



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Audrey Conklin

Fox News

(b) (6)

Washington, DC 20009

audrey.conklin@foxnews.com

Re: Freedom of Information Act Request, Control No. FCC-2021-000168

Ms. Conklin:

On January 8, 2021, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) request, which has been designated FCC FOIA Control No. 2021-000168. You requested a “copy of each email containing the phrase ‘SECTION 230’ in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period November 1, through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to your request, locating approximately 398 pages. Of these records, 40 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 40 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control No. 2021-000168 (Submitted Jan. 8, 2021) (Internal quotations omitted).

<sup>2</sup> 5 U.S.C. § 552(b)(5).

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

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>

In this case, materials related to the FCC’s decisionmaking process regarding how to respond to media and Congressional requests related to Section 230 as well as other related internal discussions have either been withheld or redacted. Similarly, draft press releases, speeches, and website postings, as well as Congressional and media briefing materials have been withheld in their entirety. We find the redacted or withheld material is the type which Exemption 5 is intended to protect and because of the reasonably foreseeable harm to agency decisionmaking process, we decline to make a discretionary release in this instance.

Additional information was redacted under FOIA Exemption 6.<sup>7</sup> Exemption 6 protects “personnel and medical files and similar files the 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.

In this case, we have redacted personal email addresses, phone numbers, and other identifying information about family members of FCC Commissioners and family members of other FCC employees. Passcodes and login identification numbers for audio and video calls have also been redacted. This information is unrelated to the subject of the FOIA request and is not appropriate for discretionary release considering the personal privacy interests involved.

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>8</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>9</sup>

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<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)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>9</sup> 47 CFR § 0.470.

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>10</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. Because the production in response to your request was provided in electronic form you will not be charged any fees.

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>11</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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:

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[FOIA-Public-Liaison@fcc.gov](mailto:FOIA-Public-Liaison@fcc.gov)

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College Park, MD 20740-6001  
202-741-5770

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<sup>10</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>11</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).

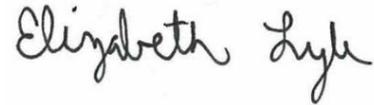
877-684-6448

[ogis@nara.gov](mailto:ogis@nara.gov)

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If you have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive, flowing style.

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Geoff Davidian  
Milwaukee Press  
(b) (6)  
Milwaukee, WI 53211  
Geoff@milwaukeeexpress.net

Re: Freedom of Information Act Request, Control No. FCC-2021-000124

Mr. Davidian:

On December 10, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) request, which has been designated FCC FOIA Control No. 2021-000124. You requested a “copy of each email containing the phrase ‘SECTION 230’ in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period November 1 through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to your request, locating approximately 398 pages. Of these records, 40 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 40 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control No. 2021-000124 (Submitted Dec. 10, 2020) (Internal quotations omitted).

<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.

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>

In this case, materials related to the FCC’s decisionmaking process regarding how to respond to media and Congressional requests related to Section 230 as well as other related internal discussions have either been withheld or redacted. Similarly, draft press releases, speeches, and website postings, as well as Congressional and media briefing materials have been withheld in their entirety. We find the redacted or withheld material is the type which Exemption 5 is intended to protect and because of the reasonably foreseeable harm to agency decisionmaking process, we decline to make a discretionary release in this instance.

Additional information was redacted under FOIA Exemption 6.<sup>7</sup> Exemption 6 protects “personnel and medical files and similar files the 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.

In this case, we have redacted personal email addresses, phone numbers, and other identifying information about family members of FCC Commissioners and family members of other FCC employees. Passcodes and login identification numbers for audio and video calls have also been redacted. This information is unrelated to the subject of the FOIA request and is not appropriate for discretionary release considering the personal privacy interests involved.

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>8</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>9</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

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<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)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>9</sup> 47 CFR § 0.470.

of the news media.”<sup>10</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. Because the production in response to your request was provided in electronic form you will not be charged any fees.

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>11</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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.”

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877-684-6448  
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<https://www.archives.gov/ogis>

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<sup>10</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>11</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 have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive, flowing style.

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

August 19, 2020

**VIA ELECTRONIC MAIL**

Avery Gardiner  
Center for Democracy & Technology  
1401 K Street NW, Suite 200  
Washington, DC 20005  
agardiner@cdt.org

Re: Freedom of Information Act Request, Control No. FCC-2020-000599

Dear Ms. Gardiner:

On August 3, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) request, which has been designated FCC-2020-000599. In your request you asked for any documents related to the requirement from Executive Order No. 13925 (re Preventing Online Censorship, issued May 28, 2020) that the Secretary of Commerce, in consultation with the Attorney General, and acting through the National Telecommunications and Information Administration Act (NTIA), file a petition for rulemaking with the FCC. Specifically, you requested:

All information and records received by the FCC pursuant to Section 2(b) of the Order, including any information on the interaction between subparagraphs (c)(1) and (c)(2) of section 230, the conditions under which an action restricting access to or availability of material is not “taken in good faith” within the meaning of subparagraph (c)(2)(A) of section 230, and any other proposed regulations submitted to the FCC to advance the scope of immunity created by section 230(c) of the Communications Decency Act. All information and records sent by the FCC in response to information and records it received pursuant to Section 2(b) of the Order.<sup>1</sup>

The Office of General Counsel conducted a search and produced no records responsive to your request other than publicly available documents. We have provided links to those publicly available documents below.

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<sup>1</sup> See FOIA FCC FOIA Control No. 2020-000599 (filed Aug. 3, 2020).

## NTIA Petition for Rulemaking

- [https://www.ntia.gov/files/ntia/publications/ntia\\_petition\\_for\\_rulemaking\\_7.27.20.pdf](https://www.ntia.gov/files/ntia/publications/ntia_petition_for_rulemaking_7.27.20.pdf)

## FCC Chairman's Statement and Public Notice re NTIA Petition:

- <https://www.fcc.gov/document/chairman-pai-seeking-public-comment-ntias-sec-230-petition>
- <https://www.fcc.gov/document/reference-information-center-petition-rulemakings-filed-38>

If you wish to conduct a search on the Commission's Electronic Comment Filing System, the docket number for this particular proposed rulemaking is RM 11862.

We are required by both the FOIA and the FCC's rules to charge requesters certain fees associated with the costs of searching for, reviewing, and producing the records requested.<sup>2</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>3</sup> Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters."<sup>4</sup> As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.<sup>5</sup> We have not expended appreciable search time or generated any copies in processing your request and therefore you will not be assessed any fees in connection with this response.

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 FCC within 90 calendar days of the date of this letter.<sup>6</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

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<sup>2</sup> See 5 U.S.C. § 552(a)(4)(A), 47 CFR § 0.470.

<sup>3</sup> 47 CFR § 0.470.

<sup>4</sup> 47 CFR § 0.466(a)(8).

<sup>5</sup> 47 CFR § 0.470(a)(3)(i).

<sup>6</sup> 47 CFR § 0.461(j). 1.115; 47 CFR § 1.7 (documents are considered filed with the FCC upon their receipt at the location designated by the FCC).

the envelope (or subject line, if via e-mail) and the application itself as “Review of Freedom of Information Action” and reference FOIA Control Number FCC-2020-000599.

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  
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If you have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,



Elizabeth Lyle  
Assistant General Counsel

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Lauren T. Feiner  
CNBC  
900 Sylvan Ave  
Englewood Cliffs, NJ 07632  
lauren.feiner@nbcuni.com

Re: Freedom of Information Act Requests, FCC-2021-000135 and FCC-2021-000136

Ms. Feiner:

On December 15, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) requests, which have been designated FCC FOIA Control Numbers 2021-000135 and FCC-2021-000136. You requested a “copy of each email containing the phrase ‘Section 230’ or ‘230’ [or ‘Trump’] in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period May 1, through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to both of your requests and located approximately 2,213 pages. Of these records, 278 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 278 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control Numbers 2021-000135 and 2021-000136 (Submitted Dec. 15, 2020) (Internal quotations omitted).

<sup>2</sup> 5 U.S.C. § 552(b)(5).

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

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>

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<sup>7</sup> 5 U.S.C. § 552(b)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

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<sup>10</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>11</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).

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Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive style with a large initial "E" and "L".

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

January 12, 2020

**VIA ELECTRONIC MAIL**

John Hendel

Politico

(b) (6)

Washington, DC 20010

[jhendel@politico.com](mailto:jhendel@politico.com)

Re: FOIA Control No. 2020-561

Mr. Hendel:

This letter responds to your Freedom of Information Act (FOIA) request, FOIA Control No. 2020-561, seeking:

All written communications records from the dates of May 26 through June 10 between any outside parties (including but not limited to administration, industry and congressional officials and encompassing email and text message records) and the offices of FCC Chairman Pai, the general counsel and legislative affairs regarding President Trump's May 28 executive order aimed at social media companies. I'd also request any FCC analysis, no matter how informal, of the legality of this order and the FCC's potential role over social media, if any was drafted during these dates. The White House executive order explicitly contemplates a role for the FCC, which puts this request in the public interest given the order's implication for online liability protections of Communications Decency Act Section 230 and thus consumers at large.

Your request for expedited processing was granted on July 14, 2020.

The Office of Chairman Pai, Office of General Counsel, and Office of Legislative Affairs searched for responsive records. We disclose 24 pages of records responsive to your request, some of which are redacted for the reasons discussed below. We withhold approximately 35 responsive emails for the reasons discussed below.

Records responsive to your request were redacted or withheld because they contain material protected under FOIA Exemption 4.<sup>1</sup> Exemption 4 protects matters that are "trade secrets and commercial or financial information obtained from a person and are privileged or confidential." Commercial or financial information is confidential if it is "customarily kept

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<sup>1</sup> 5 U.S.C. § 552(b)(4).

private, or at least closely held, by the person imparting it.”<sup>2</sup> Commercial or financial information submitted to the Commission consistent with its rules does not lose its confidential character.<sup>3</sup> In this case, emails containing news articles available by paid subscription are protected by Exemption 4.

We have determined that it is reasonably foreseeable that disclosure would harm the commercial interests of the news providers and service providers involved, which Exemption 4 is intended to protect.

Records responsive to your request were redacted or withheld under FOIA Exemption 5.<sup>4</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>5</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>6</sup> Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”<sup>7</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>8</sup> In this case, the redacted or withheld records consist of emails deliberating legal analyses, responses to press inquiries, and public statements concerning the Executive Order.

We have determined that it is reasonably foreseeable that disclosure would harm the agency’s deliberative processes, which Exemption 5 is intended to protect.

Records responsive to your request were redacted under FOIA Exemption 6.<sup>9</sup> Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In this case, the withheld or redacted information consists of private telephone numbers. Balancing the public’s right to

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<sup>2</sup> *Food Mktg. Inst. v. Argus Union Leader*, 139 S. Ct. 2356, 2363 (2019).

<sup>3</sup> See 47 CFR §§ 0.457(d), 0.459; see generally U.S. Dep’t of Justice, Office of Information Policy, *Exemption 4 After the Supreme Court’s Ruling in Food Marketing Institute v. Argus Leader Media*, <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>.

<sup>4</sup> 5 U.S.C. § 552(b)(5).

<sup>5</sup> *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>6</sup> *Id.* at 151-52.

<sup>7</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>8</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>9</sup> 5 U.S.C. § 552(b)(6).

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.

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

The FOIA requires that "any reasonably segregable portion of a record" must be released after appropriate application of the Act's exemptions.<sup>10</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>11</sup> The redactions and/or withholdings made 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 also reviewed the withheld or redacted records to determine if discretionary release is appropriate.<sup>12</sup> The materials that are protected from disclosure under Exemption 4, Exemption 5, and Exemption 6 are not appropriate for discretionary release because of the commercial, deliberative, and privacy interests involved.

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>13</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>14</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>15</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 was provided in electronic form. Therefore, you will not be charged any fees, and we do not address the merits of your fee waiver request.

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

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<sup>10</sup> 5 U.S.C. § 552(b) (sentence immediately following exemptions).

<sup>11</sup> *Mead Data Cent. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

<sup>12</sup> See President's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

<sup>13</sup> See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>14</sup> 47 CFR § 0.470.

<sup>15</sup> 47 CFR § 0.466(a)(5)-(7).

be *received* by the Commission within 90 calendar days of the date of this letter.<sup>16</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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  
45 L Street NE, Washington, DC 20554  
202-418-0440  
[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:

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National Archives and Records Administration  
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202-741-5770  
877-684-6448  
[ogis@nara.gov](mailto:ogis@nara.gov)  
<https://www.archives.gov/ogis>

Sincerely,



Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FCC FOIA Office, Office of Legislative Affairs

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<sup>16</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).



Federal Communications Commission  
Washington, D.C. 20554

December 10, 2021

**VIA ELECTRONIC MAIL**

Jeremy Borden

(b) (6)

Durham, NC 27702

(b) (6)

Re: FOIA Control No.: 2022-000057

Mr. Borden:

This letter responds to the Freedom of Information Act (FOIA) request you filed with the Federal Communications Commission (FCC or Commission) on November 7, 2021, seeking “all communications to and from Alisa Valentin, special advisor to FCC Commissioner Geoffrey Starks, concerning the following topics and/or domains: 1) Communications to and from all Google representatives, whose emails typically end in @google.com. 2) All emails about and/or concerning All emails about and/or concerning Section 230 of the Communications Decency Act, using “Section 230” and “Communications Decency Act” and “immunity” as keywords”<sup>1</sup> covering the timeframe of July 22, 2019 through November 7, 2021. Your request has been assigned FOIA Control No. 2021-000670.

Responding to concerns raised by Commission staff regarding the scope of your request, as originally constructed, you agreed to modify the timeframe for the portion of your request seeking documents related to Section 230 of the Communications Decency Act to cover the period of October 1, 2020 through February 1, 2021 and exclude all mass emails and publicly available information, such as, but not limited to, news articles, press releases, widely distributed materials, accessible to the public, etc.<sup>2</sup> In accordance with the above-described parameters, staff from the Office of Commissioner Starks searched for responsive records, locating 40 records of which 27 are being produced along with this response and with limited redactions applied for reasons discussed below. We are also withholding 13 records for reasons discussed below.

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<sup>1</sup> FOIA 2022-000057 (filed Nov. 7, 2021).

<sup>2</sup> See email from Jeremy Borden to Timothy Strachan, Federal Communications Commission (Nov. 19, 2021 11:32am EDT).

Records responsive to your request were withheld and redacted under FOIA Exemption 5.<sup>3</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>4</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>5</sup> Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”<sup>6</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>7</sup> The material being withheld from production in this matter consists of a proposed response to a press inquiry, internal emails exchanged in advance of an upcoming presentation, and accompanying draft documents, as well as a question and answer document that was created for the purpose of preparing the Commissioner for a Congressional hearing. We have determined that release of this material would have a chilling effect on agency deliberations and operations which Exemption 5 is intended to protect.

Records responsive to your request were also redacted under FOIA Exemption 6.<sup>8</sup> Exemption 6 protects “personnel and medical files and similar files the 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. Specifically, in the accompanying material, we have applied redactions to conference bridge dial-in information, as well as individual or personal identifying information such as personal phone numbers and email addresses. We have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

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>

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<sup>3</sup> 5 U.S.C. § 552(b)(5).

<sup>4</sup> *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>5</sup> *Id.* at 151-52.

<sup>6</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>7</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>8</sup> 5 U.S.C. § 552(b)(6).

<sup>9</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>10</sup> 47 CFR § 0.470.

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. Since these records will be produced electronically you will not be charged any fees.

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>12</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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:

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202-418-0440  
[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:

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877-684-6448  
[ogis@nara.gov](mailto:ogis@nara.gov)  
<https://www.archives.gov/ogis>

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<sup>11</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>12</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).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive style with a light grey rectangular background behind it.

Elizabeth Lyle  
Assistant General Counsel

cc: FCC FOIA Office



Federal Communications Commission  
Washington, D.C. 20554

December 18, 2020

**VIA ELECTRONIC MAIL**

Ryan Singel

[REDACTED]  
Oakland, CA 94609

(b) (6)

Re: FOIA Control No. FCC-2021-000028

Mr. Singel:

This letter responds to your Freedom of Information Act (FOIA) request, submitted to the Federal Communications Commission (FCC or Commission), and which seeks “[a]ny and all final legal opinions from the FCC’s general counsel office about the NTIA’s request for the FCC to start a proceeding on Section 230 of the Communications Decency Act.”<sup>1</sup> Your request has been assigned FOIA Control No. FCC-2021-000028.

The Office of General Counsel searched for responsive records. Our search produced one document – an October 21, 2020 blog post, authored by the Commission’s General Counsel, which discusses and analyzes the Commission’s authority to interpret Section 230 generally. The blog post is publicly available and can be accessed via the hyperlink below.

<https://www.fcc.gov/news-events/blog/2020/10/21/fccs-authority-interpret-section-230-communications-act>

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>2</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>3</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>4</sup> As an “educational requester, non-commercial scientific

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<sup>1</sup> FCC FOIA Control No. 2020-000028 (Submitted Oct. 15, 2020). The request also sought expedited processing and that all fees be waived since the “request is also newsworthy and of general interest to the citizenry” and because “section 230 is being talked about by Senators and the President in response to alleged censorship ahead of the 2020 elections on November 3.” This request for expedited processing was separately granted on October 26.

<sup>2</sup> See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>3</sup> 47 CFR § 0.470.

<sup>4</sup> 47 CFR § 0.466(a)(5)-(7).

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. Our response to your request did not result in any reproduction costs. Therefore, you will not be charged any fees.

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>5</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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:

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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:

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<sup>5</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 have any questions, please contact Stephen Duall in the Office of General Counsel at [Stephen.Duall@fcc.gov](mailto:Stephen.Duall@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive style with a clear, legible font.

Elizabeth Lyle  
Assistant General Counsel  
Administrative Law Division  
Office of General Counsel

cc: FCC FOIA Office



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Brittany Gibson  
American Prospect  
1225 I Street NW  
Washington, DC 07304  
bgibson@prospect.org

Re: Freedom of Information Act Request, Control No. FCC-2021-000131

Ms. Gibson:

On December 14, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) request, which has been designated FCC FOIA Control No. 2021-000131. You requested a “copy of each email containing the phrase ‘SECTION 230’ in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period November 1, through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to your request, locating approximately 398 pages. Of these records, 40 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 40 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control No. 2021-000131 (Submitted Dec. 14, 2020) (Internal quotations omitted).

<sup>2</sup> 5 U.S.C. § 552(b)(5).

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

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>

In this case, materials related to the FCC’s decisionmaking process regarding how to respond to media and Congressional requests related to Section 230 as well as other related internal discussions have either been withheld or redacted. Similarly, draft press releases, speeches, and website postings, as well as Congressional and media briefing materials have been withheld in their entirety. We find the redacted or withheld material is the type which Exemption 5 is intended to protect and because of the reasonably foreseeable harm to agency decisionmaking process, we decline to make a discretionary release in this instance.

Additional information was redacted under FOIA Exemption 6.<sup>7</sup> Exemption 6 protects “personnel and medical files and similar files the 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.

In this case, we have redacted personal email addresses, phone numbers, and other identifying information about family members of FCC Commissioners and family members of other FCC employees. Passcodes and login identification numbers for audio and video calls have also been redacted. This information is unrelated to the subject of the FOIA request and is not appropriate for discretionary release considering the personal privacy interests involved.

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>8</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>9</sup>

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<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)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>9</sup> 47 CFR § 0.470.

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>10</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. Because the production in response to your request was provided in electronic form you will not be charged any fees.

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>11</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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."

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202-741-5770

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<sup>10</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>11</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).

877-684-6448

[ogis@nara.gov](mailto:ogis@nara.gov)

<https://www.archives.gov/ogis>

If you have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive, flowing style.

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Jessica Guynn  
USA TODAY  
Washington, DC 20554  
jguynn@usatoday.com

Re: Freedom of Information Act Requests, FCC-2021-000114 and FCC-2021-000115

Ms. Guynn:

On December 8, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) requests, which have been designated FCC FOIA Control Numbers 2021-000114 and 2021-000115. You requested a “copy of each email containing the phrase ‘SECTION 230’ [or ‘TRUMP’] in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period November 1 through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to both of your requests and located approximately 398 pages. Of these records, 40 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 40 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control Numbers 2021-000114 and 2021-000115 (Submitted Dec. 8, 2020) (Internal quotations omitted).

<sup>2</sup> 5 U.S.C. § 552(b)(5).

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

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>

In this case, materials related to the FCC’s decisionmaking process regarding how to respond to media and Congressional requests related to Section 230 as well as other related internal discussions have either been withheld or redacted. Similarly, draft press releases, speeches, and website postings, as well as Congressional and media briefing materials have been withheld in their entirety. We find the redacted or withheld material is the type which Exemption 5 is intended to protect and because of the reasonably foreseeable harm to agency decisionmaking process, we decline to make a discretionary release in this instance.

Additional information was redacted under FOIA Exemption 6.<sup>7</sup> Exemption 6 protects “personnel and medical files and similar files the 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.

In this case, we have redacted personal email addresses, phone numbers, and other identifying information about family members of FCC Commissioners and family members of other FCC employees. Passcodes and login identification numbers for audio and video calls have also been redacted. This information is unrelated to the subject of the FOIA request and is not appropriate for discretionary release considering the personal privacy interests involved.

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>8</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>9</sup>

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<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)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>9</sup> 47 CFR § 0.470.

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>10</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. Because the production in response to your request was provided in electronic form you will not be charged any fees.

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>11</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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:

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Federal Communications Commission  
Office of the Managing Director  
Performance Evaluation and Records Management  
45 L Street NE, Washington, DC 20554  
202-418-0440  
[FOIA-Public-Liaison@fcc.gov](mailto:FOIA-Public-Liaison@fcc.gov)

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National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
202-741-5770

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<sup>10</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>11</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).

877-684-6448

[ogis@nara.gov](mailto:ogis@nara.gov)

<https://www.archives.gov/ogis>

If you have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive style with a large initial "E" and "L".

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2021

**VIA ELECTRONIC MAIL**

Michael Ravnitzky

(b) (6)

Silver Spring, MD 20902

(b) (6)

Re: Freedom of Information Act Request, Control No. FCC-2021-000140

Ms. Ravnitzky:

On December 15, 2020, the Federal Communications Commission (FCC or Commission) received your Freedom of Information Act (FOIA) request, which has been designated FCC FOIA Control No. 2021-000140. You requested a “copy of each email containing the phrase ‘SECTION 230’ in the email accounts of each of the following individuals: FCC Chairman Ajit Pai, Commissioner O’Rielly, Commissioner Carr, Acting General Counsel Thomas Johnson, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, and/or Intergovernmental Affairs Office Chief Greg Cooke. Please include To, From and cc emails. This request is limited to the time period November 1, through November 30, 2020. Please omit news clips and trade industry bulletins from the scope of this request.”<sup>1</sup> We are responding to your request electronically.

In furtherance of your request Commission staff searched for records that were responsive to your request, locating approximately 398 pages. Of these records, 40 pages have been withheld in full, and portions of the remaining records have been redacted, for the reasons discussed below.

The above-mentioned 40 pages of records were withheld, and a portion of other records were 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

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<sup>1</sup> FCC FOIA Control No. 2021-000140 (Submitted Dec. 15, 2020) (Internal quotations omitted).

<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.

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>

In this case, materials related to the FCC’s decisionmaking process regarding how to respond to media and Congressional requests related to Section 230 as well as other related internal discussions have either been withheld or redacted. Similarly, draft press releases, speeches, and website postings, as well as Congressional and media briefing materials have been withheld in their entirety. We find the redacted or withheld material is the type which Exemption 5 is intended to protect and because of the reasonably foreseeable harm to agency decisionmaking process, we decline to make a discretionary release in this instance.

Additional information was redacted under FOIA Exemption 6.<sup>7</sup> Exemption 6 protects “personnel and medical files and similar files the 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.

In this case, we have redacted personal email addresses, phone numbers, and other identifying information about family members of FCC Commissioners and family members of other FCC employees. Passcodes and login identification numbers for audio and video calls have also been redacted. This information is unrelated to the subject of the FOIA request and is not appropriate for discretionary release considering the personal privacy interests involved.

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>8</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>9</sup>

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<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)(6).

<sup>8</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>9</sup> 47 CFR § 0.470.

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes under category (3) as an "all other requester."<sup>10</sup> As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.<sup>11</sup> The production in response to your request required less than two hours of search time, and was provided in electronic form. Therefore, you will not be charged any fees.

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>12</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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:

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National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
202-741-5770

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<sup>10</sup> 47 CFR § 0.466(a)(8).

<sup>11</sup> 47 CFR § 0.470(a)(3)(i).

<sup>12</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).

877-684-6448

[ogis@nara.gov](mailto:ogis@nara.gov)

<https://www.archives.gov/ogis>

If you have any questions regarding this response, please contact Brendan McTaggart in the Office of General Counsel at [brendan.mctaggart@fcc.gov](mailto:brendan.mctaggart@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive, flowing style.

Elizabeth Lyle  
Assistant General Counsel

Enclosures

cc: FOIA Office, FCC



Federal Communications Commission  
Washington, D.C. 20554

February 3, 2021

**VIA ELECTRONIC MAIL**

Andrew Wyrich  
3112 Windsor Road Ste. A-391  
Austin, TX 78703  
awyrich@dailydot.com

Re: FOIA Control No. FCC-2021-000067

Mr. Wyrich:

This letter responds to your Freedom of Information Act (FOIA) request for:

“A copy of each email containing the phrase "Section 230" OR the word "Trump" OR the word "president" OR the numbers "230" from the email accounts of the following individuals: FCC Chairman Ajit Pai, Commissioners O’Rielly, Carr, Rosenworcel and Starks; Acting General Counsel Ashley Boizelle, OMR Director Brian Hart, Media Bureau Chief Michelle Carey, Intergovernmental Affairs Office Chief Greg Cooke. I limit this request to the time period October 1, 2020 through November 9, 2020.”<sup>1</sup>

Your request was subsequently amended to substitute Thomas Johnson, General Counsel, for Ashely Boizelle, and to exclude from your request media reports and trade publications, provided such reports and publications were not forwarded and did not contain supplemental commentary from individual custodians..<sup>2</sup> In order to avoid a potentially unreasonable amount of responsive records and to produce records that are more likely responsive to the information you seek, you also agreed to limit the search to emails that included the phrase “Section 230” or “230” and the word “Trump” or “President” within the time period requested.<sup>3</sup>

The named custodians, as amended, searched for responsive records. Custodians located 307 pages of documents responsive to your request, excluding duplications. Of the 307 pages located, 82 are produced as an attachment to this email, without redaction. The remaining 225 pages are withheld in full due to the reasons discussed below.

Records responsive to your request were withheld under FOIA Exemption 5.<sup>4</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

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<sup>1</sup> FCC FOIA Control No. FCC-2021-000067 (Submitted Nov. 9, 2020).

<sup>2</sup> See email from Andrew Wyrich to Stephen Duall, Fed. Commc’ns Comm’n (Nov.17, 2020 11:58am EST).

<sup>3</sup> See email from Andrew Wyrich to Stephen Duall, Fed. Commc’ns Comm’n (Nov.23, 2020 4:45pm EST).

<sup>4</sup> 5 U.S.C. § 552(b)(5).

to “prevent injury to the quality of agency decisions.”<sup>5</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>6</sup> Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”<sup>7</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>8</sup> The withheld records consist of internal agency deliberations regarding proposed responses to inquiries from news media related to Section 230 of the Communications Decency Act. We find that the disclosure of the deliberations would harm the decisionmaking process by discouraging candid exchange of advice.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.<sup>9</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>10</sup> To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the withheld records to determine if discretionary release is appropriate.<sup>11</sup> Because of the reasonably foreseeable harm to agency decision-making process, we decline to make a discretionary release in this instance.

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>12</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>13</sup>

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<sup>5</sup> *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>6</sup> *Id.* at 151-52.

<sup>7</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>8</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>9</sup> 5 U.S.C. § 552(b) (sentence immediately following exemptions).

<sup>10</sup> *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

<sup>11</sup> *See* President’s Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

<sup>12</sup> *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>13</sup> 47 CFR § 0.470.

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>14</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 was provided in electronic form. Therefore, you will not be charged any fees.

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>15</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, 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."

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<sup>14</sup> 47 CFR § 0.466(a)(5)-(7).

<sup>15</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).

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<https://www.archives.gov/ogis>

If you have any questions, please do not hesitate to contact Stephen Duall in the Office of General Counsel at [Stephen.Duall@fcc.gov](mailto:Stephen.Duall@fcc.gov).

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle". The signature is written in a cursive style with a large initial "E" and a long, sweeping tail on the "L".

Elizabeth Lyle  
Assistant General Counsel  
Administrative Law Division  
Office of General Counsel

cc: FCC FOIA Office