

May 21, 2018

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

Dear Chairman Pai:

Late last year, the identities of as many as two million Americans were stolen and used to file fake comments during the Federal Communications Commission's (FCC's) comment period for the net neutrality rule. We were among those whose identities were misused to express viewpoints we do not hold. We are writing to express our concerns about these fake comments and the need to identify and address fraudulent behavior in the rulemaking process.

The first three words in our Constitution are, "We the People." The federal rulemaking process is an essential part of our democracy and allows Americans the opportunity to express their opinions on how government agencies decide important regulatory issues. As such, we are concerned about the aforementioned fraudulent activity. We need to prevent the deliberate misuse of Americans' personal information and ensure that the FCC is working to protect against current and future vulnerabilities in its system.

Simple security measures should be employed to restore trust in the rulemaking process. For example, a CAPTCHA, or Completely Automated Public Turing test to tell Computers and Humans Apart, could be used in future public comment submissions. This technology would ensure that a human, not a machine, is using a computer to submit comments.

We encourage the FCC to determine who facilitated these fake comments. While we understand and agree with the need to protect individuals' privacy, we request that the FCC share with the public the total number of fake comments that were filed.

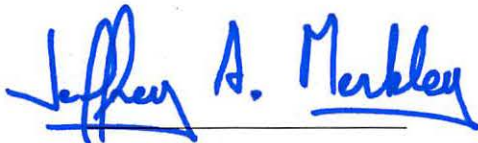
We also request that the FCC answer the following questions regarding those fake comments:

- How is the FCC working with the Department of Justice to identify those who submitted fake comments?
- Is the FCC working with state attorneys general to determine whether state crimes were broken when these identities were stolen?
- What measures is the FCC taking to ensure this does not happen in the future?
- How can the FCC track down who misused the identities of two million Americans?
- Can the FCC determine how many of the fake comments on record were submitted by bots, a software application that runs automated tasks (scripts) over the Internet?

- Has the FCC considered using a CAPTCHA, or other security technology, to prevent fraudulent machine input?
- Is the FCC aware of any foreign government submitting fake comments and for what purpose?

Thank you for your time and attention to this important matter, and we look forward to reviewing your responses to the above questions.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey A. Merkley". The signature is written in a cursive style with a horizontal line underneath.

Jeffrey A. Merkley
United States Senator

A handwritten signature in blue ink that reads "Pat Toomey". The signature is written in a cursive style with a horizontal line underneath.

Pat Toomey
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 6, 2018

The Honorable Jeff Merkley
United States Senate
313 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your letter regarding the record in the *Restoring Internet Freedom* rulemaking proceeding and the Federal Communications Commission's Electronic Comment Filing System (ECFS). I could not agree more with your view about the importance of providing Americans with an opportunity to express their opinions in the rulemaking process. For that reason, one of my first actions as Chairman was to start a transparency initiative to publicly release the draft text of meeting items at least three weeks before the Commission votes on them. This process helps ensure that the public has a full and fair opportunity to understand our proposals and participate in our rulemakings, including the *Restoring Internet Freedom* proceeding.

I furthermore agree with you that it is troubling that some bad actors submitted comments using false names. Indeed, like you, comments were submitted in my name and my wife's name that reflect viewpoints we do not hold.

I can assure you, however, that the Commission does not make policy decisions merely by tallying the comments on either side of a proposal to determine what position appears to have greater support, nor does it attribute greater weight to comments based solely on the submitter's identity. And the Commission is grateful to all commenters who engaged substantively with the legal and public policy questions presented in this important rulemaking. Indeed, a review of the *Restoring Internet Freedom Order* clearly demonstrates that the Commission's decision was based on a careful review of the relevant law and facts.

Going forward, however, I agree with you that the FCC should take steps to improve ECFS. In addition to being technologically behind the times, the system that this Commission inherited from the prior Administration was designed to make it as easy as possible to file comments. But while facilitating widespread public participation in the rulemaking process is a worthy and important goal, we believe that we can accomplish that goal while at the same time updating our system to minimize the potential for abusive behavior.

For this reason, the FCC is planning to rebuild and re-engineer ECFS and has submitted a request to reprogram the funds necessary to undertake this project. This reprogramming request is pending before the House and Senate Appropriations Committees, and we hope they will enable us to make important improvements by approving it soon. Among other upgrades, if we receive the necessary funding, we will seek to redesign ECFS to institute appropriate safeguards

against abusive conduct. For instance, I agree with you that the Commission should—and if we receive the requisite approval, will—incorporate CAPTCHA or a similar mechanism to prevent bots from submitting comments.

With respect to your other inquiries, the FCC does not have any information regarding whether any “fake” comments were submitted by foreign governments, nor can we verify the total number of comments that may have originated from bots. Similarly, we do not have a specific total number of fake comments that were filed. We do believe, however, that at least eight million pro-Title II comments were not filed with accurate names and/or addresses. For example, 7,568,949 identical comments consisted of a single, pro-Title II sentence: “I am in favor of strong net neutrality under Title II of the Telecommunications Act.” These identical comments, however, are associated with only 50,508 unique names and street addresses, and the vast majority of those street addresses do not appear to exist. Moreover, 7,562,080 of these comments come from 45,001 “individuals” using email addresses from fakemailgenerator.com and submitting the same comment more than 90 times each. In another example, over 447,000 short comments supporting Title II purported to come from “individuals” residing at the same address in Chelyabinsk, Russia: улица Полевая кв. 391 Челябинск, Россия.

I should note that because the Commission has sought to encourage robust public dialogue in its public proceedings, it has not adopted a rule regarding false statements in the rulemaking context. As the Commission stated 15 years ago, it “do[es] not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties’ statements.” *In re Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, GN Docket No. 02-37, Report and Order, 18 FCC Rcd 4016, 4021-22, para. 13 (2003). Accordingly, the Commission has not asked commenters to provide identity verification or expended the enormous resources necessary to verify commenters’ identities, thus leading to our inability to provide more specific answers to certain of your questions.

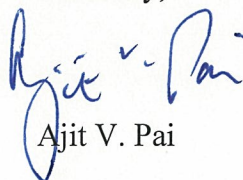
That said, the Commission has taken steps to address the possibility that a commenter’s identity will be misused. For example, in the *Restoring Internet Freedom* docket, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded by inviting them to file a statement to that effect in the public record.

The Commission has also responded, as appropriate, to inquiries like this one from Members of Congress interested in the *Restoring Internet Freedom* docket. Matters involving investigating fake comments purportedly filed by individuals raise issues of potential violations of criminal law. These matters are outside the jurisdiction of the FCC and are handled by law enforcement entities, such as the U.S. Department of Justice. The FCC does not comment on any such investigations, and I consequently cannot address that aspect of your letter.

Page 3—The Honorable Jeff Merkley

I appreciate your interest in this matter and look forward to continuing to work with Congress to ensure that the Commission has the resources necessary to improve and maintain its ECFS portal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ajit V. Pai". The signature is stylized with a large initial "A" and a long horizontal stroke.

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 6, 2018

The Honorable Patrick J. Toomey
United States Senate
248 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Toomey:

Thank you for your letter regarding the record in the *Restoring Internet Freedom* rulemaking proceeding and the Federal Communications Commission's Electronic Comment Filing System (ECFS). I could not agree more with your view about the importance of providing Americans with an opportunity to express their opinions in the rulemaking process. For that reason, one of my first actions as Chairman was to start a transparency initiative to publicly release the draft text of meeting items at least three weeks before the Commission votes on them. This process helps ensure that the public has a full and fair opportunity to understand our proposals and participate in our rulemakings, including the *Restoring Internet Freedom* proceeding.

I furthermore agree with you that it is troubling that some bad actors submitted comments using false names. Indeed, like you, comments were submitted in my name and my wife's name that reflect viewpoints we do not hold.

I can assure you, however, that the Commission does not make policy decisions merely by tallying the comments on either side of a proposal to determine what position appears to have greater support, nor does it attribute greater weight to comments based solely on the submitter's identity. And the Commission is grateful to all commenters who engaged substantively with the legal and public policy questions presented in this important rulemaking. Indeed, a review of the *Restoring Internet Freedom Order* clearly demonstrates that the Commission's decision was based on a careful review of the relevant law and facts.

Going forward, however, I agree with you that the FCC should take steps to improve ECFS. In addition to being technologically behind the times, the system that this Commission inherited from the prior Administration was designed to make it as easy as possible to file comments. But while facilitating widespread public participation in the rulemaking process is a worthy and important goal, we believe that we can accomplish that goal while at the same time updating our system to minimize the potential for abusive behavior.

For this reason, the FCC is planning to rebuild and re-engineer ECFS and has submitted a request to reprogram the funds necessary to undertake this project. This reprogramming request is pending before the House and Senate Appropriations Committees, and we hope they will enable us to make important improvements by approving it soon. Among other upgrades, if we receive the necessary funding, we will seek to redesign ECFS to institute appropriate safeguards

against abusive conduct. For instance, I agree with you that the Commission should—and if we receive the requisite approval, will—incorporate CAPTCHA or a similar mechanism to prevent bots from submitting comments.

With respect to your other inquiries, the FCC does not have any information regarding whether any “fake” comments were submitted by foreign governments, nor can we verify the total number of comments that may have originated from bots. Similarly, we do not have a specific total number of fake comments that were filed. We do believe, however, that at least eight million pro-Title II comments were not filed with accurate names and/or addresses. For example, 7,568,949 identical comments consisted of a single, pro-Title II sentence: “I am in favor of strong net neutrality under Title II of the Telecommunications Act.” These identical comments, however, are associated with only 50,508 unique names and street addresses, and the vast majority of those street addresses do not appear to exist. Moreover, 7,562,080 of these comments come from 45,001 “individuals” using email addresses from fakemailgenerator.com and submitting the same comment more than 90 times each. In another example, over 447,000 short comments supporting Title II purported to come from “individuals” residing at the same address in Chelyabinsk, Russia: улица Полевая кв. 391 Челябинск, Россия.

I should note that because the Commission has sought to encourage robust public dialogue in its public proceedings, it has not adopted a rule regarding false statements in the rulemaking context. As the Commission stated 15 years ago, it “do[es] not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties’ statements.” *In re Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, GN Docket No. 02-37, Report and Order, 18 FCC Rcd 4016, 4021-22, para. 13 (2003). Accordingly, the Commission has not asked commenters to provide identity verification or expended the enormous resources necessary to verify commenters’ identities, thus leading to our inability to provide more specific answers to certain of your questions.

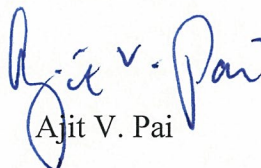
That said, the Commission has taken steps to address the possibility that a commenter’s identity will be misused. For example, in the *Restoring Internet Freedom* docket, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded by inviting them to file a statement to that effect in the public record.

The Commission has also responded, as appropriate, to inquiries like this one from Members of Congress interested in the *Restoring Internet Freedom* docket. Matters involving investigating fake comments purportedly filed by individuals raise issues of potential violations of criminal law. These matters are outside the jurisdiction of the FCC and are handled by law enforcement entities, such as the U.S. Department of Justice. The FCC does not comment on any such investigations, and I consequently cannot address that aspect of your letter.

Page 3—The Honorable Patrick J. Toomey

I appreciate your interest in this matter and look forward to continuing to work with Congress to ensure that the Commission has the resources necessary to improve and maintain its ECFS portal.

Sincerely,

A handwritten signature in blue ink, reading "Ajit V. Pai". The signature is stylized with a large initial "A" and a long horizontal stroke extending to the right.

Ajit V. Pai