

June 10, 2021

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, WC Docket Nos. 10-90, 11-10, 11-42, 17-108, 17-287, 19-195, 20-445; GN Docket No. 20-269

Dear Ms. Dortch:

On Tuesday, June 8, 2021, Derek Turner, Dana Floberg, and Matt Wood, of Free Press, spoke by video conference with William Davenport, Chief of Staff & Senior Legal Advisor for Wireless and International; Diane Holland, Legal Advisor for Media and Consumer Protection; Austin Bonner, Legal Advisor for Wireline and Public Safety; Alisa Valentin, Special Advisor; and Jazmin Bejarano, Summer Intern; in the office of Commissioner Geoffrey Starks. We summarized the findings of a recent Free Press report on trends in U.S. broadband market prices, as well as Internet Service Provider (“ISP”) profits and investments.<sup>1</sup>

We began by discussing the various types of pricing information and the data sources for them, noting the utility and drawbacks of each type for policymakers. We emphasized that the most important type of pricing information is data on the actual price ISP customers pay each month. This is the necessary pricing information for conducting economic analysis of the broadband market. And despite the importance of this type of information, it is not publicly available. We noted how the Commission and U.S. Department of Justice routinely request disclosure of this type of pricing data at a granular geographic level in merger reviews, which is necessary to conduct the market power analyses that are central to such reviews.

We reiterated our long-standing request for the Commission to collect and publish granular data on actual prices paid. In the absence of such information, researchers must rely on “second-best” data sources. There are two such sources that approximate the average, actual price paid: ISP disclosures of Average Revenue Per User (“ARPU”) and consumer survey data. We discussed the potential uses and limitations of each type.

On ARPU, we noted how not all publicly-traded ISPs report residential ARPU in their SEC filings (or the underlying revenue and subscriber figures necessary to calculate ARPU). We

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<sup>1</sup> See S. Derek Turner, “Price Too High and Rising: The Facts About America’s Broadband Affordability Gap,” Free Press (May 20, 2021), [https://www.freepress.net/sites/default/files/2021-05/prices\\_too\\_high\\_and\\_rising\\_free\\_press\\_report.pdf](https://www.freepress.net/sites/default/files/2021-05/prices_too_high_and_rising_free_press_report.pdf).

also noted that because ARPU is an average, movement at the extremes may obscure the change in median customer payments. ARPU movement also reflects absolute price increases (*e.g.*, when a customer comes off a promotion and their bill increases), as well as new and existing customers choosing higher-capacity, more expensive tiers. And we noted that tracking ISP-reported residential broadband ARPU (or revenues) requires the ISP to make a determination about how to allocate revenues in a multi-service bundle. For certain ISPs, this is transparent, as they advertise and bill each service separately. But this is not a universal practice.

We then reviewed the available residential broadband ARPU data and discussed how these figures have changed over time. We noted how residential broadband ARPU increases vary depending on the ISP, but that the subscriber-weighted values have increased consistently at more than double the rate of general economic inflation in recent years. We also noted that the first quarter of 2021 saw large ARPU increases at many leading ISPs, with a subscriber-weighted increase of near 5 percent in this single quarter.

We next discussed the use of consumer survey data, in particular the Bureau of Labor Statistics (“BLS”) Consumer Expenditure Survey (“CEX”) data. We reviewed recent CEX data on home internet services, and noted how the trajectory of this data reflects the movement in ARPU data, with increases at more than double the rate of general economic inflation. We noted that though the CEX data is a part of a high-quality survey, it nonetheless requires respondents to offer accurate information, which in the case of people purchasing bundles may introduce reporting error. And like ARPU, movements in the reported CEX values are impacted by both absolute price increase as well as customer migration to higher-priced, higher-capacity tiers.

We then discussed various other sources of pricing information. The most accessible and often-cited in media reports is the price an ISP lists in its advertisements and on its website. However, we stressed the disconnect between these advertised “headline” rates and the actual prices customers pay each month, individually and in the aggregate. We noted how providers in the home internet market, unlike those in the wireless market and many other consumer markets, advertise one headline price that may not reflect the actual price a customer pays, nor the average customer price. This is because of the ISP industry’s use of promotional rates which often balloon to an undisclosed or unknown-to-the-consumer level after an initial period. ISPs’ headline advertised prices also often obfuscate a myriad of below the line fees and conditions. These include mandatory equipment fees, mandatory “internet cost recovery fees,” data use fees, data overage fees, and autopay requirements.

We emphasized that these various obfuscations and surprise billing practices, which are unique to the home internet industry, are a critical component of how this market functions. Understanding these practices is just as important for policymakers’ efforts to measure market power as is the analysis of basic pricing data. We noted that even in markets with fiber/DOCSIS 3.1 competition, ISP pricing practices are often questionable. We discussed how in large markets like Los Angeles, Washington D.C. and Dallas, ISP headline prices will explode after the promotional period. For example, the price of Comcast’s 100 megabits per second tier in D.C. increases 170 percent after 12 months (for customers who sign up as of the time we reviewed its latest offering; rolloff prices vary depending on when the customer first signed up, and what the non-promotional price is at the time of the promotion expiration, as well as the willingness of the

ISP to offer further retention discounts. There is ample anecdotal data that indicates ISPs use customer dissatisfaction with rolloff price explosion to upsell customers into higher-speed, higher-priced tiers).

We then discussed the FCC’s Urban Rate Survey (“URS”) pricing data, noting its severe limitations and how bad-faith actors and industry lobbyists have misused this data. We explained that URS collects a very specific type of data: the non-promotional, non-discounted rate for standalone residential broadband service. We noted that this information for an unknown number of providers could be the “month-to-month rate available to a customer not eligible for introductory rates.”<sup>2</sup> We explained that the policy purpose of the URS is to have a very generous (generous to ISPs, that is) benchmark that the Commission uses to ensure USF-subsidized rural ISPs are not charging prices unreasonably out of line with urban rates. Though we again pointed out how this benchmark is set based on a published rate that does not reflect the actual price urban consumers are paying.

We noted how at the time the URS first appeared, only about one-tenth of residential broadband subscribers purchased standalone broadband, and presumably a sizable portion of these customers were not paying the month-to-month rates reported in URS. Even today, less than half of home internet customers purchase standalone broadband. We also emphasized that the expectation of the movement in the URS’s non-promotional standalone rates should be for them to decline over time, as demand for standalone broadband rapidly increased since 2015.

We then discussed the actual URS data (as opposed to the skewed indices constructed by using URS data), which indicates that the median, non-promotional price for standalone broadband (using the FCC-supplied URS weights) has increased 9 percent since 2015, equivalent to the rate of general inflation during that period. We pointed out how the non-promotional prices for standalone entry-level tiers increased at a higher rate of change, with the 25th percentile offering (measured by price) rising 20 percent since 2015. We emphasized however that the utility of the URS data for policy makers seeking to measure ISP market and pricing power is severely limited, and the data cannot be used to convey the change in actual market prices over time, because that is not the data the FCC collects in the URS.

The final type of pricing data we covered is quality-adjusted data. The most prominent source for this information is the BLS Internet Services Consumer Price Index (“CPI”) and the BLS Wireless CPI. These indices are constructed based on the BLS’ comprehensive analysis of published prices (*i.e.*, advertised, headline price, not price-paid by actual customers) and they are quality-adjusted index values. We discussed each series. We noted that in a competitive technology industry, the expectation should be for both the absolute price and the quality-adjusted price to fall. For example, the BLS CPI for personal computers declined by 39 percent between May 2011 and May 2021, and this decline was steady. During this same period the BLS CPI for Internet services increased by 4 percent, with large swings (*e.g.*, a 5 percent increase since May 2018, which followed a 4 percent decrease from May 2015).

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<sup>2</sup> See Federal Communications Commission, “FCC Urban Rates Survey Data Collection Filing Instructions,” at 26, [https://transition.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/urs\\_filing\\_instructions.pdf](https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/urs_filing_instructions.pdf) (last visited June 10, 2021).

We explained how the wireless CPI has generally declined year-over-year (with large dips after marketwide adoption of higher data allowances or unlimited data plans). But we noted that as of mid-2020, the wireless CPI spiked to a year-over-year increase above 4 percent, and has remained there ever since. This uptick is by far the largest increase in the wireless CPI since its creation in 1997, and its sustained-increased level is wholly unprecedented. Indeed, prior to July 2020, there have only been two months where this increase was above 1 percent (October 2002 and May 2003) in the 270 months in which the BLS has published year-over-year wireless CPI data. But the year-over-year increase has been above 3.4 percent in each of the 11 months of data reported since July 2020. We noted these unprecedented increases came shortly after the consummation of the T-Mobile/Sprint merger, though that correlation cannot definitively be posited as causation without far more study of the underlying causes for the sudden and sustained increase.

We then transitioned to a discussion of why understanding price and other customer-facing practices is important to telecom regulators. We emphasized that the home internet marketplace is one with high-fixed costs and nearly-insurmountable entry barriers. It is a market with a fixed potential customer base that is limited by population growth. Though the market has ample room to grow customers in the medium term, it is nearing saturation. We noted that in such a circumstance, for-profit carriers will face increased pressure to exercise their market and pricing powers, because of shareholders' expectation for a return on their investment (either through growth in the equity price, higher dividend payments, or a combination of the two).

We stressed that changes in pricing metrics alone do not fully convey whether or not a carrier has pricing power or is exercising market power. We noted that a firm could enjoy lower costs due to technology advances, and capture 100 percent of this surplus without changing price. With that in mind we discussed how ISP industry operating cash flow margins have steadily increased, and are well above the average values seen in other industrial sectors. We also discussed how capital investments (both absolute and as a percent of revenues) have declined for many firms, even as they upgraded their networks. Their declining costs, along with price increases and higher-priced tiers, have helped ISPs increase their profits.

We also discussed other non-price indicators of market power. Specifically, we noted the longstanding difference between the U.S. wireless and wired markets, with the former having historically robust prepaid and resale market segments, while there's almost a complete lack of "fVNOs" (fixed virtual network operators) in the wired market. This is the case despite the reality that many wired ISPs have more unused capacity than used (*i.e.*, typically less than half of the homes passed by a LEC ISP are using the line connected to their home).

Finally, we stressed that the Commission's most-pressing next step is to conduct actual market power and pricing power analysis, with an emphasis on distributional equity. This analysis requires granular data on the prices customers actually pay. It also requires a full understanding of the consumer experience, including the tradeoffs between "billboard" higher speed tiers and affordability. We stressed that there's a tendency in U.S. broadband market conversations to emphasize gigabit-level capacities without regard to the potential for greater consumer surplus from having a choice of lower-priced/lower-speed service tiers too. We noted

that since the U.S. residential broadband market is a duopoly, that there is a need for the Commission to be able to receive and act on allegations of unjust and unreasonable practices. And we urged the Commission to “first do no harm” by avoiding enacting any policies that would directly increase customers’ broadband bills.

Respectfully submitted,

S. Derek Turner, Research Director

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