

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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February 13, 2018

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

Dear Chairman Pai:

We write to request information that will help both us and the public better understand how the Federal Communications Commission (FCC or Commission) managed the record in its recent net neutrality proceeding.¹ This proceeding attracted unparalleled public attention, with a record 24 million public comments.² Yet the net neutrality docket is also notoriously replete with fake comments,³ even including submissions from Russian email addresses.⁴ This docket raises novel questions about how an agency can properly handle and interpret the public's feedback to make sound policy decisions.

The Commission has a responsibility under the Administrative Procedure Act to fully review and respond to significant comments filed in its record. When taking any agency action, the FCC bears the burden of demonstrating that its analysis is supported by the record, and that it has fully engaged with the American public by ensuring their voices are heard. Giving the public an opportunity to comment in a proceeding such as this one is crucial not only to ensure

¹ Federal Communications Commission, *Restoring Internet Freedom*, WC Docket No. 17-108 (rel. Jan. 4, 2018) (hereinafter "FCC 2018 Order").

² *Id.* at ¶ 19; *Id.* at 538, Dissenting Statement of Commissioner Jessica Rosenworcel ("To date, nearly 24 million comments have been filed in this proceeding. There is no record in the history of this agency that has attracted so many filings.").

³ *Millions of Net Neutrality Comments Were Faked. Turns Out Mine Was One*, USA Today (Dec. 6, 2017).

⁴ *Russian Bots Target FCC in Attempt to Get Net Neutrality Repeal*, NY Post (Nov. 22, 2017).

the FCC can consider the full impact of its proposal, but also to give the public confidence in the agency's procedures.⁵

Unfortunately, the FCC's Order gave scant detail about how it approached its unprecedented docket, tucking all description of the process into a few paragraphs at the end of a lengthy order. While we may not support the outcome of this proceeding, we hope you agree with us that transparency in the process is crucial. In order to restore public confidence in the integrity of the process and give the American people a better understanding of how the FCC analyzed the comments filed in this proceeding, we request that you provide us information on how the agency reviewed the public comments. Please answer the following questions no later than March 6, 2018.

1. The Commission has never handled a docket of this size before or one with so many fraudulent filings. What public process did the Commission conduct to determine how to handle these novel issues? How did the Commission generate any guidelines it provided to staff working on this proceeding? Please provide any guidelines and internal legal analysis to support any guidelines provided to staff.
2. The FCC's Order notes that the Commission did not rely on "comments devoid of substance," or "non-substantive comments."⁶ What analysis did the FCC conduct to determine which comments were "devoid of substance" or "non-substantive?" Please provide any guidelines provided to staff who made these determinations.
3. According to Commissioner Clyburn, the Order does not cite a single consumer comment.⁷ How many consumer comments were filed in the record? Why did the Commission decide not to respond to any of these comments?
4. Chairman Pai has stated that comments filed from Russian email addresses were in favor of net neutrality.⁸ Did the Commission conduct an independent analysis to support this determination? Please provide any data or analysis used to support this claim.
5. The FCC has refused to work with New York Attorney General Eric Schneiderman to investigate fraudulent use of Americans' identities in the record. Please explain why the FCC decided not to cooperate with this criminal investigation. Please provide any

⁵ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, et al., to Ajit V. Pai, Chairman, Federal Communications Commission, et al. (June 26, 2017).

⁶ See note 1, FCC 2018 Order at ¶ 344.

⁷ *Id.* at 223, Dissenting Statement of Commissioner Mignon L. Clyburn.

⁸ *FCC Net Neutrality Process 'Corrupted' by Fake Comments and Vanishing Consumer Complaints Officials Say*, Washington Post (Nov. 24, 2017).

internal communications about this decision and any legal analysis generated to support this decision.

6. A number of U.S. citizens claim that comments were falsely filed using their names. The FCC's Order notes that the FCC is under "no legal obligation to adopt any 'procedural devices' . . . such as identity-verification procedures."⁹ While it may not have an obligation, does the FCC have the authority to adopt such procedural devices? If so, why has the FCC chosen not to adopt such procedures?
7. How did the FCC determine whether comments were filed by the entity with whom the comments were associated? For instance, when the FCC cited a comment from an internet service provider, what did the Commission do to determine that the company in fact filed those comments? What did the Commission do to determine whether comments filed under an individual's name was in fact from that person? Please provide any guidelines provided to staff tasked with making these determinations.
8. The Order states that the FCC "focused its review of the record on the submitted comments that bear substantively on the legal and public policy consequences of the actions."¹⁰ How did the Commission determine whether comments met this standard? Please provide any guidelines provided to staff tasked with making these determinations and any internal legal analysis to support these guidelines.
9. Several members of this Committee filed comments in the docket of this proceeding, yet a number of the arguments raised in those comments were either dismissed out of hand or overlooked entirely.¹¹ How did the Commission decide which arguments filed by members of Congress should not be considered?
10. The FCC's Order notes that the FCC devoted "substantial resources" to reviewing and evaluating "the content of the approximately 23 million express comments," or "shorter submissions that are made directly into a web form and do not require supporting file attachments."¹² Did the FCC determine that any of those 23 million "shorter submission" comments contained "substantive issues" that were relevant to the FCC's decision.¹³ If so, how did the FCC address those substantive issues in its Order?
11. The FCC's Order notes that the FCC has previously declined to apply internal rules regarding false statements. Does the FCC have the authority to require commenters to be

⁹ See note 1, FCC 2018 Order at ¶ 345.

¹⁰ *Id.* at ¶ 344.

¹¹ Comments of Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, et al. filed with Federal Communications Commission, *Restoring Internet Freedom*, WC Docket No. 17-108 (Aug. 4, 2017).

¹² See note 1, FCC 2018 Order, footnote 1182.

¹³ *Id.* at footnote 1182.

truthful in their submissions to the FCC? If so, why did the FCC choose not to require commenters to be truthful?

12. As noted by the National Hispanic Media Coalition (NHMC), the FCC has received tens of thousands of consumer complaints related to net neutrality, yet the Commission denied NHMC's request to include the filings in the record.¹⁴ In denying NHMC's request, the FCC relied on arguments made by industry representatives, and noted, "[s]ince we do not rely on these informal complaints as the basis for the decisions we make today, we do not have an obligation to incorporate them into the record."¹⁵ What analysis did the FCC conduct to determine that consumer complaints about net neutrality violations were not relevant to the FCC's net neutrality decision? Please provide internal communications and any legal analysis conducted to support the decision not to rely on consumer complaints as evidence of harm.
13. The Order states that the Commission did not rely on comments filed under "fake" names.¹⁶ How did the Commission determine which filings used fake names? Please provide any internal communications or analysis regarding how the agency identified or analyzed fraudulent comments.
14. The Commission decided not to remove these fraudulent comments from the public website despite requests from the people associated with the identities. Please provide any internal communications and analysis explaining how the Commission decided not to remove these comments. Did the Commission remove any filings at all from the public record? If so, how did it decide which ones to remove? Please provide any documentation to support your response.
15. Did FCC staff review every comment filed in the docket? How many staff hours did the Commission devote to reviewing the record? Was staff assigned to work on the docket full time? Was staff asked to work overtime to complete the review of the record by a certain deadline? How much of the FCC's budget was spent to compensate staff designated to review the docket? How much of the FCC's budget was spent to pay staff overtime to review the docket? Please provide any documentation and internal communications, including communications provided to staff, regarding how to spend time reviewing the docket.
16. Did senior management at the Commission provide any training sessions for staff tasked with reviewing the record? If so, please provide any training material supplied to the staff.

¹⁴ *Id.* at ¶ 339.

¹⁵ *Id.* at ¶ 341-342 (citing AT&T Opposition and NCTA and USTelecom Opposition).

¹⁶ *Id.* at ¶ 345.

Your assistance in this matter is greatly appreciated, and we look forward to your response. If you have any questions, please contact Julie Babayan or Gerald Leverich with the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



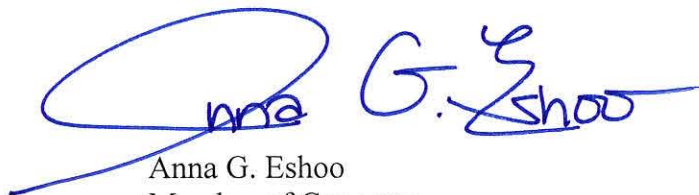
Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations



Eliot L. Engel
Member of Congress



Gene Green
Member of Congress



Anna G. Eshoo
Member of Congress



Bobby L. Rush
Member of Congress



Jan Schakowsky
Member of Congress



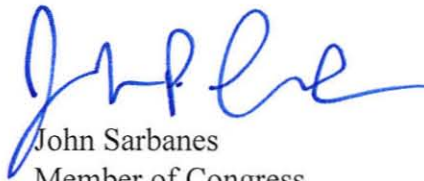
G.K. Butterfield
Member of Congress



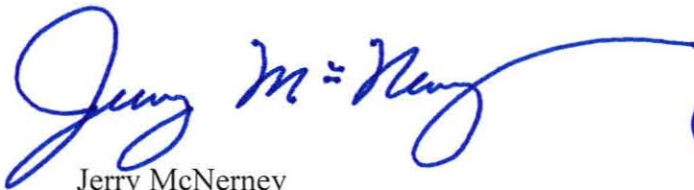
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Member of Congress



Kathy Castor
Vice Ranking Member



John Sarbanes
Member of Congress



Jerry McNerney
Member of Congress



Peter Welch
Member of Congress



Ben Ray Lujan
Member of Congress



Paul D. Tonko
Member of Congress



Yvette D. Clarke
Member of Congress



Dave Loebsack
Member of Congress



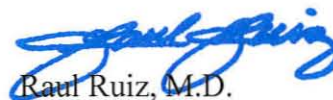
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