



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

Mike O'Rielly  
Commissioner

September 16, 2016

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Ranking Member Cummings:

I am responding to your September 14, 2016 letter regarding the Oversight Committee's request for documents pertaining to the issue of net neutrality.

I sincerely apologize if there was a disconnect between my staff and the Republican or Democratic staff of the Oversight Committee. It is not my intention to delay or withhold any information from the Committee's review. Please know that any misunderstanding was unintentional, and I seek to remedy the situation immediately.

Pursuant to the conference call between Republican and Democratic Oversight Committee staff, my Chief of Staff, and Commissioner Pai's Chief of Staff that occurred on March 7, 2016, my staff believed that the Committee staff was satisfied with our responses and no further information would be necessary. Specifically, during that call, my staff outlined the screening process that we were told was used by the FCC's Office of General Counsel (OGC) in producing its response to the Committee's February 6, 2015 request, a production which your letter seems to indicate was deemed in full compliance. Significantly, the timeframe was limited from the period initially requested (January 14, 2014 – February 6, 2015) to a six-week period from November 1 to December 15, 2014, and after two separate automated searches were performed, the remaining documents were individually reviewed by OGC staff for responsiveness to the Committee's requests. The documents considered to be responsive were then provided to the Committee, except for drafts of the net neutrality order itself, which OGC withheld as they are considered by OGC to be highly sensitive documents critical to the internal deliberative process. Majority and minority Committee staff confirmed that this was an accurate description of the production process used. Further, my staff represented and Committee staff seemingly accepted that there would be no responsive documents from my office had we conducted a similar process. Accordingly, no further review was conducted, and my office has had no further contact with majority or minority Committee staff since that date.

However, in response to your September 14, 2016 letter, my staff and I have individually reviewed each of our documents between November 1 and December 15, 2014, and identified all documents that could be considered relevant in any way. These largely consist of emails sent

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within my office in the process of drafting speeches or talking points for public events in which I participated during that timeframe. In the interest of attempting to fully resolve any outstanding concerns you may have, I will provide these documents to the Committee next week.

In terms of the lack of information filed with OGC, it has been Commission practice and precedent for minority Commissioners to file directly any materials or documents requested by a Congressional Committee. This is, in part, because the OGC has taken a much more active role in the policy of the agency, as opposed to strictly acting in the capacity of a non-partisan counsel. This explains the description of the February 18, 2016 conference call between Committee staff and OGC, in which it was indicated that my office had not supplied OGC with any documents.

Lastly, I hope to clear up any misunderstanding regarding my May 5, 2014 *The Hill* op-ed, which was reviewed and commented upon by select outside individuals prior to publication. The Committee's press release indicated that I tried to argue that I wrote the op-ed "in [my] 'personal' capacity despite using official FCC resources, email, and staff." To clarify, I do not claim in any way that I wrote my op-ed in my personal capacity. Instead, I was indicating that my interactions with outside parties in this matter did not rise to the level of requiring ex parte filings, because the outside parties did not seek to influence FCC proceedings, but responded to my personal views provided in the draft version of the op-ed.

I am hopeful that this will resolve any outstanding requests or concerns in this matter. Please do not hesitate to contact me directly or have your staff reach out to Robin Colwell in my office at (202) 418-2300 with any questions or concerns.

Sincerely,  
  
Michael O'Rielly  
Commissioner

cc: The Honorable Jason Chaffetz, Chairman