

# National Hispanic Media Coalition

Submitted via Hand-Delivery for Electronic Filing

December 1, 2017

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

EX PARTE OR LATE FILED

ACCEPTED/FILED

DEC - 1 2017

Federal Communications Commission  
Office of the Secretary

Re: *Ex Parte* presentation pursuant to 47 CFR 1.1206(b) in WC Docket No. 17-108

Dear Ms. Dortch:

The National Hispanic Media Coalition (NHMC) submits the documents received pursuant to Freedom of Information Act (FOIA) requests via hand-delivered USB flash drive into the record in the above-referenced proceeding.<sup>1</sup> NHMC requests that the documents be officially incorporated as part of the record and uploaded electronically to the Federal Communications Commission's (FCC) Electronic Comment Filing System (ECFS).<sup>2</sup>

As the FCC noted in its draft Order, NHMC is familiar with how to file documents in ECFS<sup>3</sup> and is therefore aware that there are very specific limitations for uploading documents.<sup>4</sup> Each submission can have a maximum of five files and the combined files cannot exceed 25 MB.<sup>5</sup> Additionally, the only supported files are pdf, text, ppt, pptx, docx, xlsx, doc, xls, rtf, ppt, pptx,

DOCKET FILE COPY ORIGINAL

<sup>1</sup> See Attachment A (Excel spreadsheet listing all documents provided by the FCC to NHMC).

<sup>2</sup> See FCC Response to NHMC FOIA Request, <https://www.fcc.gov/response-nhmc-foia-request> (last visited Dec. 1, 2017) (the FCC uploaded all documents responsive to NHMC's FOIA requests to its website, but to date, failed to incorporate this vital evidence as part of the record in WC Docket No. 17-108); see also NHMC Releases New Net Neutrality Documents to Public Showing Importance of Open Internet Order, <http://www.nhmc.org/foia-release/> (last visited Dec. 1, 2017) (NHMC publicly posted the documents it received in response to the FOIA to its own website for public inspection and analysis).

<sup>3</sup> See *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, FCC-CIRC1712-04 at n. 1138 (draft rel. Nov. 22, 2017) ("We are confident that NHMC is familiar with how to file documents in ECFS that it believes are relevant to this proceeding given the numerous filings it has made in this docket, including the NHMC Joint Motion and NHMC Joint Response.") (*Restoring Internet Freedom Draft Order*).

<sup>4</sup> See FCC Electronic Comment Filing System "Submit A Filing", <https://www.fcc.gov/ecfs/filings> (last visited Dec. 1, 2017).

<sup>5</sup> See *id.*

Headquarters | 65 South Grand Ave | Pasadena CA 91105 | 626 792 6462  
Washington, DC Office | 718 7th St NW | Washington, DC 20001 | 202 596 2063  
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and dwg.<sup>6</sup> The FCC provided its FOIA productions to NHMC over email by attaching compressed zip files, which are not supported by the ECFS.<sup>7</sup>

Further, in response to the FOIA requests, NHMC received 67 documents representing nearly 70,000 pages, with a total file size of approximately 326 MB.<sup>8</sup> This would require at a minimum, thirteen separate submissions to ECFS, if not more, due to the fact that certain files are close to the 25 MB limit.

NHMC is incorporating these documents into the record in the event the Commission continues to refuse to do so as it has signaled in its draft Order.<sup>9</sup> NHMC reasserts that these documents are critical evidence to the questions posed in the Notice of Proposed Rulemaking related to the benefits of Title II Net Neutrality regulations.

Respectfully submitted,



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

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<sup>6</sup> See *id.*

<sup>7</sup> See *id.* As an example, on August 24, 2017 NHMC received four emails from the FCC. The first email attached a zip file "Consumer Complaints for FOIAs 2017-565 & 577" of 16.5 MB, and ten Excel spreadsheets. A second email attached the "Carrier Responses for FOIA 2017-577" zip file of 23.3 MB. The third and fourth email contained "Ombudsperson Emails for 2017-577 1 of 2" a 21.2 MB zip file and "Ombudsperson Emails for 2017-577 2 of 2" a 20.3 MB zip file respectively. See Attachment B.

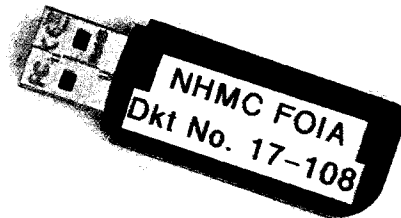
<sup>8</sup> See Attachment A. This does not include the 21 cover letters and emails that NHMC received as this production. See Attachment B (providing all FCC cover letters and emails as part of NHMC's productions).

<sup>9</sup> See *Restoring Internet Freedom Draft Order* at para. 335.

**ACCEPTED/FILED**

**DEC - 1 2017**

**Federal Communications Commission  
Office of the Secretary**



# **Attachment A**

Excel spreadsheet listing all documents provided by the FCC to NHMC  
pursuant to Freedom of Information Act requests filed in May 2017

Date of Production	File Name	Type of Document	Subcategories	File Type	File Size KB	File Size MB
6/20/17	FOIA 2017-565 REVISED 1(Internet Complaints regarding Open Internet)	Spreadsheet		XLS	18	
6/20/17	Complaint data for FOIA 2017-577 (Internet Complaints)	Spreadsheet		XLS	15	
6/20/17	Complaint data for FOIA 2017-638 (Internet - Billing Complaints)	Spreadsheet		XLS	11	
6/20/17	Complaints for 2017-565 Blocking - 100 Samples	Samples	Blocking	PDF	295	
6/20/17	Complaints for 2017-565 Data Caps - 100 Samples	Samples	Data Caps	PDF	286	
6/20/17	Complaints for 2017-565 Inaccurate Disclosure-Transparency - 100 Sample	Samples	Inaccurate Disclosure-Trans	PDF	365	
6/20/17	Complaints for 2017-565 Throttling - 100 sample	Samples	Throttling	PDF	281	
6/20/17	Complaints for 2017-577 advertised speed - 100 Sample	Samples	Advertised Speed	PDF	294	
6/20/17	Complaints for 2017-577 Inconsistent Speed - 100 Sample	Samples	Inconsistent Speeds	PDF	291	
6/20/17	Complaints for 2017-577 Interference - 100 Sample	Samples	Interference	PDF	334	
6/20/17	Complaints for 2017-577 Jamming-Blocking - 100 Sample	Samples	Jamming-Blocking	PDF	292	
6/20/17	Complaints for 2017-577 Privacy - 100 Sample	Samples	Privacy	PDF	290	
6/20/17	Complaints for 2017-638 Internet Billing - 100 Samples	Samples	Internet Billing	PDF	310	
6/29/17	FOIA 2017-565 (Open Internet 100 Sample Complaints only)	Spreadsheet		XLS	3	
6/29/17	FOIA 2017-577 (Internet Complaints 100 Sample Complaints Only)	Spreadsheet		XLS	1.8	
6/29/17	FOIA 2017-638 (Internet Billing Complaint - Sample 100)	Spreadsheet		XLS	21	
8/24/17	Complaint data for 2017-565 (1) Blocking	Spreadsheet	Blocking	XLS	84	
8/24/17	Complaint data for 2017-565 (2) Data Caps	Spreadsheet	Data Caps	XLS		4.1
8/24/17	Complaint data for 2017-565 (3) Transparency	Spreadsheet	Transparency	XLS	53	
8/24/17	Complaint data for 2017-565 (4) Throttling	Spreadsheet	Throttling	XLS	151	
8/24/17	Complaint data for 2017-565 (5) Open Internet (other)	Spreadsheet	Other	XLS	638	
8/24/17	Complaint data for 2017-577 (1) Interference	Spreadsheet	Interference	XLS	1	
8/24/17	Complaint data for 2017-577 (2) Jamming-Blocking	Spreadsheet	Jamming-Blocking	XLS	102	
8/24/17	Complaint data for 2017-577 (3) Privacy	Spreadsheet	Privacy	XLS	850	
8/24/17	Complaint data for 2017-577 (4) Inconsistent Speeds	Spreadsheet	Inconsistent Speeds	XLS	122	
8/24/17	Complaint data for 2017-577 (5) Less than advertised speed	Spreadsheet	Advertised Speed	XLS	255	
8/24/17	Carrier responses for 2017-565 attachments-blocking FOR RELEASE_Redacted	Carrier Responses	Blocking	PDF		5.9
8/24/17	Carrier responses for 2017-565 attachments-data caps FOR RELEASE_Redacted	Carrier Responses	Data Caps	PDF		1.9
8/24/17	Carrier responses for 2017-565 attachments-Inacc Disc.FOR RELEASE_Redacted	Carrier Responses	Inaccurate Disclosures	PDF		4.8
8/24/17	Carrier responses for 2017-565 attachments-Throttling.FOR RELEASE_Redacted	Carrier Responses	Throttling	PDF		5.6
8/24/17	Carrier responses for 2017-577 attachments-Inconsistent FOR RELEASE_Redacted	Carrier Responses	Inconsistent Speeds	PDF		6.8
8/24/17	FOIAs 2017-565 & 577 combined-Blocking FOR RELEASE_Redacted	Consumer Complaints	Blocking	PDF		2.3
8/24/17	FOIAs 2017-565 & 577 combined-data caps FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		2.7
8/24/17	FOIAs 2017-565 & 577 combined-Inconsistent FOR RELEASE_Redacted	Consumer Complaints	Inconsistent Speeds	PDF	567	
8/24/17	FOIAs 2017-565 & 577 combined-Interference FOR RELEASE_Redacted	Consumer Complaints	Interference	PDF		2.7
8/24/17	FOIAs 2017-565 & 577 combined-Less than advertised FOR RELEASE_Redacted	Consumer Complaints	Advertised Speed	PDF		2.6
8/24/17	FOIAs 2017-565 & 577 combined-Open Internet FOR RELEASE_Redacted	Consumer Complaints	Combined	PDF		8.8
8/24/17	Ombudsperson Emails for 2017-577 1 of 2 FOR RELEASE_Redacted	Ombudsperson Emails	Combined	PDF		22.9

Date of Production	File Name	Type of Document	Subcategories	File Type	File Size KB	File Size MB
8/24/17	Ombudsperson Emails for 2017-577 2 of 2 FOR RELEASE_Redacted	Ombudsperson Emails	Combined	PDF		21.7
8/29/17	Carrier responses for 2017-577 attachments-Advertised-FOR RELEASE_Redacted	Carrier Responses	Advertised Speed	PDF		8.4
8/29/17	Carrier responses for 2017-577 attachments-Privacy-FOR RELEASE_Redacted	Carrier Responses	Privacy	PDF		1.2
8/29/17	FOIAs 2017-565 & 577 combined-Data Cap-FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		17.6
8/29/17	FOIAs 2017-565 & 577 combined-Inacorr Discl-FOR RELEASE_Redacted	Consumer Complaints	Inaccurate Disclosure-Trans	PDF		1.4
8/29/17	FOIAs 2017-565 & 577 combined-Interference-FOR RELEASE_Redacted	Consumer Complaints	Interference	PDF		7.1
8/29/17	FOIAs 2017-565 & 577 combined-Jamming-Blocking-FOR RELEASE_Redacted	Consumer Complaints	Blocking	PDF		2.5
8/29/17	FOIAs 2017-565 & 577 combined-Less than advertised-FOR RELEASE_Redacted	Consumer Complaints	Advertised Speed	PDF		1.2
8/29/17	FOIAs 2017-565 & 577 combined-Open Internet-FOR RELEASE_Redacted	Consumer Complaints	Combined	PDF		4.6
8/29/17	FOIAs 2017-565 & 577 combined-privacy-FOR RELEASE_Redacted	Consumer Complaints	Combined	PDF		4.7
8/29/17	FOIAs 2017-565 & 577 combined-Throttling-FOR RELEASE_Redacted	Consumer Complaints	Combined	PDF		1.3
9/5/17	Carrier responses for 2017-577 attachments-Jamming part 5 of 5 - FOR RELEASE_Redacted	Carrier Responses	Jamming	PDF		2.9
9/5/17	Carrier responses for 2017-638 attachments-internet billing -FOR RELEASE_Redacted	Carrier Responses	Billing	PDF		6.6
9/5/17	FOIAs 2017-565 & 577 combined-data caps- 1 OF 3 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		14.6
9/5/17	FOIAs 2017-565 & 577 combined-data caps- 2 OF 3 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		18.7
9/5/17	FOIAs 2017-565 & 577 combined-data caps- 3 OF 3 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		18.4
9/5/17	FOIAs 2017-565 & 577 combined -Less than advertised-FOR RELEASE_Redacted	Consumer Complaints	Advertised Speed	PDF		2.4
9/5/17	FOIAs 2017-565 & 577 combined-Inconsistent-FOR RELEASE_Redacted	Consumer Complaints	Inconsistent Speeds	PDF		2.4
9/5/17	FOIAs 2017-565 & 577 combined-privacy-FOR RELEASE_Redacted	Consumer Complaints	Privacy	PDF		10.7
9/14/17	FOIAs 2017-565 & 577 combined-Data Caps 1 OF 4 FOR RELEASE_Redacted.pdf	Consumer Complaints	Data Caps	PDF		16.2
9/14/17	FOIAs 2017-565 & 577 combined-Data Caps 2 OF 4 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		18.7
9/14/17	FOIAs 2017-565 & 577 combined-Data Caps 3 OF 4 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		17
9/14/17	FOIAs 2017-565 577 combined-Data Caps- 4 OF 4 FOR RELEASE_Redacted	Consumer Complaints	Data Caps	PDF		2.4
9/14/17	Carrier responses for 2017-577 attachments-Interference FOR RELEASE_Redacted	Consumer Complaints	Interference	PDF		3.1
9/14/17	FOIAs 2017-565 & 577 combined-Interference FOR RELEASE_Redacted	Consumer Complaints	Interference	PDF		9.1
9/14/17	FOIAs 2017-565 & 577 combined-Open Internet- FOR RELEASE_Redacted	Consumer Complaints	Combined	PDF		2.3
9/14/17	FOIAs 2017-565 & 577 combined-Throttling FOR RELEASE_Redacted	Consumer Complaints	Throttling	PDF		2.5
9/14/17	FOIAs 2017-565 & 577 combined-Privacy 1 of 2 FOR RELEASE_Redacted	Consumer Complaints	Privacy	PDF		13.5
9/14/17	FOIAs 2017-565 & 77 combined-Privacy 2 of 2 FOR RELEASE_Redacted	Consumer Complaints	Privacy	PDF		11.7

# **Attachment B**

June 20, 2017 – September 14, 2017  
FCC FOIA Cover Letters and Emails to NHMC



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

**CGB**

June 20, 2017

Carmen Scurato  
National Hispanic Media Coalition  
[cscurato@nhmc.org](mailto:cscurato@nhmc.org)

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.<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12<sup>th</sup> St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to [FOIA-Appeal@fcc.gov](mailto: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.

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<sup>1</sup> 5 U.S.C. § 552(b)(6).

<sup>2</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>3</sup> 47 CFR § 0.470(e).

<sup>4</sup> 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 12<sup>th</sup> St SW,  
Washington, DC 20554  
[FOIA-Public-Liaison@fcc.gov](mailto: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](mailto:ogis@nara.gov)  
[ogis.archives.gov](http://ogis.archives.gov)

Sincerely,

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

Attachments

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov  
**Subject:** FOIA Requests 2017-565 & 577 (1 of 4)  
**Date:** August 24, 2017 at 4:17 PM  
**To:** Carmen Scurato cscurato@nhmc.org



Ms. Scurato,

Attached please find a production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

As I have already discussed with you in our August 18 phone conversation, the Commission is dedicating significant staff resources to reviewing the 47,000 complaints and other related documents you have requested in order to remove the sensitive personal information of consumers that falls under FOIA exemption (b)(6). This production includes not only 7,044 pages of consumer complaints and Excel spreadsheets with data relating to the entire universe of consumer complaints you requested; it also includes 457 pages of carrier responses and all 1,500 emails from the ombudspersons that you requested. My expectation is that we will be able to provide you another significant production this time next week and in following weeks.

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 documents represent information provided by the public that has not been verified by the FCC.

Due to file size, the responsive documents for this production of documents will be sent over four separate e-mails. This is e-mail one of four.


Best,

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774

 ZIP	 XLSX	 XLSX	 XLSX	 XLSX
Consumer Compl...577.zip	Complaint data for 201...(1).xlsx	Complaint data for 201...(2).xlsx	Complaint data for 201...(3).xlsx	Complaint data for 201...(4).xlsx
 XLSX	 XLSX	 XLSX	 XLSX	 XLSX
Complaint data for 201...(5).xlsx	Complaint data for 201...(1).xlsx	Complaint data for 201...(2).xlsx	Complaint data for 201...(3).xlsx	Complaint data for 201...(4).xlsx

XLSX

Complaint data  
for 201...(5).xlsx

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (2 of 4)  
**Date:** August 24, 2017 at 4:22 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email two of four in a series for the production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Carrier  
Respo...577.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (3 of 4)  
**Date:** August 24, 2017 at 4:25 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email three of four in a series for the production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Ombudsperson  
Emails...of 2.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (4 of 4)  
**Date:** August 24, 2017 at 4:27 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email four of four in a series for the production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Ombudsperson  
Emails...of 2.zip

From: **Kristine Fargotstein** Kristine.Fargotstein@fcc.gov   
Subject: FOIA Requests 2017-565 & 577 (1 of 4)  
Date: August 29, 2017 at 4:52 PM  
To: Carmen Scurato cscurato@nhmc.org

Ms. Scurato,

Attached please find the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577. This production includes 13,311 pages of consumer complaints, in addition to the 7,044 pages of consumer complaints sent on August 24. It also includes 127 pages of carrier responses in addition to the 457 pages of carrier responses also sent on August 24. This comes to a total of 20,939 documents provided thus far on top of the 1,500 ombudsperson emails and Excel spreadsheets. I anticipate providing you with another significant production next week.

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 documents represent information provided by the public that has not been verified by the FCC.

Due to file size, the responsive documents for this production of documents will be sent over four separate e-mails. This is e-mail one of four.

Best,


Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Carrier  
Responses.zip



**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (2 of 4)  
**Date:** August 29, 2017 at 4:53 PM  
**To:** Carmen Scurato cscurato@nhmc.org


This is email two of four in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Consumer  
Compl...sed.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (3 of 4)  
**Date:** August 29, 2017 at 4:54 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email three of four in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Consumer  
Compl...ling.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (4 of 4)  
**Date:** August 29, 2017 at 4:55 PM  
**To:** Carmen Scurato cscurato@nhmc.org


This is email four of four in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Consumer  
Compl...aps.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (1 of 5)  
**Date:** September 5, 2017 at 4:18 PM  
**To:** Carmen Scurato cscurato@nhmc.org

Ms. Scurato,

Attached please find the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577. This production includes 21,702 pages of consumer complaints and 156 pages of carrier responses. This comes to a total of 42,797 pages of documents provided thus far on top of the 1,500 ombudsperson emails and Excel spreadsheets. I anticipate providing you with another significant production next week.

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 documents represent information provided by the public that has not been verified by the FCC.

Due to file size, the responsive documents for this production of documents will be sent over five separate e-mails. This is e-mail one of five.

Best,

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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Carrier  
Responses.zip


**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (2 of 5)  
**Date:** September 5, 2017 at 4:19 PM  
**To:** Carmen Scurato cscurato@nhmc.org

This is email two of five in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



Consumer  
Compl...acy.zip

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (3 of 5)  
**Date:** September 5, 2017 at 4:20 PM  
**To:** Carmen Scurato cscurato@nhmc.org


This is email three of five in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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Consumer  
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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (4 of 5)  
**Date:** September 5, 2017 at 4:21 PM  
**To:** Carmen Scurato cscurato@nhmc.org

This is email four of five in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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Consumer  
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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565 & 577 (5 of 5)  
**Date:** September 5, 2017 at 4:22 PM  
**To:** Carmen Scurato cscurato@nhmc.org

This is email five of five in a series for the next production of documents in response to your letter dated July 27, 2017 regarding Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565 and 2017-577.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



ZIP

Consumer  
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From: **Kristine Fargotstein** Kristine.Fargotstein@fcc.gov  
Subject: FOIA Requests 2017-565, 577, & 568 (1 of 6)  
Date: September 14, 2017 at 2:20 PM  
To: Carmen Scurato cscurato@nhmc.org

Ms. Scurato,

Attached please find the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-568, and a letter formally responding to your request. This production includes 26,159 pages of consumer complaints and 83 pages of carrier responses. This comes to a total of 69,465 pages of documents provided, including the 1,500 ombudsperson emails and Excel spreadsheets.

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 documents represent information provided by the public that has not been verified by the FCC.

Due to file size, the responsive documents for this production of documents will be sent over six separate e-mails. This is e-mail one of six.

Best,

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



FOIA 2017-565  
577 63...er.docx



Federal Communications Commission  
Washington, D.C. 20554

September 14, 2017

Carmen Scurato  
National Hispanic Media Coalition  
Washington, DC Office  
718 7<sup>th</sup> Street NW  
Washington, DC 20001  
*Via e-mail to [cscurato@nhmc.org](mailto: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.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>4</sup> Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The redactions and/or withholdings made

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<sup>1</sup> 5 U.S.C. § 552(b)(6).

<sup>2</sup> 5 U.S.C. § 552(b)(5).

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

<sup>4</sup> *Id.* at 151-52.

<sup>5</sup> *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. . .”).

<sup>6</sup> *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).

<sup>7</sup> 5 U.S.C. § 552(b) (sentence immediately following exemptions).

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup>

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."<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12<sup>th</sup> St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to [FOIA-Appeal@fcc.gov](mailto: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 12<sup>th</sup> St SW, Washington, DC 20554  
202-418-0440  
[FOIA-Public-Liaison@fcc.gov](mailto:FOIA-Public-Liaison@fcc.gov)

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

<sup>10</sup> 47 C.F.R. § 0.470.

<sup>11</sup> 47 C.F.R. § 0.466(a)(5)-(7).

<sup>12</sup> 47 C.F.R. § 0.470(e).

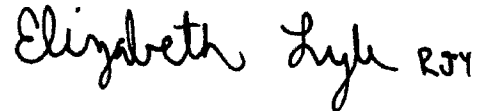
<sup>13</sup> 47 C.F.R. § 0.470(e)(5).

<sup>14</sup> 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](mailto:ogis@nara.gov)  
[ogis.archives.gov](http://ogis.archives.gov)

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle" followed by the initials "RL" in a cursive script.

Elizabeth Lyle  
Assistant General Counsel

Enclosures  
cc: FCC FOIA Office

**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565, 577, & 568 (2 of 6)  
**Date:** September 14, 2017 at 2:22 PM  
**To:** Carmen Scurato cscurato@nhmc.org


This is email two of six in a series for the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-638.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565, 577, & 568 (3 of 6)  
**Date:** September 14, 2017 at 2:22 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email three of six in a series for the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-638.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565, 577, & 568 (4 of 6)  
**Date:** September 14, 2017 at 2:23 PM  
**To:** Carmen Scurato cscurato@nhmc.org



This is email four of six in a series for the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-638.


Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565, 577, & 568 (5 of 6)  
**Date:** September 14, 2017 at 2:24 PM  
**To:** Carmen Scurato cscurato@nhmc.org




This is email five of six in a series for the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-638.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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Consumer  
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**From:** Kristine Fargotstein Kristine.Fargotstein@fcc.gov   
**Subject:** FOIA Requests 2017-565, 577, & 568 (6 of 6)  
**Date:** September 14, 2017 at 2:26 PM  
**To:** Carmen Scurato cscurato@nhmc.org

This is email six of six in a series for the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-638.

Kristine Fargotstein  
Special Counsel  
Office of General Counsel  
Federal Communications Commission  
(202) 418-2774



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DOCKET NO. 17-108

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

- o Microfilm, microform, certain photographs or videotape.

- X. Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center at 445 12<sup>th</sup> Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician

USB thumb drive