Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of Media Bureau Data Practices	)	MB Docket No. 10-103
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	
Review of Wireless Telecommunications Bureau Data Practices	)	WT Docket No. 10-131
	)	

COMMENTS OF FREE PRESS

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I. INTRODUCTION

The Commission "seeks public comment, proposals and recommendations relating to its collection, use and dissemination of data."[1] This comprehensive examination of its data practices is meant to "eliminate unnecessary data collection while ensuring that the FCC has the information needed for sound analysis and policymaking."[2] The Commission breaks this public comment request into four sub-parts:

- The utility and rationale for existing data collections;
- Additional data needed to inform the Commission's policymaking activities;
- Improving collection and analysis processes for existing data;

and

- Improving dissemination and access to data and subsequent reports

We structure our comments to align with this sequential questioning and offer guiding principles and informative examples, which we believe should underlie each of the considerations above.

II. DISCUSSION

A. The Commission Should Exercise Caution Before Removing Legacy Data Collections

In considering the need for existing data collections, the Commission faces a balancing act. Information that truly has no practical utility should not be collected. Such an action frees Bureau staff to focus on more productive data analysis, which provides additional benefits to stakeholders and the public. Furthermore, by eliminating ineffective data collection, the

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[1] Public Notice, *Pleading Cycle Established for Comments on Review of Media Bureau Data Practices*, DA 10-1195 (Rel. June 29, 2010); Public Notice, *Pleading Cycle Established for Comments on Review of Wireless Telecommunications Bureau Data Practices*, DA 10-1223 (Rel. June 29, 2010); Public Notice, *Pleading Cycle Established for Comments on Wireline Competition Bureau Data Practices*, DA 10-1189 (Rel. June 29, 2010) ("Public Notice").

[2] *See* http://reboot.fcc.gov/data/review/ (Last visited Aug. 12, 2010).

Commission stands on firmer ground to justify any legitimate burdens that will result from new collections. With that said, we urge the Commission to *fully* consider the current and/or future utility of any existing data collection.

The dangers of prematurely ceasing data collections are illustrated in the Commission's decision to grant AT&T forbearance from much of the information collected through Automated Reporting Management Information System (ARMIS).[3] Both state entities and public interest groups urged the Commission to grant limited forbearance, agreeing that certain data no longer served a practical purpose.[4] However, other service quality and customer satisfaction data in the forbearance petition was used by numerous entities and offered clear public benefits. AT&T stated the Commission could collect any information that retained value through Form 477 and

[3] The other large ILECs still subject to ARMIS submitted far less narrow forbearance requests. *See e.g. Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c),* WC Docket No. 07-204 (filed Sept. 13, 2007). The Commission ultimately streamlined the petitions and granted the overwhelming majority of the forbearance requested. *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Petition of AT&T Inc. for Forbearance Under* 47 *U.S.C. § 160(c) From Enforcement o f Certain of the Commission's ARMIS Reporting Requirements, Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to* 47 *U.S.C. § 160(c), Petition of the Embarq Local Operating Companies for Forbearance Under* 47 *U.S.*C. *§ 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, Petition o f Verizon for Forbearance Under* 47 *U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, Petition of AT&T Inc. for Forbearance Under* 47 *U.S.*C. *§ 160 From Enforcement of Certain of the Commission's Cost Assignment Rules,* Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) ("ARMIS Order").

[4] Ex Parte Comments of Consumers Union, Free Press and U.S. PIRG, In the Matter of *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-139, p. 4 (August 29, 2008).

thus incorporate similarly situated entities, which should also report such information.[5] The problem with this is that the Commission faces an enormous number of responsibilities making quick action unlikely and reporting entities have a long history of opposing and impeding virtually any effort to collect more information. The end result of the ARMIS forbearance proceeding was the cessation of the collection of important data with a Commission promise to collect that data in a different format. Not surprisingly, this promise has long been forgotten.

The Commission should take this reality into account when considering the elimination of the collection of other data. If certain information retains value the Commission should revise the collection to only include that specific information, while simultaneously opening a proceeding to incorporate the reporting into another collection. Following the *completion* of this incorporation, the Commission can eradicate the legacy data collection. Such a process offers stakeholders important safeguards to ensure uninterrupted access to data, not to mention preserving a complete historical record of such information. Once again, the ARMIS forbearance is instructive here. In the ARMIS forbearance *Order*, the Commission recognized the value of the service quality and customer satisfaction data within certain reports. Thus, a condition of the forbearance was to have reporting entities "continue collecting service quality and customer satisfaction data, and to file those data publicly…for twenty four months."[6] The purpose of this continued collection was to "ensure continuity with regard to the service quality and customer satisfaction data that the Commission has collected up to this point, and afford the Commission a reasonable period of time to consider whether to adopt such industry-wide reporting

[5] Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139, p. 7 (filed June 8, 2007).

[6] ARMIS Order at ¶ 12.

requirements."[7] This voluntary reporting will expire in approximately two months with no sign as to whether the Commission has even begun to consider expanding these reporting requirements; let alone circulating, voting, the OMB approving, and requiring the first submission date to such an expansion. We encourage the Commission to consider this important component of any decisions to eliminate certain data submission requirements.

B. The Commission Should Focus on Data Modernization, not Simply the Elimination of Data Collection

The Commission should be wary of concluding that convergence negates the need to collect so-called "legacy" data. Communications markets are currently in a trajectory of consolidation and monopolization.[8] Thus, some of the legacy data collected remain highly relevant. The goal should be to modernize data collection to reflect the current and emerging communications environment. This effort requires more than just talk however; it requires careful planning and swift implementation.

Broadband and wireless networks are and will continue to be the primary means by which Americans communicate for many years. The Commission notes it has "previously recognized it must obtain…data relevant to broadband availability, adoption and competition"[9] While we appreciate this recognition, we nonetheless feel compelled to remind the Commission

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[7] *Ibid.*

[8] We have offered the Commission considerable evidence that the wireless industry is quickly becoming dominated by the largest telephone companies and that the cable industry is emerging as the sole provider of broadband at what is currently considered higher speeds. *See e.g.* Comments of Free Press and Media Access Project, In the Matter of *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, pp. 12-14 (July 30, 2010); Reply Comments of Free Press, In the Matter of *Framework for Broadband Internet Service*, GN Docket No. 10-127, pp. 31-34 (Aug. 12, 2010).

[9] Public Notice at 2.

that it has been more than three years since the Commission's *expedited* comment cycle and promise to complete an order on collecting broadband availability information within four months.[10] This reality illustrates just how deficient the Commission's current collection of broadband data is. Broadband subscribership and availability, along with speed and price, represent the most basic information concerning broadband. The Commission should already possess broadband data that includes a host of basic infrastructure, capacity, traffic and usage information.[11] Wireless data networks should be given similar treatment. The Commission should also view calls to rely on third party information as an adequate substitute for Commission collection with serious skepticism.[12]

The Commission's failure to collect broadband availability information also highlights the fact that just as important as identifying new information that needs collecting is seeing the process through.[13] The process between consideration and simply receiving that information is lengthy. In the case of improving broadband subscribership data, the *NPRM* was adopted on Feb.

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[10] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9710 (2008).

[11] *See e.g.* Comments of Free Press, In the Matter of *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket Nos. 08-190, 07-38, pp. 7-10 (Nov. 16, 2008).

[12] *See e.g.* Comments of Free Press, In the Matter of *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, pp. 2-4 (Feb. 17, 2009).

[13] Another instance is the Commission's cable subscribership form, which has stalled at an even later stage. Public Notice, *Media Bureau Seeks Comment on a Cable Subscribership Survey for the Collection of Information Pursuant to Section 612(g) of the Communications Act*, MB Docket No. 07-269, DA 09-44 (Rel. Jan. 16, 2009).

26, 2007, while the data was not ultimately received by the Commission until March 16, 2009, more than two years later.[14] Such long durations underscore the need to move quickly on data collection modernization. Under this timetable, if the Commission were to adopt an NPRM at its next open meeting, the data would not be submitted until October 2012, let alone disseminated, which in the case of the revamped 477 data, took another eleven months.[15]

C. The Commission Should Streamline the Collection and Improve the Analysis of Data

Data requires analysis in order to be turned into useful information. We suggest that analysis reform is just as important as data collection reform. Otherwise the burdens of reporting will outweigh the benefits.

The most recent Form 477 Report aptly illustrates the types of improvements needed from Commission analyses.[16] The 477 Report was the Commission's first opportunity to take advantage of far more granular broadband subscribership information. Instead, the Commission largely just replicated previous analyses, which had offered a misleading picture resulting in a routine use of figures that do not reflect market reality.[17] Thus, it seems existing analyses suffer

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[14] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760 (2007); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Order, 24 FCC Rcd 2375 (2009).

[15] *See* "FCC Releases Census Tract-Level Data on High-Speed Internet Services," Press Release, Federal Communications Commission, Feb. 12, 2010.

[16] Federal Communications Commission, High-Speed Services for Internet Access: Status as of December 31, 2008, February 2010.

[17] *See e.g.*, Request of Free Press to Review Form 477 Data and Request for Protective Order, In the Matter of *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to*

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from a certain rigidity that the Commission should move away from. That is, reports are "updated" simply by plugging in updated data. Going forward, the Commission should not only consider whether the data has been updated, offering additional or improved opportunities for analysis, but also consideration of market developments, the addition of separate but relevant Commission data and the use of pertinent third-party data that offers additional insight.

D. The Commission Must Improve Access to the Data Underlying Reports and Analyses

While we encourage the Commission to consider ways to "improve dissemination of reports", the Commission should focus on the far more important task of providing researchers and the public access to the information that underlie such documents. This effort can begin by acting on the *Free Press Request* granting access to the Form 477 data. Beyond this, the Commission should take a hard look at their current implementation of the rules governing the granting of confidentiality.[18] The public is being artificially denied access to information they should by any reasonable account have access to.[19] As the Commission considers collecting new information and dropping legacy collections, they should focus on a commitment to greater

(footnote continued)
Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; *A National Broadband Plan for Our Future*; *Preserving the Open Internet*; *Broadband Industry Practices*; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Services* (WC Docket No. 07-38 WC Docket Nos. 07-52, 07-38, GN Docket Nos. 09-51, 09-137, 09-191, pp. 3-7 (Feb. 22, 2010) (docketed by the Commission as *Free Press Request to Review Form 477 Data and Request for Protective Order*, WC Docket No. 10-75 (*see* Public Notice, DA 10-466 (Mar. 19, 2010)) (*Free Press Request*).

[18] 47 U.S.C. § 0.459(a).

[19] *See* Free Press Petition at 14.

public access.[20] The value of data is undoubtedly increased through public availability. With technological and communication advances, the public is well-equipped to acquire, manipulate and distribute data that advances Commission efforts or provides alternate analyses entirely.[21] The "sound analysis" the Commission seeks will also originate from parties beyond Commission staff.[22]

For public disclosure of information collected by the Commission that reporting entities can illustrate would result in "substantial competitive harm," the Commission should require interested parties to sign the type of protective order commonly used in Commission proceedings.[23] While of less value than full disclosure, this will at least allow data to be analyzed by outside parties with expertise different from that of the Commission. Furthermore, given the stiff penalties associated with these protective orders, reporting entities could be confident in the security of their reported information. The status quo, however, is unacceptable. If the Commission truly intends to have a "general policy of making the data it collects available to the public" including "to make additional data that is not accessible by the public available to academic researchers and others" then it must take action immediately to follow through on this pledge.[24]

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[20] Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, GN Docket No. 09-51, pp. 290-294 (June 8, 2009).

[21] Further Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, In the Matter of *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, pp. 18-21 (July 17, 2008).

[22] *See* http://reboot.fcc.gov/data/review/ (Last visited Aug. 12, 2010).

[23] *See e.g.* Reply Comments of Free Press, In the Matter of *Free Press Request to Review Form 477 Data and Request For Protective Order*, WC Docket No. 10-75, pp. 6-10 -(May 4, 2010).

[24] Public Notice at 2-3.

III. CONCLUSION

The Commission has set out on the enormous task of updating data collections across numerous industries. The biggest hurdle the Commission will face is following through on this effort. The Commission's record is littered with data collection reform efforts that have stalled at various stages. Given the critical importance of communication networks to our society, this effort should not meet a similar fate. In fact, the Commission's ability to have "the information needed for sound analysis and policy making" depends on it.[25]

Respectfully Submitted,

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[25] *See* http://reboot.fcc.gov/data/review/ (Last visited Aug. 12, 2010).