

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Restoring Internet Freedom

WC Docket No. 17-108

**JOINT MOTION TO MAKE INFORMAL OPEN
INTERNET COMPLAINT DOCUMENTS PART OF
THE RECORD AND TO SET A PLEADING CYCLE
FOR COMMENT ON THEM**

Pursuant to 5 U.S.C. § 553(c) and 47 C.F.R. § 1.415(d), the National Hispanic Media Coalition (“NHMC”) and the organizations listed in the signature blocks below (collectively, “Movants”) request that the Federal Communications Commission (“FCC” or “Commission”) *first* incorporate into the record in this proceeding certain documents directly relevant to the *Internet NPRM*¹ that were not made available during the original pleading cycle, and *second* establish a new pleading cycle to allow for public analysis and comment on them. The documents at issue are the approximately 50,000 open internet consumer complaints; 18,000 carrier responses; 1,500 documents related to the open internet ombudsperson’s interactions with internet users; and 10 spreadsheets containing data for all customer complaints that NHMC asked the Commission to produce in its Freedom of Information Act (“FOIA”) requests filed between May 1 and May 17, 2017.

¹ Notice of Proposed Rulemaking, 32 FCC Rcd. 4434 (May 23, 2017) (“*Internet NPRM*”).

BACKGROUND

On May 18, 2017, the FCC adopted the *Internet NPRM* proposing, among other things, to reverse the Commission's 2015 *Open Internet Order* and to reclassify broadband Internet access service as a Title I information service. The NPRM sought comment on several questions related to the positive and negative impacts to consumers resulting from the reclassification:

- “Is there evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification for broadband Internet access service? Is there any evidence that the likelihood of these events occurring decreased with the shift to Title II?”²
- “[W]hat, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers?”³
- “Do we have reason to think providers would behave differently today if the Commission were to eliminate the no-blocking rule?”⁴
- “How does the [no-throttling] rule benefit consumers? . . . When is ‘throttling’ harmful to consumers?”⁵
- “Would the original transparency rule, which has been continuously operational since it came into effect following adoption of the *Open Internet Order*, be sufficient to protect consumers?”⁶
- “Is the role of an ombudsperson necessary to protect consumers, business, and other organizations’ interests?”⁷

² *Id.*, ¶ 50.

³ *Id.*, ¶ 51.

⁴ *Id.*, ¶ 80.

⁵ *Id.*, ¶ 83.

⁶ *Id.*, ¶ 90.

⁷ *Id.*, ¶ 97.

- “What have been the benefits and drawbacks of the complaint procedures instituted in 2010 and 2015? . . . Can we infer that parties heeded the Commission’s encouragement to “resolve disputes through informal discussions and private negotiations” without Commission involvement, except through the informal complaint process? Does the lack of formal complaints indicate that dedicated, formal enforcement procedures are unwarranted?”⁸

Although the Commission has in its possession roughly 50,000 informal consumer complaints; 18,000 carrier responses; and 1,500 ombudsperson emails that are directly relevant to the Commission’s enforcement of the *Open Internet Order*, it did not mention these documents in the *Internet NPRM*, nor did it make them available for public analysis and comment during the original pleading cycle. To respond to the questions posed by the *Internet NPRM*, NHMC submitted several FOIA requests to the FCC. NHMC’s first FOIA request, submitted to the Commission’s Consumer & Governmental Affairs Bureau (“CGB”) on May 1, 2017—4 days after the draft NPRM was released—sought “[a]ll documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality,”⁹ and “[a]ll records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations[] sought guidance from the ombudsperson.”¹⁰ NHMC submitted subsequent FOIA requests on May 5, 2017, and May 17, 2017 seeking additional data regarding internet complaints submitted by consumers to the Commission.¹¹

⁸ *Id.*, ¶ 98.

⁹ NHMC May 1 FOIA Request at 1 (Attachment 1).

¹⁰ *Id.* at 2.

¹¹ NHMC May 5 and May 17 FOIA Requests (Attachments 2, 3, 4).

NHMC and CGB exchanged phone calls and emails over the next few weeks to narrow the scope of the requests,¹² and CGB's first formal response to NHMC's FOIA requests occurred on June 20, 2017. The initial production consisted of incomplete samples of customer complaints and carrier responses and did not include an enhanced spreadsheet of data for all the customer complaints.¹³ In a letter dated June 26, 2017, NHMC informed CGB that the production did not adequately respond to NHMC's FOIA request, and asked CGB to honor the original request for all of the informal consumer complaints, carrier responses, and ombudsperson documents.¹⁴

On July 7, 2017, NHMC moved for an extension of time to file comments and reply comments on the *Internet NPRM*. The motion requested that the Commission produce the requested consumer complaints, carrier responses, and ombudsperson documents, and that the Commission extend the comment deadline to 60 days after the production in order to permit NHMC and other interested parties time to analyze the evidence and comment accordingly. NHMC reminded the Commission that the *Internet NPRM* "ignores a substantial amount of data that is critical to evaluating the success of the *Open Internet Order*, and willfully neglects to mention or mischaracterizes two years of enforcement that occurred under the rules."¹⁵ NHMC also pointed out that the NPRM's critical questions regarding the effectiveness of the rules established by the *Open Internet Order* could not be answered by members of the public because the

¹² NHMC agreed that it would accept FCC's production of 100 samples of each category of the description fields, attachments, and provider responses for the informal complaints, and that FCC would produce an enhanced spreadsheet with data points that could be cross-referenced with publicly available data.

¹³ Letter from Nancy Stevenson, CGB, to Carmen Scurato, NHMC (June 20, 2017) (Attachment 5).

¹⁴ Letter from Carmen Scurato, NHMC, to Stephanie Kost, FCC (June 26, 2017) (Attachment 6).

¹⁵ NHMC, Motion for Extension of Time, 5, (July 7, 2017).

information relevant to those questions—information contained in the informal complaints, carrier responses, and ombudsperson documents—remained in the Commission’s exclusive possession.¹⁶

On July 14, 2017, CGB offered to produce an additional sample of 2,000 informal consumer complaints, approximately 900 pages of carrier responses, 1,500 ombudsperson emails, and additional spreadsheets containing data pertaining to all documents responsive to NHMC’s FOIA requests.¹⁷ Shortly thereafter, on July 17, 2017, the Commission denied NHMC’s motion for an extension of time. Acknowledging the existence of over 47,000 complaints and 1,500 related emails, the Commission’s order stated that NHMC’s FOIA requests did not justify such a “lengthy delay” in the comment cycle, and that “Commission staff could have denied NHMC’s FOIA request on its face as unreasonably burdensome.”¹⁸

NHMC responded to CGB’s July 14 offer for a narrowed FOIA production on July 27, 2017. NHMC accepted the Commission’s offer for the 1,500 ombudsperson emails and enhanced spreadsheets, but rejected its offer for only 2,000 of the consumer complaints with 900 pages of carrier responses. NHMC explained to CGB that “[t]here is a need for the Commission to release, and for the public to be able to review, all of the more than 47,000 open Internet complaints in order to protect the integrity of the record in the pending *Internet NPRM* proceeding.”¹⁹ NHMC also clarified that it did not waive

¹⁶ *Id.* at 7-8.

¹⁷ E-mails from Mike Hennigan, CGB, to Carmen Scurato, NHMC (July 14, 2017 and July 18, 2017) (Attachment 7).

¹⁸ Order, 32 FCC Rcd. 5650, 5651 (July 17, 2017).

¹⁹ Letter from Carmen Scurato, NHMC, to Mike Hennigan, CGB at 1 (July 27, 2017) (Attachment 8).

any of its rights to appeal the Commission’s decision on its FOIA requests, and that the Commission “failed to adequately assess the more than 47,000 open Internet-related complaints[,]their impact on the issues raised and the accuracy of some of the tentative conclusions reached in the *Internet NPRM*.”²⁰

On August 1, 2017 a coalition of public interest and consumer groups moved to extend the reply comment deadline in the *Internet NPRM* proceeding.²¹ The Commission granted that motion, extending the reply comment deadline to August 30, 2017.²²

By August 10, 2017 NHMC still had not received a reply from CGB or any other Commission office regarding NHMC’s July 27 response to CGB. NHMC therefore filed a letter in the *Internet NPRM* docket requesting an update and once again emphasizing that the information requested “is critical to the Net Neutrality proceeding and must be released for the public to have adequate time to review before the comment deadline expires.”²³

On August 18, 2017—over three-and-a-half months after NHMC’s FOIA request and only 12 days before the *Internet NPRM* reply comment deadline—the Commission

²⁰ *Id.* at 2.

²¹ Public Knowledge et al., Motion for Extension of Time to File Reply Comments, 1-2, 6-7.

²² Order, DA 17-761 (Aug. 11, 2017).

²³ NHMC, Letter Re: Restoring Internet Freedom, 1, (August 10, 2017). In addition, a coalition of public interest and consumer advocacy groups filed a motion in the *Internet NPRM* docket asking the Commission to respond to NHMC’s FOIA request:

Over 47,000 consumer complaints have been submitted against ISPs since June 2015. . . carriers provided approximately 18,000 responses to those complaints, and there are 1,500 emails documenting interactions between the ombudsperson and internet users. These numbers alone should give the Commission pause. However, only a full analysis of these [documents] will allow the public to fully answer questions posed in the NPRM.

18MillionRising.org et al., Letter Re: Restoring Internet Freedom, 2, (Aug. 21, 2017).

Office of General Counsel contacted NHMC and agreed to produce all consumer complaints, carrier responses, and ombudsperson emails on a rolling basis. The Commission made several productions of these documents. The most recent production was on September 14, 2017, when the Commission provided NHMC with 29,475 pages of documents including the 1,500 ombudsperson emails and Excel spreadsheets.²⁴ The Commission said that this was its final production to NHMC, but the documents that the Commission has produced so far do not include all the documents it agreed to produce. For instance, the Commission has stated that it has 18,000 carrier responses to consumer complaints in its possession; to date it has produced only 823 pages of carrier responses.²⁵

Also on September 14, the Commission posted all of the documents it has produced so far to NHMC on its website.²⁶ The Commission has not incorporated any of these documents into the administrative record in the *Internet NPRM* proceeding.

DISCUSSION

Movants thank the Commission for the information that it has produced thus far, and for posting the information requested publicly. But because of the sheer volume of the production (as well as the fact that the Commission has yet to produce all of the documents requested by NHMC, such as all of the carrier responses), NHMC has had no opportunity to review the entirety of the relevant information, much less to incorporate the results of any such review into reply comments that were due by August 30, 2017.

²⁴ Letter from Elizabeth Lyle, FCC Office of General Counsel, to Carmen Scurato, NHMC (Sept. 14, 2017) (Attachment 9).

²⁵ See e-mail from Mike Hennigan, CGB, to Carmen Scurato, NHMC (July 14, 2017) (Attachment 7).

²⁶ *Response to NHMC FOIA Request*, FCC, <https://www.fcc.gov/response-nhmc-foia-request> (last visited Sept. 15, 2017).

Nor were other interested parties able to review and incorporate information contained in the production into their reply comments, since the Commission did not make this information public until two weeks *after* the reply comment deadline. Because the documents were not filed in the *Internet NPRM* proceeding, but rather on a newly-created FCC webpage, interested parties in the *Internet NPRM* proceeding may not be aware that this critical information is now publicly accessible. Movants therefore request that the Commission reopen the administrative record in the *Internet NPRM* proceeding in order to integrate into the record the consumer complaints, carrier responses, ombudsperson documents, and Excel spreadsheets. Movants also request that the Commission establish a new comment cycle to allow the public to review and provide feedback on this information, which is directly relevant to the questions posed by the Commission in the *Internet NPRM* but which was unavailable to the public during the original comment/reply period.

Permitting the public to review and comment upon information available to the agency is necessary for the development of the administrative record. Both the Administrative Procedure Act (“APA”) and the Commission’s regulations require that the public be provided adequate opportunity to review and comment upon a proposed rule. *See* 5 U.S.C. § 553(c) (“[T]he agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments”); 47 C.F.R. § 1.415(a) (“After a notice of proposed rulemaking is issued, the Commission will afford interested persons an opportunity to participate in the rulemaking proceeding through submission of written data, views, or arguments.”). Even when the public

comment period has closed, the Commission has the authority to permit additional comments to be filed. 47 C.F.R. § 1.415(d).

Disclosing and providing opportunity for comment on information available to the agency and relevant to a proposed rule is imperative so that the public may review and either support or object to the proposed rule. *See, e.g., Nat'l Restaurant Ass'n v. Solis*, 870 F. Supp. 2d 42, 50 (D.D.C. 2012) (noting that the APA's notice and comment requirements "serve the salutary purposes of (1) ensuring that agency regulations are tested via exposure to diverse public comment, (2) ensuring fairness to affected parties, and (3) giving affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.") (internal citations and quotations omitted). Moreover, the administrative record must adequately reflect the information available to the agency. "[I]nformation in agency files . . . which the agency has identified as relevant to the proceedings [must] be disclosed to the parties for adversarial comment." *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 54 (D.C. Cir. 1977) (explaining, in the context of a discussion of ex parte communications with Commissioners, that "the public record must reflect what representations were made to an agency so that relevant information supporting or refuting those representations may be brought to the attention of the reviewing courts by persons participating in agency proceedings.").

Just as an agency may not rely on data that has not been admitted into the administrative record, it also may not *prevent* directly relevant information from being admitted into the record simply because it does not support the agency's proposed rule. Rather, the agency is required to consider all critical information during the notice and

comment period. *See Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) (explaining that 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.”) (internal citations and quotations omitted).

As NHMC has emphasized repeatedly in its FOIA requests and in the *Internet NPRM* docket, the consumer complaints, carrier responses, ombudsperson documents, and Excel spreadsheets are directly relevant to the *Internet NPRM*’s questions regarding the effectiveness of the 2015 *Open Internet Order*. Among other things, the *Internet NPRM* asks whether there has been harm to consumers sufficient to support maintaining a Title II telecommunications service classification for broadband access service; whether the Title II classification has resulted in positive impacts to consumers; and whether the role of the ombudsperson and formal complaint procedures were actually necessary. To develop a complete and accurate administrative record—the importance of which the Commission acknowledged in its August 11, 2017 Order extending the deadline to file reply comments in this proceeding—the Commission must set a new pleading cycle to allow public comment. If the Commission fails to do so, any decision in this proceeding would be based on an insufficient and fundamentally flawed record.

CONCLUSION

The Commission should grant this motion and (1) incorporate the informal consumer complaints and other related documents that were the subject of NHMC’s May 2017 FOIA requests into the record in the above-captioned proceeding, and (2) set a new pleading cycle for public comment on those documents.

Respectfully submitted,

/s/ Carmen Scurato

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September 18, 2017

ATTACHMENTS
WC DOCKET NO. 17-108

ATTACHMENT 1



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 1, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All formal complaints filed since June 2015 under 47 C.F.R. § 8.12.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality, for all sub-issues such as blocking, data caps, inaccurate disclosures/transparency, throttling, and other. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

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- **(3)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the ombudsperson.
- **(4)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the Consumer and Governmental Affairs Bureau (CGB).

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

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ATTACHMENT 2



National Hispanic
Media Coalition

Submitted via FOIA Online
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May 5, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to speed issues, including all sub-issues such inconsistent speed, less than advertised speed, and other.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to interference issues, including all sub-issues such jamming/blocking (including Wi-Fi), and other.
- **(3)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for Internet complaints relating to privacy, whether or not the individual had their personal information been accessed, obtained or used by an unauthorized person.

NHMC seeks the following information for each informal complaint:

- (a) Date of complaint
- (b) City and State of filer
- (c) Subject of complaint
- (d) Description of complaint
- (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
- (f) Company Name
- (g) Filer's relationship to company
- (h) Whether filer contacted company about the issue
- (i) Whether filer submitted complaint on behalf of someone else
- (j) Any attachments included with the filer's complaint
- (k) Resolution of complaint, including provider's response letters

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

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ATTACHMENT 3



National Hispanic
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Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

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This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- All documents, information, and communications related to informal internet billing complaints submitted to the FCC since June 2015. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

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ATTACHMENT 4



National Hispanic
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Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, communications, and guidance used by the Consumer and Governmental Affairs Bureau to resolve internet complaints received either by phone or online since June 2015.
- **(2)** All documents, information, communications, and guidance used by the Enforcement Bureau to resolve internet complaints received either by phone or online since June 2015.

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

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ATTACHMENT 5



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554



June 20, 2017

Carmen Scurato
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FOIA Nos. 2017-565, 2017-577, 2017-638 & 2017-639

Dear Ms. Scurato:

This letter responds to your recent Freedom of Information Act ("FOIA") requests received by the Federal Communications Commission (FCC or Commission) and assigned to the Consumer & Governmental Affairs ("CGB"), Enforcement ("EB") and Wireline Competition Bureaus ("WCB"). Among other things, you are requesting documents, information and communications regarding the "FCC's enforcement of the 2015 Open Internet Order, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015." We are responding to your requests electronically. Pursuant to section 0.461(g)(1)(i) of the Commission's rules, the date for responding to your requests has been extended from May 31, 2017, to June 20, 2017, due to a need to search records from multiple offices of the Commission.

Please be advised that your four FOIA requests were aggregated for calculation of the FOIA fees. On May 22, 2017, via telephone, you spoke with Mike Hennigan of my staff regarding your requests and you were advised that our search located approximately 47,279 complaints related to "Open Internet." You advised Mr. Hennigan that you would be interesting in receiving the first 100 samplings of the complaints we located, per complaint category and complaints sub-categories for complaints filed in "2015, 2016 as well as 2017."

Therefore, CGB conducted a search of the databases in which we maintain the records of informal complaints filed by, or on behalf of, consumers. Our search revealed approximately 1000 complaints that are responsive to your request, which are attached. We have attached data you are requesting related to the approximately 47,279 complaints related to "Open Internet." Also, as you requested, our search revealed 308 pages of carrier responses and approximately 1,500 emails related to your request. WCB has advised us that they have potentially responsive documents which they are continuing to process, and will respond to your request as expeditiously as possible. EB informed CGB that a search of their records identified no responsive records.

Also, on May 22, 2017, you agreed that due to the volume of documents located and the number of hours involved in processing your request, we would provide you with responsive documents on a rolling basis in order to complete your request in the most efficient and timely manner possible. Please be advised that the FCC receives many complaints and comments that do not involve violations of the Communications Act or any FCC rule or order. Thus, the existence of a complaint or comment filed against a particular carrier or business entity does not necessarily indicate any wrongdoing by any individuals or business entities named in the complaint or comment. The attached complaints represents information provided by the public that has not been verified by the FCC.

Record responsive to your request were withheld or redacted under FOIA Exemption 6.¹ Exemption 6 protects files containing personally identifiable information disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. Therefore, all FCC employee's names, complainant's addresses, and the complainant's telephone numbers were redacted under Exemption 6

FOIA and FCC rules require the FCC to charge requesters for time spent searching for and reviewing responsive documents, and for copying them." Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."² As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request is electronic, and did not involve any duplication. Therefore, you will not be charged any fees.

You have requested a fee waiver pursuant to section 0.047(e) of the Commission's rules.³ As you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such request, does not make a determination on your request for a fee waiver.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁴ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action" and the application should refer to FOIA Nos. 2017-565, 2017-577, 2017-638 and 2017-639.

¹ 5 U.S.C. § 552(b)(6).

² 47 CFR § 0.466(a)(5)-(7).

³ 47 CFR § 0.470(e).

⁴ 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
FCC, Office of the Managing Director,
Performance Evaluation and Records Management
445 12th St SW,
Washington, DC 20554
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's Office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,



Nancy Stevenson
Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Attachments

ATTACHMENT 6



Submitted via Email
Stephanie.Kost@fcc.gov
FOIA Public Liaison
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

June 26, 2017

CONCERNS RE: RESPONSES TO NHMC's FOIA REQUEST FCC 2017-565

Dear Ms. Kost,

I write because I have several concerns about a FOIA request that I submitted to the Federal Communications Commission (FCC) on May 1, 2017, through the online portal at <https://foiaonline.regulations.gov>. The request was subsequently labeled FCC 2017-565.

My point of contact at the FCC throughout this request has been Mike Hennigan. In his first email I received May 22, 2017 Mr. Hennigan stated: "We are unable to process your requests as currently framed." This was of grave concern to me and I spoke with Mr. Hennigan on the phone to provide clarity regarding the information and documents I was seeking. Mr. Hennigan explained it would be impossible to provide all informal complaints within the time frame and suggested based on my request that he could provide "all the data" but then narrow a portion of my FOIA request to the first 100 samples of each category for other data points I requested, such as the description, attachments, and carrier/provider responses. I would like to be clear that I only agreed to this sample based on the premise that I would receive "all the data" - which I understood (and believed Mr. Hennigan did as well) as providing me with all the other non-private information requested for the all the informal Open Internet/Net Neutrality complaints.

To further clarify what I mean by "all the data" I did offer to send the attached spreadsheet to Mr. Hennigan, but he informed me that was not necessary since he understood my request. I am attaching the spreadsheet now so there is no further confusion. This was a spreadsheet I exported from the FCC's own Consumer Complaint Center data center on April 28, 2017, only a few days prior to submitting request 2017-565 on May 1, 2017. I also reviewed the Consumer Complaint [submission form](#) for "Internet" complaints, with the "Internet Issue" of "Open

Internet/Net Neutrality” complaints to see what data points consumers are asked. The data points were all captured in my FOIA Request. This form also provides the basis of what data points/information is not made publicly available on the [Consumer Complaint Data Center](#) - some which are necessary to withhold due to privacy concerns, yet other information is not private but remains off the public-facing data center. In my request to Mr. Hennigan for “all the data” I understood that I would receive a spreadsheet similar to the one I have attached to this email but with all the “not-private” fields populated. Instead, what I received was a spreadsheet with “totals” that cannot in anyway be cross-references with the information that is already publicly available.

If Mr. Hennigan had made it clear from our first discussion that such data would not be possible to produce, I would not had agreed to receiving “samples.” It is very clear from my most recent calls and emails with Mr. Hennigan that the only way to resolve this is to honor the initial request for all informal Open Internet/Net Neutrality complaints. I did send Mr. Hennigan an email this past Friday June 23, 2017 and he stated that I would need to file a new request in order to receive more informal complaints beyond the initial sample -- I disagree.

The FCC FOIA Office should honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.

Moreover, I would like to bring to your attention the call I had with Mr. Hennigan the day before the first wave of production documents were due on June 19, 2017, where Mr. Hennigan said he could either send me the “data” and samples, or withhold the data and start producing all informal complaints. I pressed him on why this would be a mutually exclusive request, and did not receive a satisfying response. At this point in our conversation, I was very concerned that altering my request would further delay production and it was important to see what documents Mr. Hennigan had already gathered.

Mr. Hennigan and I had spoken the week prior on June 12, 2017 and had left a few things unresolved. In that earlier call, Mr. Hennigan explained that the search for relevant documents under request 3 for documents from the ombudsperson in FOIA 2017-565 produced “a lot, a lot of documents” and that he had yet to start processing them. Mr. Hennigan said that Michael Janson had sent over thousands of responsive documents, which must first be printed and then scanned back into the Adobe redaction software. He also mentioned he received documents from Parul Desai responsive to this request, but did not specify any amount. Mr. Hennigan said such documents would have to be produced on a rolling basis, and did not give me any estimate for a completion date to this request. I did subsequently follow-up regarding an estimate on Friday June 23, 2017 and Mr. Hennigan said he was unable to provide such estimate, but that I should start seeing documents as early as this week.

Also, on our call on June 12, 2017, Mr. Hennigan mentioned that Mr. Janson had alerted him to a prior FOIA Request from June 2016 with approximately 20,000 documents responsive to my FOIA Request for informal Open Internet/Net Neutrality complaints. Mr. Hennigan said he would look to verify these documents, and asked whether I would be interested. I answered in the affirmative and asked that he please let me know as soon as he verified that these 20,000 or so documents were responsive. Based from this conversation I understood these documents to be informal complaints relating to Open Internet issues that had already been redacted, and therefore could be easily produced as responsive to my request. I did not receive any follow-up emails or calls from Mr. Hennigan, which is what led to our call on June 19, 2017.

When I spoke to Mr. Hennigan on June 19, 2017 again about the 20,000 documents he told me he had in fact “looked into it” and that Mr. Janson was “mistaken” and that the documents were not responsive. I asked if Mr. Hennigan could provide me with the frame of the original FOIA request so I could verify this, but he was unable to do so. Mr. Hennigan then mentioned there were 639 emails that may be responsive from a previous request- he asked whether I would like those documents, and again I answered in the affirmative. I have yet to see those emails and would like a further investigation into the 20,000 documents that Mr. Janson flagged as responsive.

Finally, the documents requested from the FCC in response FOIA Request 2017-565 are pertinent to an open proceeding. Such documents are critical for the National Hispanic Media Coalition and other members of the public to comments on proposals set forth in the *Restoring Internet Freedom* Notice of Proposed Rulemaking WC Docket No. 17-108.

To summarize, I request that:

1. The FCC FOIA Office honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.
2. The FCC FOIA Office provide an estimate for the completion date for the rolling production for documents responsive to Request #3 in 2017-565 regarding the role of the ombudsperson.
3. A further investigation into the 20,000 documents that Mr. Janson flagged as responsive to my request for informal Open Internet/Net Neutrality complaints based on a prior request submitted to the FCC in June 2016.
4. A clarification of the 639 responsive emails that Mr. Hennigan mentioned during our call on June 19, 2017 and an estimated time for production.

Thank you for taking the time to review this request. I look forward to your response and would also like to discuss next steps with you in further detail later this afternoon.

June 26, 2017

NHMC FOIA Request 2017-565

Respectfully,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

ATTACHMENT 7

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

MH

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

From: Carmen Scurato cscurato@nhmc.org
Subject: Re: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 15, 2017 at 7:15 AM
To: Mike Hennigan Mike.Hennigan@fcc.gov
Cc: Nancy.Stevenson@fcc.gov, Ryan.Yates@fcc.gov, Stephanie.Kost@fcc.gov, Vanessa Lamb Vanessa.Lamb@fcc.gov, Gloria Tristani gtristani@nhmc.org



Mr. Hennigan,

Thank you for your detailed response. I will consider your offer and provide a response by the deadline requested.

I do however, have a few follow-up questions which I hope you can respond to before the July 28th deadline. Some of these questions I had already raised in an email this past Monday (July 10th) to Ms. Kost.

(1) I asked whether the 2,000 additional sample complaints could be limited to those complaints that triggered a carrier response. I see from your email below that you state 900 pages of carrier responses for the 2,000 complaints, but not the number of carrier responses that represents. Would providing 2,000 complaints with 2,000 carrier responses be something you could take under consideration as we work to narrow the request?

(2) For the additional 2,000 complaints, will the production also include any attachments uploaded by the consumers?

(3) I am still waiting on the 308 carrier responses from the first 1,000 samples you provided and any attachments associated with those complaints. What is the production deadline for those documents?

(4) You mention 1,500 emails, and I want to be clear - is this in reference to the ombudsperson documents? Or are there other emails that are being produced in response to my FOIA requests? Additionally, if it is the ombudsperson documents, can you confirm that the 1,500 emails is the total you received from both Michael Janson and Parul Desai?

(5) The email from Ms. Kost on July 7th, states that a spreadsheet with 47,000+ consumers complaint data could be produced by July 19th. Are we still on track to get this spreadsheet in that time-frame, or does your email below suggest that the new time-frame is September 1st?

(6) This is something I raised with Ms. Kost in the July 10th, email - but to clarify when you say "by September 1, 2017" are we using that as the completion date? If so, are we still moving forward with a rolling production as you suggested in earlier calls? If it is a rolling production, could you provide further details regarding the production schedule? If not a rolling production, could you please confirm that all the data, documents, emails, and spreadsheet all will be produced on September 1st?

Finally, I again want to make it clear that these documents requested are pertinent to an open rule making proceeding at the Commission (WC Docket No. 17-108), with the comment deadline set to this coming Monday, July 17th, and reply comments due August 16th, a couple of weeks before the September 1st timeline you have provided in your email below.

Thank you for taking these follow-up questions into consideration. 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 Jul 14, 2017, at 4:34 PM, Mike Hennigan <Mike.Hennigan@fcc.gov> wrote:

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

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: RE: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 18, 2017 at 4:01 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov, Stephanie Kost Stephanie.Kost@fcc.gov, Vanessa Lamb Vanessa.Lamb@fcc.gov, Gloria Tristani gtristani@nhmc.org

MH

Ms. Scurato, this email is in further response to your July 15, 2017, email regarding your request for Open Internet Complaints.

1. The 2,000 additional sample complaints would include the carrier responses for the complaints that have been served on a carrier. However, certain "issues" you have asked us to search such as; (e.g. "interference issues") would produce no carrier responses because those complaints are typically not served on a carrier.
2. The additional 2,000 sample complaints would include the complaints and any attachments thereto.
3. The 308 carrier responses from the first 1,000 samples would be provided to you by September 1, 2017, once you have agreed to our offer.
4. The approximately 1,500 emails are from the ombudsperson(s) Michael Janson and Parul Desai. Included in those 1,500 e-mails are also approximately three other emails related to your request that were provided to me by persons other than the ombudsperson(s).
5. The spreadsheet for the 47,000 plus complaints data would be provided to you by September 1, 2017.
6. Yes, we are using the September 1, 2017, as the completion date. Yes, we will continue to provide you with documents on a rolling basis once you have agreed to our offer. There is no set schedule when providing the documents on a rolling production other than providing you the documents in the most efficient and timely manner possible.

Sincerely,

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

From: Carmen Scurato [mailto:cscurato@nhmc.org]
Sent: Saturday, July 15, 2017 7:15 AM
To: Mike Hennigan <Mike.Hennigan@fcc.gov>
Cc: Nancy Stevenson <Nancy.Stevenson@fcc.gov>; Ryan Yates <Ryan.Yates@fcc.gov>; Stephanie Kost <Stephanie.Kost@fcc.gov>; Vanessa Lamb <Vanessa.Lamb@fcc.gov>; Gloria Tristani <gtristani@nhmc.org>

ATTACHMENT 8



National Hispanic
Media Coalition

Submitted via Email
Mike.Hennigan@fcc.gov
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

July 27, 2017

RESPONSE TO OFFER RE: NHMC FOIA REQUEST FCC 2017-565

Dear Mr. Hennigan,

Please consider this NHMC's response to your email from July 14, 2017, and the follow-up email from July 18, 2017. After careful consideration, we are willing to accept your offer as it relates to the 1,500 ombudsperson documents, but cannot accept the offer to provide only 2,000 of the more than 47,000 consumer complaints that are responsive to our request, because we still have several concerns about narrowing the request as it relates to the current Internet rulemaking proceeding, WC Docket No. 17-108 ("*Internet NPRM*").

First, we accept the offer for the ombudsperson documents because these documents are responsive to part 3 of NHMC's Freedom of Information Act request FCC-2017-565 submitted on May 1, 2017. However, your offer states that we will receive all 1,500 emails from ombudsperson(s) Parul Desai and Michael Janson by September 1, 2017. This date is five months after the date of our FOIA request, and it remains unclear what has caused such an unnecessary delay in production. Further, these documents are directly responsive to a question raised in the Commission's pending *Internet NPRM* proceeding, and your production deadline of September 1, 2017, is two weeks after the *Internet NPRM*'s reply comment deadline of August 16, 2017. We therefore ask that you provide documents to NHMC on a rolling basis throughout the month of August, with the final set of documents provided to NHMC no later than September 1, 2017.

Second, we cannot accept your offer to provide only an additional 2,000 consumer complaints, with 900 pages of carrier responses. There is a need for the Commission to release, and for the public to be able to review, all of the more than 47,000 open Internet complaints in order to protect the integrity of the record in the pending *Internet NPRM* proceeding. When NHMC submitted its FOIA requests last May, it was unaware of the Commission's failure to review its own open Internet complaint-related documents, a failure that is clearly apparent now. Therefore, we request that the Commission work to release the text of the more than 47,000 open Internet-related complaints and the data related to those complaints, not only to NHMC, but also, in the interests of transparency and a complete record in the *Internet NPRM* proceeding, to the

remainder of the public. Simply put, it should not take a FOIA request for the Commission to release to the public for review and comment Commission records that directly relate to issues the Commission itself has chosen to raise in the pending *Internet NPRM* proceeding. This situation is only further exacerbated by the facts that the Commission holds this information in its exclusive possession, failed even to acknowledge its existence in the *Internet NPRM*, and has apparently yet to conduct any analysis of these documents.

Third, we would accept the spreadsheet with data for the more than 47,000 consumer complaints, as this would capture the entire universe of complaints. Given Stephanie Kost's original proposed production date of July 19, 2017 for this material, we should be confident in assuming that this data will be produced to NHMC well before the September 1, 2017 production deadline. Please let me know if my confidence is misplaced.

Fourth, we still request that you produce the 308 carrier responses that relate to the initial production of 1,000 consumer complaints. We also want to emphasize that several of these complaints reference attachments uploaded by consumers, and we request that those attachments be produced as well.

Finally, by accepting the documents as described and on the time schedule set forth above, NHMC does not waive any of its rights to appeal this FOIA production or its rights to request further responsive documents from the Commission. We remain deeply concerned that the Commission has failed to adequately address the more than 47,000 open Internet-related complaints and their impact on the issues raised and the accuracy of some of the tentative conclusions reached in the *Internet NPRM*. We are likewise troubled that the Commission continues to move forward with a proceeding to repeal open Internet rules established in 2015 without analyzing, or allowing the public to analyze, information that is critical to assessing the benefits of, and the need to preserve those rules.

We look forward to your prompt response in writing.

Respectfully,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

ATTACHMENT 9



Federal Communications Commission
Washington, D.C. 20554

September 14, 2017

Carmen Scurato
National Hispanic Media Coalition
Washington, DC Office
718 7th Street NW
Washington, DC 20001
Via e-mail to cscurato@nhmc.org

Re: FOIA Control Nos. 2017-565, 2017-577, and 2017-638

Ms. Scurato:

This letter responds to your Freedom of Information Act (FOIA) requests for “all documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality, for all sub-issues such as blocking, data caps, inaccurate disclosures/transparency, throttling, and other;” “for Internet complaints relating to speed issues, including all sub-issues such inconsistent speed, less than advertised speed, and other;” “for Internet complaints relating to interference issues, including all sub-issues such jamming/blocking (including Wi-Fi), and other;” and “for Internet complaints relating to privacy.” These requests also asked for “all formal complaints filed since June 2015 under 47 C.F.R. § 8.12” and all records “indicating when consumers, businesses, and other organizations’ sought guidance from the ombudsperson [or] from the Consumer and Governmental Affairs Bureau (CGB).” These requests were dated May 1, 2017; May 5, 2017; and May 17, 2017, and assigned FOIA Control Nos. 17-565, 17-577, and 17-638 respectively. These requests were modified by your letter from July 27, 2017, accepting the FCC’s offer to provide the following documents:

- “1,500 emails from ombudsperson(s) Parul Desai and Michael Janson”;
- “more than 47,000 consumer complaints”;
- “the spreadsheet with data for the more than 47,000 consumer complaints”; and
- “the 308 carrier responses that relate to the initial production of 1,000 consumer complaints”

Pursuant to section 0.461(g)(1)(i) of the Commission’s rules and the need to examine such a voluminous amount of records in order to redact consumer’s personal and sensitive information, the date for responding to your full request has been extended from September 1, 2017, to provide the documents on a rolling basis on June 20, August 24, August 29, September 5, and September 14.

The Consumer and Governmental Affairs Bureau, along with the Wireline Competition Bureau and Office of General Counsel, located nearly 70,000 pages of records responsive to your request. A team of thirty-two employees from across the Commission spent 1,017 hours redacting consumer’s personal and sensitive material on the pages produced due to the reasons discussed below.

Records responsive to your request were redacted under FOIA Exemption 6.¹ Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The information redacted included the names, contact information, account numbers, and other sensitive personal information of parties that filed complaints or otherwise contacted the Commission. Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy by revealing the personal information of complainants.

We have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the persons at the Commission, which Exemption 6 is intended to protect.

Additionally, records responsive to your request were also redacted under FOIA Exemption 5.² Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context. Exemption 5 encompasses a deliberative process privilege intended to “prevent injury to the quality of agency decisions.”³ To fall within the scope of this privilege the agency records must be both predecisional and deliberative.⁴ Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”⁵ Deliberative records must be such that their disclosure “would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”⁶

The redacted materials include internal discussions of how to respond to a broadband consumer’s inquiry sent to the ombudsperson and drafts of a blog post published by the ombudsperson. We have determined that it is reasonably foreseeable that disclosure would harm the Commission’s deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.⁷ The statutory standard requires the release of any portion of a record that is nonexempt and that is “reasonably segregable” from the exempt portion. However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.⁸ The redactions and/or withholdings made

¹ 5 U.S.C. § 552(b)(6).

² 5 U.S.C. § 552(b)(5).

³ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

⁴ *Id.* at 151-52.

⁵ *Formaldehyde Inst. v. Dep’t of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (“In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents. . . .”).

⁶ *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc’ns Corp. v. Dep’t of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

⁷ 5 U.S.C. § 552(b) (sentence immediately following exemptions).

⁸ *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.⁹ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.¹⁰

Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."¹¹ As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. As we are producing the records electronically, you will not be billed for any document reproduction.

You have requested a fee waiver pursuant to section 0.470(e) of the Commission's rules.¹² As you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such requests, does not make a determination on your request for a fee waiver.¹³

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.¹⁴ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance
Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

⁹ See 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

¹⁰ 47 C.F.R. § 0.470.

¹¹ 47 C.F.R. § 0.466(a)(5)-(7).

¹² 47 C.F.R. § 0.470(e).

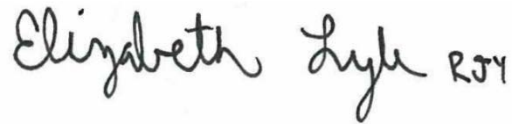
¹³ 47 C.F.R. § 0.470(e)(5).

¹⁴ 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle" followed by a stylized monogram or initials "RL" to the right.

Elizabeth Lyle
Assistant General Counsel

Enclosures
cc: FCC FOIA Office