



October 13, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Ex Parte* disclosure pursuant to 47 C.F.R. § 1.1206(b) in WC Docket No. 17-108  
*Restoring Internet Freedom*

Dear Ms. Dortch:

On October 11, 2017, Gloria Tristani, Carmen Scurato, and I of the National Hispanic Media Coalition (NHMC) met with Claude Aiken, Commissioner Clyburn's Wireline Advisor, regarding the above-referenced proceeding.

Ms. Scurato provided background on NHMC's Joint Motion filed on September 18, 2017, to incorporate consumer complaint and ombudsperson documents into the record. NHMC's Freedom of Information Act (FOIA) request uncovered over 47,000 consumer complaints submitted since implementation of the *2015 Open Internet Order*. The Commission dutifully produced many responsive documents; however, a significant number of carrier responses, consumer rebuttals, emails, and email attachments were omitted from those productions and remain in the Commission's exclusive possession. Further, the Commission does not appear to have produced any interactions between consumers and the Commission through the [ombudsperson@fcc.gov](mailto:ombudsperson@fcc.gov) email address since the prior ombudsperson stepped down earlier this year. These omissions, which represent a clear failure by the Commission under its FOIA obligations, also make it impossible to conclude how the underlying complaints were ultimately resolved.

Ms. Scurato also explained why this evidence warrants a public notice and a new comment cycle. First, the evidence was neither addressed in Notice of Proposed Rulemaking (NPRM) nor made available for review until after the comment and reply comment deadlines expired. The public did not have adequate notice or any meaningful opportunity to comment. Second, in the NPRM, the Commission explicitly requested evidence of consumer harm or benefit, and proposed to eliminate the ombudsperson role. Information within the FOIA production provides answers to these questions, including illustrations of how the ombudsperson helped broker resolutions for consumers, and admissions of misconduct and redress.

I stated that the Commission has not disclosed any efforts to analyze the documents.<sup>1</sup> Before eliminating rules that have only been in place for two years, the Commission has an obligation to conduct a thorough analysis of evidence critical to the proceeding and should not rely on conclusions from any type of cursory review. And as stated earlier, much of this evidence still remains in the Commission's exclusive possession.

Ms. Tristani explained that contrary to assertions raised by other stakeholders that the informal complaints cannot be relevant because they did not lead to enforcement actions, and that the Commission has relied on informal complaints in other contexts.<sup>2</sup> She reiterated that issuing a public notice and setting a new comment cycle would give the public an opportunity to analyze new evidence that has a direct impact on the proceeding.

I respectfully submit this notice of ex parte meeting pursuant to 47 C.F.R. § 1.1206(b).

Sincerely,



Francella Ochillo  
Policy Counsel

CC: Claude Aiken

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<sup>1</sup> See Response to NHMC FOIA Request (Sept. 14, 2017), <https://www.fcc.gov/response-nhmc-foia-request> (FCC published the NHMC FOIA materials with the following disclaimer, "These documents represent information provided by the public that has not been verified by the FCC.").

<sup>2</sup> See, e.g., *In the Matter of T-Mobile USA, Inc.*, 31 F.C.C. Rcd. 11410 (F.C.C. 2016); *In the Matter of AT&T Mobility, LLC.*, 30 F.C.C. Rcd. 6613 (F.C.C. 2015).