

September 21, 2017

775

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write to express our concern that the Federal Communications Commission (FCC) has not provided the American people with an opportunity to comment on valuable evidence in the pending net neutrality proceeding. Although the Commission has undertaken an historic proceeding to undo the Open Internet Order, the FCC has failed to provide stakeholders with an opportunity to comment on the tens of thousands of filed complaints that directly shed light on proposed changes to existing net neutrality protections.

In May 2017, the National Hispanic Media Coalition (NHMC) filed a Freedom of Information Act (FOIA) request that uncovered over 47,000 Open Internet complaints, approximately 1,500 ombudsperson documents, and related documents that cut to the core of several questions posed by the Commission, including whether there exists “evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification,” or “conversely, what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers?”¹ While the Commission confirmed the existence of responsive documents in July, they did not start producing the complaints until a few days before the reply comment deadline in August, and only last week posted them on their website, preventing people from commenting on those complaints.

The public deserves an opportunity to review and analyze evidence that has a direct impact on the proceeding. Moreover, under the Administrative Procedures Act, the Commission has an obligation to consider all relevant data and be able to articulate a rational connection between the facts found and the choices made. An agency may not “promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”²

Accordingly, we respectfully request that you answer the following questions:

1. What efforts has the Commission made to analyze the Open Internet Order complaints, carrier responses, ombudsperson, and other documents?
2. Does the Commission plan to incorporate this evidence into the record? If so, when?

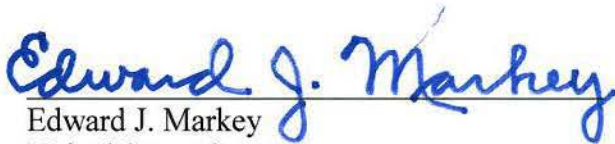
¹ *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60, paras. 50-51 (May 23, 2017).


² *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (2008).

3. Will the Commission issue a public notice with its own comment cycle, affording the public adequate time to review and analysis?


We appreciate your immediate attention to this matter. We look forward to hearing your response by October 11.

Sincerely,



Edward J. Markey
United States Senator


Charles E. Schumer
United States Senator


Ron Wyden
United States Senator


Al Franken
United States Senator


Richard Blumenthal
United States Senator


Elizabeth Warren
United States Senator


Chris Van Hollen
United States Senator


Brian Schatz
United States Senator


Kamala D. Harris
United States Senator

Cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your letter involving the Commission's Restoring Internet Freedom proceeding. On May 18, 2017, the Commission adopted the Restoring Internet Freedom Notice of Proposed Rulemaking (NPRM).¹ The NPRM solicited public input and, in response, received over 22 million comments—more than any other rulemaking in the Commission's history. In an *Order* adopted on December 14, the Commission determined that Title I of the Communications Act provided the best legal framework for both protecting Internet freedom and providing strong incentives for investment and innovation in the next-generation networks that could bring digital opportunity to all Americans. The *Order* was released on January 4, 2018.

The Commission grounded its decision to restore the bipartisan consensus on light-touch, Title I Internet regulation on a robust factual record. After conducting a thorough review of that record, the Commission addressed all significant issues that had been raised.

With respect to the 50,000 *informal* complaints you reference from the National Hispanic Media Coalition's FOIA request, we specifically addressed this issue in the *Order*. Notably, the Commission expended substantial resources to supply thousands of documents involving these complaints, and supplied them long before the record closed. Indeed, the record remained open for over three months after the documents were produced pursuant to the FOIA request, which provided ample opportunity for the National Hispanic Media Coalition to submit them into the record. And parties had ample opportunity to meaningfully review them and provide comment during the Commission's *ex parte* period, which ended when the Sunshine Period began—on December 7, 2017.

Because the Commission did not rely on these informal complaints as the basis for its determination, it does not have an obligation to incorporate materials relating to those complaints into the record.² Nonetheless, the Commission takes consumer complaints seriously and finds them valuable in informing us about potential violations of the Commission's rules. Since the *Title II Order*'s rules became effective in June 2015, the Consumer and Governmental Affairs

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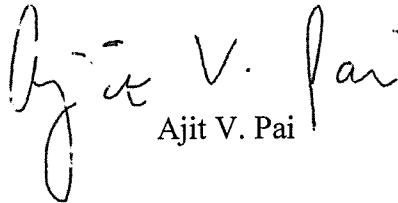
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Franken:

Thank you for your letter involving the Commission's Restoring Internet Freedom proceeding. On May 18, 2017, the Commission adopted the Restoring Internet Freedom Notice of Proposed Rulemaking (NPRM).³ The NPRM solicited public input and, in response, received over 22 million comments—more than any other rulemaking in the Commission's history. In an *Order* adopted on December 14, the Commission determined that Title I of the Communications Act provided the best legal framework for both protecting Internet freedom and providing strong incentives for investment and innovation in the next-generation networks that could bring digital opportunity to all Americans. The *Order* was released on January 4, 2018.

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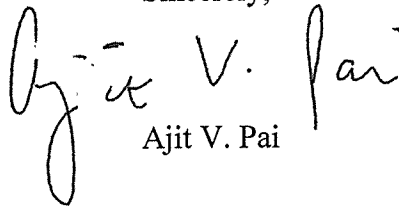
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Kamala D. Harris
United States Senate
B40B Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Harris:

Thank you for your letter involving the Commission's Restoring Internet Freedom proceeding. On May 18, 2017, the Commission adopted the Restoring Internet Freedom Notice of Proposed Rulemaking (NPRM).⁵ The NPRM solicited public input and, in response, received over 22 million comments—more than any other rulemaking in the Commission's history. In an *Order* adopted on December 14, the Commission determined that Title I of the Communications Act provided the best legal framework for both protecting Internet freedom and providing strong incentives for investment and innovation in the next-generation networks that could bring digital opportunity to all Americans. The *Order* was released on January 4, 2018.

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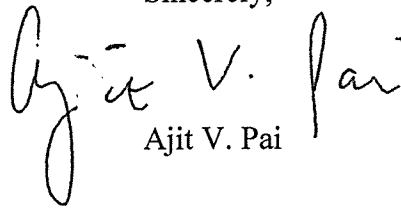
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

Thank you for your letter involving the Commission's Restoring Internet Freedom proceeding. On May 18, 2017, the Commission adopted the Restoring Internet Freedom Notice of Proposed Rulemaking (NPRM).⁷ The NPRM solicited public input and, in response, received over 22 million comments—more than any other rulemaking in the Commission's history. In an *Order* adopted on December 14, the Commission determined that Title I of the Communications Act provided the best legal framework for both protecting Internet freedom and providing strong incentives for investment and innovation in the next-generation networks that could bring digital opportunity to all Americans. The *Order* was released on January 4, 2018.

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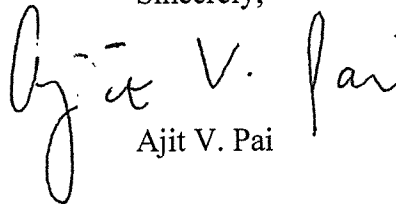
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Brian Schatz
United States Senate
722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schatz:

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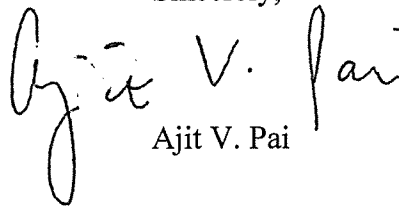
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Charles E. Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer:

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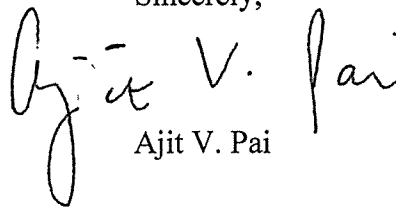
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OFFICE OF
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January 19, 2018

The Honorable Chris Van Hollen
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B40C Dirksen Senate Office Building
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Dear Senator Van Hollen:

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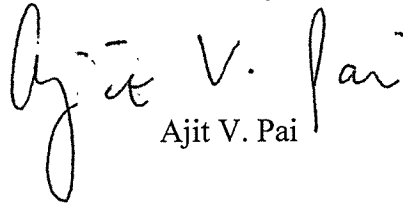
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Staff from the Consumer and Governmental Affairs Bureau review all informal complaints received by the Commission and work with staff in the Enforcement Bureau who also monitor media reports and conduct additional research to identify complaint trends so the Commission can best target its enforcement capabilities toward entities that have a pattern of violating the Communications Act and the Commission's rules, regulations, and orders. In addition to this review, quantitative data about all of the informal complaints received by the Commission, as well as the general subject matter of the complaints, is publicly available online at the Commission's Consumer Complaint Data Center. Actual informal complaints are not typically released in order to protect filers' privacy interests.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your letter involving the Commission's Restoring Internet Freedom proceeding. On May 18, 2017, the Commission adopted the Restoring Internet Freedom Notice of Proposed Rulemaking (NPRM).¹⁵ The NPRM solicited public input and, in response, received over 22 million comments—more than any other rulemaking in the Commission's history. In an *Order* adopted on December 14, the Commission determined that Title I of the Communications Act provided the best legal framework for both protecting Internet freedom and providing strong incentives for investment and innovation in the next-generation networks that could bring digital opportunity to all Americans. The *Order* was released on January 4, 2018.

The Commission grounded its decision to restore the bipartisan consensus on light-touch, Title I Internet regulation on a robust factual record. After conducting a thorough review of that record, the Commission addressed all significant issues that had been raised.

With respect to the 50,000 *informal* complaints you reference from the National Hispanic Media Coalition's FOIA request, we specifically addressed this issue in the *Order*. Notably, the Commission expended substantial resources to supply thousands of documents involving these complaints, and supplied them long before the record closed. Indeed, the record remained open for over three months after the documents were produced pursuant to the FOIA request, which provided ample opportunity for the National Hispanic Media Coalition to submit them into the record. And parties had ample opportunity to meaningfully review them and provide comment during the Commission's *ex parte* period, which ended when the Sunshine Period began—on December 7, 2017.

Because the Commission did not rely on these informal complaints as the basis for its determination, it does not have an obligation to incorporate materials relating to those complaints into the record.¹⁶ Nonetheless, the Commission takes consumer complaints seriously and finds them valuable in informing us about potential violations of the Commission's rules. Since the *Title II Order*'s rules became effective in June 2015, the Consumer and Governmental Affairs

¹⁵ See *Restoring Internet Freedom*, Notice of Proposed Rulemaking, 32 FCC Rcd 4434 (2017) (*Internet Freedom NPRM*).

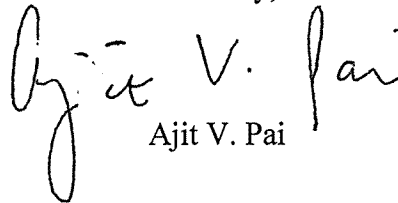
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2018

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

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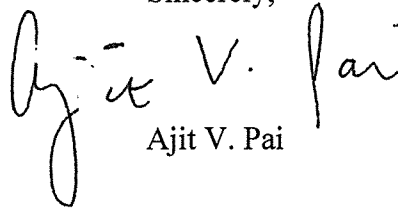
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