



December 7, 2017

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

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

Dear Ms. Dortch:

The National Hispanic Media Coalition (NHMC) submits this *ex parte* filing in order to correct the record and summarize our concerns regarding the Federal Communications Commission's (FCC) refusal to upload the documents provided via hand-delivered USB flash drives into the Electronic Comment Filing System (ECFS).

On December 1, 2017, Gloria Tristani and I hand-delivered two NHMC *ex parte* filings to the FCC's Office of the Secretary; one to incorporate all of the documents which NHMC received pursuant to its Freedom of Information Act (FOIA) requests submitted to the FCC,¹ and the other in response to AT&T's filing.² The documents were attached to the NHMC cover letters via USB flash drives. NHMC made several requests to the FCC asking it to upload the documents in the USB flash drives to ECFS, but those requests were either denied or ignored.³

¹ See Attachment A; Letter from Carmen Scurato, National Hispanic Media Coalition to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-108, NHMC FOIA Documents (filed Dec. 1, 2017), <https://ecfsapi.fcc.gov/file/1206141849545/17120501-3.pdf>.

² See Attachment B; Letter from Carmen Scurato, National Hispanic Media Coalition to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-108, NHMC Response to AT&T (filed Dec. 1, 2017), <http://www.nhmc.org/wp-content/uploads/2017/08/NHMC-Ex-Parte-FOIA-ATT-12.01.2017.pdf>.

³ See Attachment C (unanswered email sent by Carmen Scurato, NHMC to Marlene Dortch and Melissa Askew on December 4, 2017); *see also*, Attachment D, "50,000 net neutrality complaints were excluded from FCC's repeal docket," Jon Brodtkin, *Ars Technica* (published Dec. 5, 2017), <https://arstechnica.com/tech-policy/2017/12/fcc-refused-to-include-50000-net-neutrality-complaints-in-repeal-docket/>.

The NHMC FOIA documents filing was posted on ECFS on December 6, 2017 with a note added at the end of the filing stating that the FCC received a CD-ROM and that a "page" was not submitted to ECFS because "for one reason or another, [it] could not be scanned into the ECFS system." NHMC asserts that it did not deliver a CD-ROM, instead it hand-delivered a USB flash drive. Additionally, the files are in digital form (PDF, Excel) that would not need to be scanned, and could have been uploaded to ECFS.

Although NHMC also submitted its response to AT&T together with a USB flash drive on December 1, 2017, NHMC has not seen it posted to ECFS. NHMC is attaching a copy of the filing to this submission out of an abundance of caution.

NHMC again requests that the FCC upload all documents provided on December 1, 2017 via USB flash drive to ECFS. The documents provided by NHMC are evidence that the FCC must incorporate into the record and consider before moving ahead with the planned repeal of the 2015 Open Internet Order.

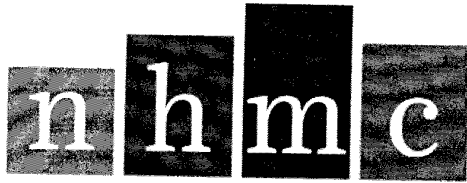
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CDS' with a stylized flourish at the end.

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

Attachment A

Letter from Carmen Scurato, National Hispanic Media Coalition to
Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-108, NHMC FOIA Documents
Hand-Delivered to FCC on December 1, 2017



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 § 1.406(b) in WC Docket No. 17-108
DOCKET FILE COPY ORIGINAL

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.¹ 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).²

As the FCC noted in its draft Order, NHMC is familiar with how to file documents in ECFS³ and is therefore aware that there are very specific limitations for uploading documents.⁴ Each submission can have a maximum of five files and the combined files cannot exceed 25 MB.⁵ Additionally, the only supported files are pdf, text, ppt, pptx, docx, xlsx, doc, xls, rtf, ppt, pptx,

DOCKET FILE COPY ORIGINAL

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

² 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).

³ 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*).

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

⁵ 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
info@nhmc.org | www.nhmc.org

No. of Copies rec'd 0
List ABCDE

and dwg.⁶ The FCC provided its FOIA productions to NHMC over email by attaching compressed zip files, which are not supported by the ECFS.⁷

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.⁸ 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.⁹ 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

⁶ See *id.*

⁷ 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.

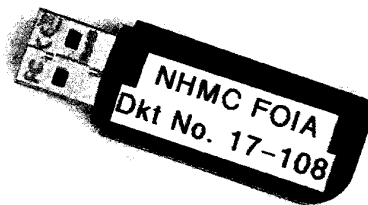
⁸ See Attachment A. This does not include the 21 cover letters and emails that NHMC received as this production. See Attachment B (providing all FCC cover letters and emails as part of NHMC's productions).

⁹ 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-Transparency	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-Advised-FOR RELEASE_Redacted	Carrier Responses	Advised 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-Inacrr 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	Advised 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	Advised 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

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

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
				

11
XLSX
Microsoft Excel 97-2003

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



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Consumer
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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



ZIP

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



ZIP

Consumer
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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



ZIP

Consumer
Compl...f 3.zip

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



ZIP

Consumer
Compl...f 3.zip

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

09/05/2017
1:23 PM
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
Compl...f 3.zip

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 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).

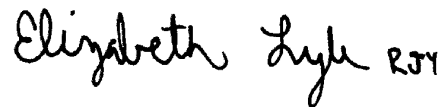
¹³ 47 C.F.R. § 0.470(e)(5).

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

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



ZIP

Consumer
Compl...f 3.zip

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

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

~~o. This filing contains confidential information (Not For Public Inspection)~~

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.

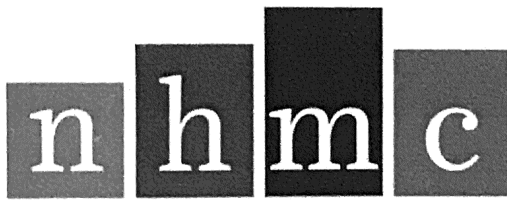
o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th 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.

1 L 2- ROM

Attachment B

Letter from Carmen Scurato, National Hispanic Media Coalition to
Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-108, NHMC Response to AT&T
Hand-Delivered to FCC on December 1, 2017



National Hispanic Media Coalition

Submitted via Hand-Delivery for Electronic Filing

December 1, 2017

ACCEPTED/FILED

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

DEC - 1 2017

Federal Communications Commission
Office of the Secretary

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

Dear Ms. Dortch:

The National Hispanic Media Coalition (NHMC) submits this letter and hand-delivered USB flash drive to address AT&T's opposition¹ to NHMC's Joint Motion filed on September 18, 2017 asking the Federal Communications Commission (FCC) to (1) incorporate all informal consumer complaints and other related open Internet documents into the above-referenced proceeding; and (2) set a new comment cycle providing the public adequate time to review and comment on the new evidence.²

In our review of the documents, NHMC discovered that the FCC did not produce a large portion of the documents requested through our Freedom of Information Act (FOIA) requests.³ Nevertheless, NHMC commissioned an analysis of documents released to date, finding not only that consumer complaints are relevant in the above-referenced proceeding, but also finding that consumers and carriers perceive that broadband Internet access service is a telecommunications service.⁴

The FCC provided NHMC with data in various Excel spreadsheets for 6,876 consumer complaints against AT&T, and text for 6,868 of those complaints. AT&T notes that "NHMC has been free to file any of those complaints into this docket along with an explanation of why they are relevant, and indeed it remains free to do that today under the FCC's liberal *ex parte* rules."⁵ NHMC is still missing the significant portion of the carrier responses and is unable to determine how these complaints were resolved. However, AT&T was required to draft carrier responses to these complaints and is therefore in the best position to explain how the 6,876 complaints involving AT&T were resolved.

¹ See Letter from Henry Hultquist, Vice President Regulatory Affairs, AT&T to Marlene Dortch, Secretary, FCC, WC Docket No. 17-108 (Sept. 27, 2017) (AT&T *Ex Parte*).

² See Joint Motion To Make Informal Open Internet Complaint Documents Part of the Record and To Set a Pleading Cycle for Comment on Them, WC Docket No. 17-108 (filed Sept. 18, 2017).

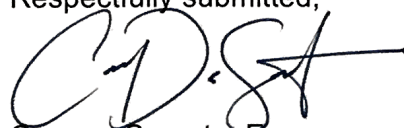
³ See Application of NHMC for Review of Initial Action Re: NHMC FOIA Requests, WC Docket No. 17-108 (filed Nov. 14, 2017).

⁴ Reza Rajabiun, LLM, PhD, Consumer Perspectives on Barriers to Accessing the Open Internet: A Preliminary Analysis of Informal Consumer Complaints to the Federal Communications Commission (FCC) and Related Documents, WC Docket No. 17-108 (filed Nov. 20, 2017).

⁵ AT&T *Ex Parte* at 6.

NHMC is submitting the text of the consumer complaints and spreadsheet via hand-delivered USB flash drive to the FCC and requests that the documents be uploaded to its Electronic Comment Filing System (ECFS). The documents released pursuant to NHMC's FOIA requests show that everyday consumers experience barriers when trying to access the open Internet. This evidence must be considered by the FCC as part of the above-referenced proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Scurato', with a long horizontal stroke extending to the right.

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

ACCEPTED/FILED


DEC - 1 2017

Federal Communications Commission
Office of the Secretary



Attachment C

Unanswered email sent by Carmen Scurato, NHMC
to Marlene Dortch and Melissa Askew on December 4, 2017

From: Carmen Scurato cscurato@nhmc.org 
Subject: Re: Meeting with NHMC
Date: December 4, 2017 at 11:19 AM
To: Marlene Dortch Marlene.Dortch@fcc.gov
Cc: Gloria Tristani gtristani@nhmc.org, Melissa Askew Melissa.Askew@fcc.gov

Hi Marlene,

I wanted to flag that NHMC hand-delivered two ex partes last Friday, December 1, 2017. Each filing included a USB flash drive with documents that we request be uploaded to the Electronic Comment Filing System (ECFS). Can you please confirm receipt of the cover letters and the USB flash drives accompanied with each filing?

Also, I spoke with Melissa on the phone and she noted that the documents in the USB flash drives will not be uploaded to ECFS, but there will be a note accompanying the cover letters mentioning the USB flash drive is available for examination at the FCC. I was hoping you could share any guidance that outlines this protocol.

I am also writing to ask whether you will reconsider and upload the documents in the USB flash drives to ECFS. However, as an alternative, we would request that you include this FCC link in the note about the USB flash drive for the ex parte filing with all FOIA documents attached. <https://www.fcc.gov/response-nhmc-foia-request>

To clarify, this link, on the FCC's own website includes all the documents in the NHMC FOIA USB flash drive, that we request be incorporated as part of the official record in the WC Docket No. 17-108 proceeding.

Looking forward to your response.

Best,
Carmen



NHMC Ex Parte
FOIA A...017.pdf



NHMC Ex Parte
FOIA D...ed].pdf

Carmen Scurato / Vice President, Policy & General Counsel
cscurato@nhmc.org / (202) 596-8997 / Washington, DC



National Hispanic
Media Coalition



On Dec 1, 2017, at 10:36 AM, Marlene Dortch <Marlene.Dortch@fcc.gov> wrote:

Hi Carmen,

I am out of the office today. For clarification on filing a large number of documents, you may meet with or call Melissa Askew. She manages ECFS and is the expert on using the system. She is in the office today and can be reached at (202)418-0292.

I am copying her here as well.

Best,
Marlene

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Carmen Scurato
Sent: Thursday, November 30, 2017 9:00 PM
To: Marlene Dortch
Cc: Gloria Tristani
Subject: Meeting with NHMC

Hi Marlene,

I have a few questions about filing a large number of documents into the record for the WC Docket No. 17-108 proceeding. Would you be able to meet with Gloria Tristani, Francella Ochillo and I tomorrow, Friday December 1st, between 10am-1pm?

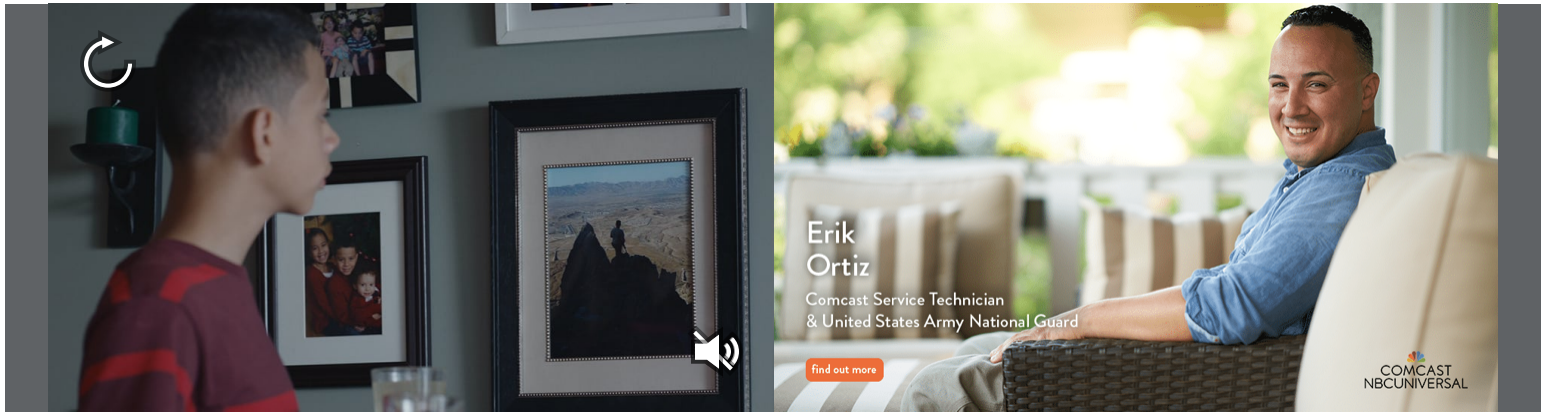
Best,
Carmen

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



Attachment D

"50,000 net neutrality complaints were excluded from FCC's repeal docket"
by Jon Brodtkin, Ars Technica



NET NEUTRALITY DOCKET —

50,000 net neutrality complaints were excluded from FCC's repeal docket

FCC is "going to great lengths to ignore these documents," advocate says.

JON BRODKIN - 12/5/2017, 10:17 AM



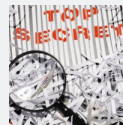
loonyhiker

[Enlarge](#)

The Federal Communications Commission docket for its repeal of net neutrality rules is missing something: more than 50,000 complaints that Internet customers have filed against their ISPs since the rules took effect in 2015.

The National Hispanic Media Coalition (NHMC) was able to obtain the text of net neutrality complaints from the FCC via a public records request but says it has not been able to convince the FCC to include them in the [repeal docket](#). "It seems to me that the commission is going to great lengths to ignore these documents and not incorporate them into the record," NHMC General Counsel Carmen Scurato told Ars.

This is the latest dispute between the NHMC and the FCC over net neutrality complaints. The NHMC filed a Freedom of Information Act (FoIA) request in May for complaints that Internet users filed against their ISPs and for the ISPs' responses to those complaints.



FURTHER READING

Democrat asks why FCC is hiding ISPs' answers to net neutrality complaints

The FCC initially [refused](#) to release all of the complaints but eventually complied with that aspect of the NHMC's request and produced nearly 70,000 pages of records. The FCC [still hasn't](#) given the NHMC most of the broadband providers' responses to complaints.

The NHMC made the documents it obtained from the FCC public at [this webpage](#), and the FCC has posted the documents [on its website](#). But officials at the NHMC argue that the complaints should be part of the official record in the FCC's repeal of net neutrality rules. The complaints may show that the repeal of net neutrality rules is misguided, they say.

“We hand-delivered USB flash drives”

Of course, the FCC has all the documents and could include them in the docket itself. The NHMC and about 20 other advocacy groups filed a [motion](#) in mid-September to have the documents included, but the motion was opposed by broadband industry lobby groups and then rejected by the FCC.

Scurato and NHMC Special Policy Advisor Gloria Tristani went to the FCC headquarters on Friday last week and spoke to an FCC employee who handles the public commenting system. Scurato told Ars:

“

[We] [hand-delivered](#) two filings with USB flash drives, one of which included all of the documents that the FCC produced in response to our FoIA requests. We were told by staff at the FCC that they would not upload the documents in the USB flash drive and instead would put a note in the record saying that the flash drive was available for inspection at the commission.

Scurato said they also asked if the FCC has any official guidance for including such documents in the record but didn't get anything in return.

"I asked if it would have been different had we printed out all the pages, and she said that honestly no, they wouldn't upload that either—maybe a few samples, and would have included that same note [about the documents being available for inspection at the FCC office]," Scurato said. That note about documents being available for inspection apparently isn't on the docket yet.

Meanwhile, the net neutrality docket has 22 million filings and has been overrun by spam bots and fraudulent comments attributed to people without their knowledge. New York Attorney General Eric Schneiderman [described this](#) as "a massive scheme that fraudulently used real Americans' identities" in order to "drown out the views of real people and businesses."

FCC Chairman Ajit Pai and his staff have apparently taken no steps to prevent fraud in the docket, even when people who say they were impersonated [asked the FCC](#) to remove the fraudulent comments.

Scurato said she requested a meeting with another FCC employee and sent another email yesterday "reiterating our ask that the documents be uploaded to the electronic record (and if not, provide the official guidance as to why not)." She's still waiting to hear back.

Pai's office: This has been "fully addressed"

We contacted Pai's office today, and a spokesperson told us that "the NHMC issue is fully addressed" in the [net neutrality repeal proposal](#), starting on paragraph 335.

The NHMC's motion to include net neutrality complaints in the docket was [opposed](#) by lobby groups that represent the cable and telecom industries (NCTA and USTelecom, respectively), Pai's proposal notes. "The motion is opposed by several parties who argue that the informal complaint materials are not relevant to this proceeding, and that the motion 'appears to be... aimed at prolonging this proceeding unnecessarily,'" Pai's proposal says.

The FCC agreed with the industry lobbyists who argued that the complaints themselves aren't likely to identify any net neutrality problems that advocates haven't already discussed in the docket. "We are convinced that we have a full and complete record on which to base our determination today without incorporating the materials requested by NHMC," Pai's proposal said.

Pai's proposal also says:

“

Under Commission rules, and as noted by opponents to the motion, "NHMC is free to put

into the record whatever it believes to be relevant via *ex parte* letters." NHMC began receiving the documents it claims are relevant to the proceeding on June 20, 2017. If NHMC believed the documents were relevant to the proceeding at that time, it could have submitted them into the record at any time during the course of the following [four] months. It did not.

The FCC's online commenting system allows documents to be uploaded, but there is a limit of five files per submission and a limit of 25MB per submission. The NHMC's FoIA request turned up 67 documents totaling 326MB; some of them are nearly 25MB, and one document consisting of [complaints about AT&T](#) is more than 25MB, Scurato told us.

"It would take multiple separate and likely disjointed uploads to get the documents in there," Scurato told Ars. "Additionally, we had asked the FCC not only to incorporate the documents into the record as part of our motion, but to also set a new comment cycle to give stakeholders adequate notice and opportunity to analyze and comment on the documents. Both of those requests were denied."

The NHMC motion to include the complaints in the docket argued that the documents help answer questions that the FCC asked when it sought public comment on repealing net neutrality rules. For example, the FCC asked if there is "evidence of actual harm to consumers sufficient to support maintaining" the rules and the classification of ISPs as common carriers.

The NHMC did [commission a report](#) that offers a preliminary analysis of the complaints. The analysis said that complaints "clearly reveal [that] slower than expected effective speeds and restrictive data cap[s] already constrain the freedom of American consumers to utilize the basic broadband subscriptions they are paying for" to reliably access services "on top of these connections to the open Internet." The analysis also found that consumers perceive broadband to be a "telecommunications" service, in contrast to [Pai's argument](#) that broadband isn't telecommunications and shouldn't be regulated as such.

In a congressional hearing in July, a Democratic lawmaker asked Pai if anything could stop the FCC from eliminating net neutrality rules. [Pai told Congress](#) that evidence of consumer harm would be taken seriously, but the FCC hasn't conducted an extensive review of the complaints.

Putting the complaints in the record would "clearly undermine the FCC's legal conclusion that the rules are unnecessary and that concerns are 'anecdotal'" Senior VP Harold Feld of consumer advocacy group Public Knowledge told Ars. "By contrast, the failure of the FCC to even accept the information in the docket raises some significant APA [[Administrative Procedure Act](#)] concerns. It is highly relevant evidence that directly rebuts one of the Order's key supporting points."

Problems in the public comment process could end up playing a role in future lawsuits, as net neutrality supporters will likely sue the FCC in order to reinstate the rules.

Democrats pressure Pai

The NHMC isn't the only one calling on the FCC to include net neutrality complaints in the docket.

There are "50,000 consumer complaints missing from the record," Democratic FCC Commissioner Jessica Rosenworcel **said** yesterday. Twenty-eight Democratic senators led by Maggie Hassan of New Hampshire also called out the "50,000 consumer complaints [that] seem to have been excluded from the public record in this proceeding" in a **letter to Pai yesterday**.

The senators also complained about the extensive fraud in the docket, with bots apparently having filed "hundreds of thousands of comments."

"A free and open Internet is vital to ensuring a level playing field online, and we believe that your proposed action may be based on an incomplete understanding of the public record in this proceeding," the senators wrote.

Promoted Comments

cvilleraven / Wise, Aged Ars Veteran

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So complaints about specific instances of ISP impropriety in any form are not "legitimate" comments regarding the need for Title II regulation. Got it.

134 posts | registered 9/29/2016



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