



Federal Communications Commission
Washington, D.C. 20554

December 7, 2017

The Honorable Eric T. Schneiderman
Attorney General, State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Dear Attorney General Schneiderman:

I write in response to your November 21, 2017 letter to Chairman Pai requesting information about the Federal Communications Commission's *Restoring Internet Freedom* rulemaking proceeding. Upon careful review of your letter, the Commission must respectfully decline your request for information.

The public draft released over two weeks ago in the *Restoring Internet Freedom* docket marks the culmination of an unprecedented amount of public participation and transparency. Since the Commission issued its notice of proposed rulemaking in May 2017, the agency has received millions of public comments related to the proposal. The public draft amply addresses this rulemaking record in a nearly 200-page order that contains over one thousand footnotes. In addition, pursuant to Chairman Pai's transparency initiative, the public now has had an opportunity to review the draft and submit further feedback before the scheduled vote at the Commission's December 14 open meeting.

The Commission is grateful to all commenters who engaged the legal and public policy questions presented by this important rulemaking. These comments ensure that the Commission considers all important aspects of its proposal to reclassify broadband Internet access service as an "information service" and return to the "light-touch" regulatory framework that fostered a free and open Internet in the United States prior to 2015.

As in many important rulemakings, this proceeding carries the potential for advocates on either side to abuse the process to create an appearance of numerical advantage. But the Commission does not make policy decisions merely by tallying the comments on either side of a proposal to determine what position has greater support, nor does it attribute greater weight to comments based on the submitter's identity. Accordingly, the Commission has never burdened commenters with providing identity verification or expended the massive amount of resources necessary to verify commenters' identities. Rather than dwell on how accurately automated or form submissions reflect actual popular support, the Commission has instead focused on

encouraging robust participation in its proceedings and ensuring that it has considered how the substance of submitted comments bear on the legal and public policy consequences of its actions.

Thus, while your letter suggests that the public comment process was somehow “corrupted” by the alleged submission of comments under false names, you offer no evidence that this activity affected the Commission’s ability to review and respond to comments in the record. Indeed, any cursory review of the public draft released over two weeks ago would demonstrate precisely the opposite—that the Commission painstakingly engaged with the voluminous public record in this proceeding in reaching its conclusions. To the extent you are concerned with non-substantive comments submitted under multiple different names that stated simply that the commenter supported or was opposed to the Title II classification without substantive explanation, the public draft does not rely on or cite any such comments.

Moreover, from a legal perspective, your requests for information suffer from substantial deficiencies. For example, you cite no authority for your jurisdiction as a state official to investigate a federal agency’s rulemaking process or to compel that agency to produce documents. Similarly, while your letter asserts that the alleged submission of comments under fake names “likely violates state law,” you have not identified any specific law or legal authority to support that assertion.

Finally, far from ensuring the integrity and transparency of the Commission’s public comment process, the disclosure of the technical information requested by you and your staff would likely have the opposite effect.

Specifically, your staff has previously asked us to provide logs of internet protocol (“IP”) addresses for certain comments. Even assuming that these logs would indicate that some comments originated from cloud-based automatic “bots,” many others would reflect the IP addresses of authentic human users. It would be unduly burdensome, if not impossible, for the Commission to separate legitimate from illegitimate entries in the logs. Revealing the IP addresses of public commenters would also raise significant personal privacy concerns. Moreover, if members of the public feared that their personal IP addresses could be provided to a state’s chief legal officer in connection with an ongoing investigation, they could be deterred from participating in the robust public dialogue surrounding important rulemakings. For similar reasons, the Commission has previously declined to apply its rules regarding false statements to the rulemaking context, because it “d[id] not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties’ statements.” *In re Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to Commission*, GN Docket No. 02-37, Report and Order, 18 FCC Rcd 4016, 4021-22 para. 13 (2003).

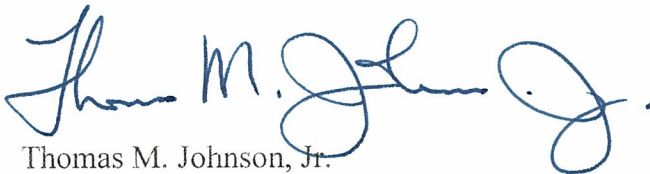
The logs would also provide detailed information about how the Commission protects the security of its electronic comment system and other information assets, including how the Commission protects its commercial cloud server from disruptive attacks. The confidentiality of this information is critical to ensuring the security and integrity of the Commission’s rulemaking processes. If third parties were to obtain access to the Commission’s security protocols, it could

provide a roadmap for hackers to create the very disruptions to federal rulemakings that you seek to prevent.

As noted above, the Commission is staunchly committed to transparency and integrity in rulemaking proceedings, including in connection with the *Restoring Internet Freedom* proceeding. To that end, when individuals have contacted the Commission to complain that a comment was falsely filed in their name, the Commission has responded by inviting them to file a statement to that effect in the public record. *See Attachment.* (And to reiterate, although the Commission thoroughly reviewed the record, it did not rely on or cite any non-substantive comments in preparing its draft.) In addition, as noted above, members of the public have had an opportunity to comment on the substance of the public draft released over two weeks ago, pursuant to Chairman Pai's transparency initiative.

The Commission is confident that the process followed in this proceeding will result in an order that is both consistent with law and furthers the public interest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas M. Johnson, Jr.", with a stylized flourish at the end.

Thomas M. Johnson, Jr.
General Counsel