

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

September 14, 2016

The Honorable Ajit Pai
The Honorable Michael O'Rielly
Commissioners
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioners Pai and O'Rielly:

I am writing to request an explanation for your refusal to provide any documents in response to a request from the Oversight Committee more than a year ago relating to the rulemaking process for the Open Internet Order, which was released publicly on March 12, 2015.

Although Democratic Members of the Commission have cooperated fully with our request, neither of you has produced a single responsive document to date, and even more concerning, your staff informed the Oversight Committee that you had not even begun to collect them.

Your refusal to cooperate with the Committee's request is unacceptable, it obstructs our investigation, and it prevents the Committee from having a complete or accurate understanding of the circumstances surrounding this rulemaking.

On February 6, 2015, the Oversight Committee sent a letter requesting that the Federal Communications Commission (FCC) produce a broad range of documents related to the Open Internet Order, including:

All documents and communications relating to the recommendations, or views of FCC personnel about net neutrality, the open internet proceeding, the classification of broadband, or the regulation of broadband internet access service.¹

¹ Letter from Chairman Jason Chaffetz, House Committee on Oversight and Government Reform, to Chairman Tom Wheeler, Federal Communications Commission (Feb. 6, 2015) (online at <https://oversight.house.gov/wp-content/uploads/2015/05/2015-02-06-JEC-to-Wheeler-FCC-open-internet.pdf>).

On February 26, 2015, staff from the FCC's Office of General Counsel consulted with Oversight Committee staff on the specific terms to be used to search for documents responsive to the Committee's request, such as "open internet" and "net neutrality." Following that call, Majority staff sent an email confirming that the Committee "expects that *all* documents responsive to its request will be produced."²

On March 25, 2015, staff from the FCC's Office of General Counsel and the Committee agreed to the list of custodians at the FCC whose documents would be searched in response to the Committee's request. This list of custodians included you and all of the individuals working in your offices.³

On May 29, 2015, the FCC's Office of General Counsel sent a letter to the Committee with its first set of responsive documents. However, this letter explained that Commissioner Pai personally refused to cooperate. The letter stated:

Notwithstanding our efforts to execute your Committee's instructions in a consistent manner throughout the agency, senior staff in the Office of Commissioner Ajit Pai recently informed me that Commissioner Pai will not permit OGC to collect, review and produce responsive documents that are in his custody or in the custody of his staff.⁴

Despite this refusal, on June 10, 2015, *Politico* reported that "Pai chief of staff Matthew Berry told MT [*Politico's* Morning Tech] that the Republican commissioner is fully cooperating with the committee's probe and willing to make any requested documents available."⁵

On February 26, 2016, Committee staff held a bipartisan conference call with both of your chiefs of staff. During that call, Commissioner Pai's Chief of Staff informed our staff that his office has not conducted a search for responsive documents using the terms agreed upon with the Committee. Commissioner O'Rielly's Chief of Staff informed our staff that although his office did conduct a preliminary search for documents with the letters "NN" (for "net neutrality"), they discontinued this search when it resulted in a large number of documents

² Email from Republican Staff, House Committee on Oversight and Government Reform, to John Williams, Senior Legal Advisor, Federal Communications Commission (Feb. 26, 2015).

³ Email from Christopher Morgan, Federal Communications Commission, to Committee Staff, House Committee on Oversight and Government Reform (Mar. 25, 2015); Email from Republican Staff, House Committee on Oversight and Government Reform, to Christopher Morgan, Federal Communications Commission (Mar. 26, 2015).

⁴ Letter from John Williams, Senior Legal Advisor, Federal Communications Commission, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (May 29, 2015).

⁵ *Pai Skirts FCC General Counsel in House Net Neutrality Probe*, Politico Morning Tech (June 10, 2015) (online at www.politico.com/tipsheets/morning-tech/2015/06/pai-skirts-fcc-general-counsel-in-house-net-neutrality-probe-house-panel-to-vote-on-icann-transition-bill-telecom-panel-adds-firstnet-hearing-212543).

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because a member of his staff has those initials. Commissioner O'Rielly's Chief of Staff conceded that they did not use any other search terms, such as "net neutrality" or "open internet," to identify documents responsive to the Committee's request.⁶

In addition, on February 18, 2016, Committee staff held a bipartisan call with staff from the FCC's General Counsel's Office, who informed us that neither Commissioner Pai's office nor Commissioner O'Rielly's office is responding to inquiries regarding this issue, and neither has provided a single document in response to the Committee's request last year.⁷

For these reasons, I request that you provide, by September 16, 2016, a complete explanation of all steps taken by your offices to respond to the Committee's request and the date by which your document production to the Committee will be complete.

Thank you for your prompt attention to this matter.

Sincerely,



Elijah E. Cummings
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman

⁶ Conference Call between House Committee on Oversight and Government Reform Staff and Chiefs of Staff to Commissioners Pai and O'Rielly, Federal Communications Commission (Feb. 26, 2016).

⁷ Conference Call between House Committee on Oversight and Government Reform Staff and Office of General Counsel Staff, Federal Communications Commission (Feb. 18, 2016).