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June 19, 2013

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: ***Ex Parte* Presentation in:**

WC Docket No. 11-10, *Modernizing the FCC Form 477 Data Program*
WC Docket No. 07-38, *Development of Nationwide Broadband Data*
WC Docket No. 08-190, *Service Quality, Customer Satisfaction and Data Gathering*
WC Docket No. 10-75, *Free Press Request to Review Form 477 Data*
WC Docket No. 10-132, *Review of Wireline Competition Bureau Data Practices*
WT Docket No. 10-131, *Review of Wireless Telecommunications Bureau Data Practices*

Dear Ms. Dortch:

On Monday, June 17th, I spoke by telephone with Rebekah Goodheart, Legal Advisor for Wireline Issues to Acting Chairwoman Clyburn, regarding the draft Order in the above-captioned dockets. During the call, I reiterated Free Press's disappointment with what we understand to be that item's contents. Despite the need for the agency to collect and disseminate better data to facilitate competition analysis, the draft item does not adopt recommendations made in the National Broadband Plan and by the Department of Justice on this score.

Ms. Goodheart and I discussed the concerns outlined in other recent filings in WC Docket No. 11-10, including a Free Press *ex parte* submission on June 14th and a Public Interest Spectrum Coalition *ex parte* notification on June 17th. In brief, I explained that the Commission can and must collect pricing data to inform its analyses – even if it begins to do so on a less granular and market-specific basis using an approach similar to the Media Bureau's annual pricing survey in the multichannel video market. The Commission also should take steps to ensure that Form 477 data is made available to researchers, pursuant to appropriate protective orders. And the Commission should increase the granularity of its reporting for deployment and subscription data, not decrease the level of specificity by abandoning the NTIA's road segment methodology for large, rural census blocks.

I suggested again that the Commission pull the item from the agenda in the absence of substantial improvements to the areas outlined above. If there were an immediate need to continue NTIA's collection, then the Commission could issue a narrow order on that aspect while seeking further comment on pricing data in a new Further Notice. Moreover, if a chief motivation for moving to an order now is collection of data for universal service and Connect America Fund ("CAF") purposes, the Commission already understands that it has better options.

Free Press recognizes the need for accurate and granular broadband availability data in order to implement and oversee the CAF. In fact, this is so important that the Commission's proposals to continue NTIA's mapping efforts with Form 477 deserve to be put out for public comment, because of the current draft's above-mentioned reduction in the granularity of rural deployment data. But just as the Commission needs granular deployment data to implement the CAF, it also needs granular pricing data. This is not just our opinion, it is something the Commission itself concluded.

In the 2011 USF Reform Order the Commission stated: "As with voice services, for broadband services we will consider rural rates to be 'reasonably comparable' to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable broadband service.... [W]e direct the Bureaus to develop a specific methodology for defining that reasonable range[.]" That order continued: "We also delegate to the Wireline Competition Bureau and Wireless Telecommunications Bureau the authority to conduct an annual survey of urban broadband rates, if necessary, in order to derive a national range of rates for broadband service." This was needed because the Commission did "not currently have sufficient data to establish such a range for broadband pricing, and [was] unaware of any adequate third-party sources of data for the relevant levels of service to be compared."¹

Explaining the phrase "if necessary" in describing the survey, the Commission noted: "We will rely on any pricing data collected pursuant to a revised FCC Form 477 data collection to calculate a national average urban rate for broadband. However, the process of collecting and publishing industry-wide data through a revised FCC Form 477 may not be completed before the first annual certification."²

Indeed, when the Commission issued the 2011 Form 477 FNPRM, then-Commissioner Clyburn noted the importance of collecting granular pricing data for the agency's universal service work, as well as other statutory duties:

I am pleased that we are exploring the use of additional broadband data, such as pricing information, so that we can better assess affordable and comparable prices. As we consider explicitly supporting broadband networks and service in our USF/ICC Reform NPRM adopted today, it is important that we have the information necessary to determine whether rates in rural areas are comparable to rates in urban areas, so that we can assess whether we have met the goals of Section 254 for ensuring universal service. Furthermore, the Broadband Data Improvement Act, requires that we compare pricing for broadband service with other countries; thus, the collection of pricing information may be necessary to fulfill that obligation.³

¹ In the Matter of Connect America Fund, WC Docket No. 10-90, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17709 ¶¶ 113-114 (2011) (internal citations omitted).

² *Id.* ¶ 114 n.187.

³ Statement of Commissioner Mignon L. Clyburn, In the Matter of Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10, *Notice of Proposed Rulemaking*, 26 FCC Rcd 1508, 1577 (2011).

Free Press understands the level of opposition among some companies to the mere idea of collecting pricing data. But the Commission must be above such politics. Its statutory mission includes ensuring that quality telecommunications, information and advanced services are available at “just, reasonable and affordable rates”⁴; and ensuring that all Americans have access to wired and wireless communications “with adequate facilities at reasonable charges.”⁵ Congress also tasked the Commission with developing “a detailed strategy for achieving affordability of [broadband] service and maximum utilization of broadband infrastructure and service by the public.”⁶ This last duty in part led to the National Broadband Plan’s first recommendation that the Commission should collect granular pricing information. Those that oppose the mere collection of pricing data are making a case that the agency either should ignore its statutory mandates or carry them out blindly.

There is no dispute that the Commission has the duty to manage our nation’s communications systems in the public’s interest. As has been said by many in the context of this issue, you can’t manage what you don’t measure. Free Press strongly recommends that the Commission take the time to get this right, and not rush to adopt a flawed order at this month’s open meeting.

Respectfully submitted,

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cc: Rebekah Goodheart

⁴ 47 U.S.C. § 254(b)(1); *see also id.* § 254(i).

⁵ *Id.* § 151.

⁶ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(2)(B) (2009).