



National Hispanic
Media Coalition

October 13, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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) and our legal counsel James Horwood and Jeffrey Bayne from Spiegel & McDiarmid LLP, met with Kris Monteith, Daniel Kahn, and Madeleine Findley from the Wireline Competition Bureau and John Williams and Kristine Fargotstein from the Office of General Counsel 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 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. NHMC provided some examples of potential violations flagged through the ombudsperson emails that illustrate concerns that a carrier is blocking selected data content on low cost plans,¹ and a case where a provider was systematically providing inferior service to rural areas at high cost.²

Further, I stated that the Commission has not disclosed any efforts to analyze the documents.³ 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 started earlier, much of this evidence still remains in the Commission's exclusive possession.

Ms. Scurato also noted that the "resolution" column in the enhanced spreadsheets provided by the Commission were all left blank, further underscoring the need for the Commission to produce all 18,000 carrier responses. She also explained how she sent several emails to OGC regarding the carrier responses, as well as inquiring about additional missing documents, but never received an email or call in response.⁴ NHMC requested the carrier responses in its original FOIA request on May 1, 2017, and was told on July 14, 2017 that the production of materials would "place an unreasonable burden on the agency" based on the combination of informal consumer complaints *and* carrier responses for a total of 65,000 documents.⁵ This is proof that the Commission was well aware that NHMC's FOIA request clearly included all carrier responses.

Contrary to assertions raised by other stakeholders that the informal complaints cannot be relevant because they did not lead to enforcement actions,⁶ Ms. Tristani explained that the Commission has relied on informal complaints in other contexts.⁷ The

¹ See, e.g., FCC, Response to NHMC FOIA Request, FCC at 166-67, 177-87 (Aug. 24, 2017) ("Ombudsperson Emails 2 of 2"), <https://www.fcc.gov/sites/default/files/foia-ombudsperson-emails-08242017-577-part-2.pdf>.

² See Ombudsperson Emails 1 of 2 at 116-120. ("They claim we are rural and not worth the investment.").

³ See Response to NHMC FOIA Request (Sept. 17, 2017), <https://www.fcc.gov/response-nhmc-foia-request> (FCC published the FOIA materials with the following disclaimer, "These documents represent information provided by the public that has not been verified by the FCC.").

⁴ See Attachment A. Emails from Carmen Scurato to Kristine Fargotstein and Ryan Yates on August 21, 2017 and September 14, 2017.

⁵ See Attachment B. Email from Mike Hennigan to Carmen Scurato, July 14, 2017.

⁶ See NCTA and USTelecom, Opposition to Motion Regarding Informal Complaints, WC Docket No. 17-108 (filed Sept. 28, 2017).

⁷ 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).

Commission's website states that informal consumer complaints are valuable because they help the Commission keep a pulse on what consumers are experiencing and may lead to investigations.⁸ Finally, Mr. Horwood responded to another assertion that, indeed, NHMC could supplement the record with analysis in ex parte filings. However, there is no certainty as to how long the docket will remain open. Mr. Bayne 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: Kris Monteith
Daniel Kahn
Madeleine Findley
John Williams
Kristine Fargotstein

⁸ FCC Consumer Complaint Center, Frequently Asked Questions, <https://consumercomplaints.fcc.gov/hc/en-us/articles/205082880-Filing-a-Complaint-Questions-and-Answers> (last visited Oct. 13, 2017)(stating that the FCC does “not resolve individual complaints...However, the collective data we receive helps us keep a pulse on what consumers are experiencing, may lead to investigations and serves as a deterrent to the companies we regulate.”).

Attachment A

Emails from Carmen Scurato to Kristine Fargotstein and Ryan Yates
August 21, 2017 and September 14, 2017.

From: Carmen Scurato cscurato@nhmc.org
Subject: Follow-up on NHMC's FOIA Request
Date: August 21, 2017 at 7:28 AM
To: kristine.fargotstein@fcc.gov
Cc: Ryan Yates ryan.yates@fcc.gov
Bcc: Gloria Tristani gtristani@nhmc.org, Francella Ochillo fochillo@nhmc.org



Hi Kristine,

Thank you for reaching out to me this past Friday. I wanted to circle back on something we discussed over the phone, mainly the 18,000 carrier responses that correspond with the 47,000+ open internet consumer complaints. I am attaching the email from Mike Hennigan that provided us with this number and confirming that this was part of NHMC's May 1, 2017 FOIA request: "As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses)." This number was also mentioned on a few calls as well.

The May 1, 2017 FOIA request asked for several data points, as well as any attachments uploaded by the consumer, and the resolution of those complaints, including the carrier/provider response letters. The request asked for these documents because it is necessary to understand not only the basis of the consumers' complaints, but also how the complaints were resolved by the carriers - and whether any consumers challenged the carrier's response.

Mike Hennigan did not provide a tally of the amount of possible attachments - but I flagged that a few of the 1,000 complaints he provided on June 21 had references/placeholders for attachments.

I would appreciate if you could confirm that now that we are moving forward with all 47,000+ consumer complaints, that we will be receiving any attachments uploaded by consumers, corresponding carrier responses, and any consumer responses to the carriers. I'm looking forward to your response.

Best,
Carmen

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 14, 2017 at 4:35 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov

Hello Ms. Scurato, this is a follow-up to our telephone conversation on July 5, 2017, regarding your requests for complaints and carrier responses related to the "2015 Open Internet Order." As you are aware, our search located approximately 47,000 documents which included various keyword searches (i.e., speed, billing, blocking, throttling, etc.) and approximately 18,000 carrier responses.

As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses). This would require a vast amount of resources for CGB to process, as each document would need to be individually reviewed to redact any personally identifiable information contained therein. CGB staff initially estimate that processing such a request would require over 2,000 staff hours. Also, extracting all these records would tremendously impact the operation of the Zendesk database, and the ability of Zendesk to process incoming complaints and any subsequent responses from CGB would be hindered. For these reasons, your FOIA request for all complaints and carrier responses related to the Open Internet Order would place an unreasonable burden upon the agency.

Therefore, in an attempt to narrow the scope of your requests, we are offering you an additional 2,000 sample complaints related to your requests, along with the carrier responses (approximately 900 pages), approximately 1,500 emails, and Excel spreadsheets with all approximately 47,000 complaint numbers and the additional data fields you requested. If you agree to this offer, we anticipate we can provide the additional documents to you by September 1, 2017.

Please respond to this offer by close of business on July 28, 2017, advising us of your willingness to narrow the scope of your requests as outlined above. If we do not hear back from you by the

due date, we will assume that you decline the Commission's offer to narrow the request.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

Carmen Scurato / Director, Policy & Legal Affairs
cscurato@nhmc.org / (202) 596-8997 / Washington, DC

From: Carmen Scurato cscurato@nhmc.org
Subject: Re: Follow-up on NHMC's FOIA Request
Date: September 14, 2017 at 11:17 AM
To: kristine.fargotstein@fcc.gov
Cc: Ryan Yates ryan.yates@fcc.gov
Bcc: Gloria Tristani gtristani@nhmc.org, Francella Ochillo fochillo@nhmc.org



Hi Kristine,

I wanted to follow-up with you today to address some issues I have come across while reviewing the documents.

First, the ombudsperson emails do not include attachments. Attachments to emails are not only an integral part to emails between consumers and the ombudsperson, but attachment are also part of the request - since it asked for "all records."

Second, with the ombudsperson emails, I've noticed that the last one was from March 2017. However, my understanding is that the ombudsperson email address continues to be active - even after the last ombudsperson left the role earlier this year. As worded, the request would cover all emails addressed to the ombudsperson, or when consumers attempted to reach the ombudsperson. Based on this, I would like confirmation that you have reached out to individuals at the FCC that may be responding to such emails, and that those emails are included that as part of the production.

Third, could you please confirm that we will be receiving all carrier responses?

Finally, I was hoping you could clarify when you believe the production will be complete. Last week on 9/5 you mentioned anticipating another large production by the end of the week, but I have not received that production.

I look forward to your response.

Best,
Carmen

Carmen Scurato / Director, Policy & Legal Affairs
cscurato@nhmc.org / (202) 596-8997 / Washington, DC



National Hispanic
Media Coalition



On Aug 21, 2017, at 7:28 AM, Carmen Scurato <cscurato@nhmc.org> wrote:

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<07.14.2017 FOIA FCC Email .pdf>

Attachment B

Email from Mike Hennigan to Carmen Scurato July 14, 2017.

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 14, 2017 at 4:35 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov

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Sincerely,

Mike Hennigan
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