the Form 477 data, there is no indication that Free Press' analysis will be better. It may be different than the Commission's analyses, but "different" does not always mean "better." In addition, there is no indication that Free Press (or others) have suggested specific alternative analytical models to the Commission for use in conducting its internal analyses of Form 477 data. If meritorious alternative analytical models are proposed to the Commission, we are quite confident that the Commission will evaluate whether the public interest is served by using them. The Commission has no need to rely on Free Press to conduct analyses that the Commission is fully qualified to perform. The Commission is required by neither law nor common sense to rely on Free Press to perform these functions.

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<sup>6</sup> New America Comments, pp. 5-6.

6. Second, New America's call for an "open proceeding" and for some form of "managed public disclosure" of Form 477 data is inconsistent with the requirements of Rule Section 0.459, as applied by the Commission's decisions in Local Competition and Broadband Reporting, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717 (2000) and Local Telephone Competition and Broadband Reporting, WC Docket No. 04-141, Report and Order, 19 FCC Rcd. 22340 (2004). Under established Commission policy, requests for release of the data are made in the form of a Freedom of Information Act ("FOIA") request, and the Commission has withheld the data from public disclosure relying on FOIA Exemption 4. The Courts have upheld Commission action withholding Form 477 data from public inspection under FOIA Exemption 4. See Center for Public Integrity v. FCC, 505 F.Supp.2d 106 (D.D.C. 2007). New America's proposed solution is at variance with these requirements. Additionally, the Commission has held that "interested third parties have no right to review [Form 477] data and use that information to participate in any Commission proceeding."<sup>7</sup>

7. Third, the Commission recently released its decision in Providing Eligible Entities Access to Form 477 Data, WC Docket No. 07-38, Order, FCC 10-71, released April 26, 2010. The decision, which implements Section 106(h)(1) of the Broadband Data Improvement Act ("BDIA"), sets forth standards and protections for the release of Form 477 data to "eligible entities," which are the sole designees of each state that are eligible to receive BDIA State Broadband Data and Development grant, and imposes strict confidentiality requirements on the eligible entities that receive these grants. Most of the grants given to these eligible entities are for the performance of broadband

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<sup>7</sup> Providing Eligible Entities Access to Form 477 Data, WC Docket No. 07-38, Order, FCC 10-71, released April 26, 2010 at Para. No. 34.

deployment mapping. In adopting these requirements, the Commission found “that the sensitivity of much of the data, and their potential to reveal provider-specific data even in aggregate form, warrant certain measures, including data-sharing firewalls, to minimize the risk of inappropriate or inadvertent disclosure of competitively sensitive information that the BDIA directs [the Commission] to share with BDIA grantees.” Order, Para. No.

2. The protections afforded by the Commission in the Order are far more extensive than those proposed by Free Press in its proffered protective order. *See* Order, Para. Nos. 31 – 45.

8. Furthermore, Recommendation 4.2 of the National Broadband Plan contemplates that the Commission will collect more detailed data in the future and make at least some of that data available for public analyses. Presumably, any release of data to responsible segments of the public will be accompanied by protections against disclosure at least as stringent as those adopted in the Order. The Commission has placed a Broadband Data NPRM on its 2010 Key Broadband Action Agenda Items list for release during the Fourth Quarter of 2010. This NPRM will likely address Recommendation 4.2.

9. Thus, both the protections in the Order are, and those likely to be adopted pursuant to the upcoming NPRM will be, more stringent than those proposed by Free Press in its proffered protective order. If anything, Free Press’ request is at best premature, and should be summarily denied; and the alternatives advocated by New America are inconsistent with the requirements of law and with the Commission’s plans on a going-forward basis for handling the release of Form 477 data.

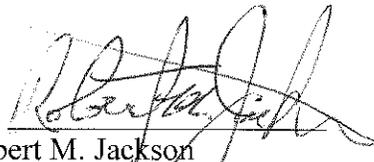
10. At this juncture, we wish to emphasize that Free Press is not an “eligible entity” within the meaning of Section 106(h)(1) of the BDIA because it is not a state designee with a BDIA State Broadband Data and Development grant. As such, release of data to Free Press under the provisions of the Order is not permitted.

11. In addition, we are compelled to note that the record here contains no disclosures by Free Press as to the identity of its real parties in interest. We do not know who owns Free Press, the identity of its financial backers, or the identities of its officers, directors or employees. For all we know, these people may be owners or representatives of companies engaged in the telecommunications business, *i.e.*, the very people to whom competitively sensitive Form 477 data should *not* be released. Until this question is satisfactorily answered, Free Press has failed to demonstrate that it even has standing to file its request.

**WHEREFORE**, the Blooston Rural Carriers request that the Free Press request be denied.

Respectfully submitted,

**Blooston Rural Carriers**

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Dated: May 4, 2010

**Attachment A**

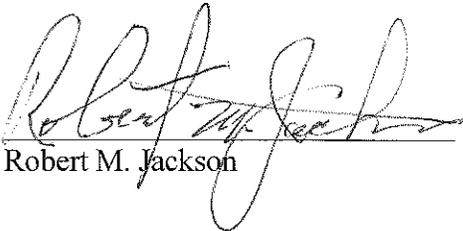
All West Communications, Inc.  
Bear Lake Communications, Inc.  
CL Tel Wireless, Inc.  
Central Utah Telephone, Inc.  
Clear Lake Independent Telephone Company  
Copper Valley Telephone Cooperative, Inc.  
Copper Valley Wireless, Inc.  
Dumont Telephone Company  
FWC Communications, Inc.  
Kennebec Telephone Co., Inc.  
The Lincoln County Telephone System, Inc.  
Mid-Rivers Telephone Cooperative, Inc.  
Public Service Telephone Company  
Rural Telephone Service Company  
Santel Communications Cooperative, Inc.  
Skyline Telecom  
Smithville Telephone Company, Inc.  
South Slope Cooperative Telephone Co., Inc.  
3 Rivers Telephone Cooperative, Inc.  
Uintah Basin Electronic Telecommunications, Inc.  
Venture Communications Cooperative  
WUE, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that on May 4, 2010 I caused to be sent by electronic mail (e-mail), a copy of the foregoing "**Reply Comments**" to the following:

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