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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 25, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Mr. Chairman:

Once again, I want to express my disappointment with your decision not to participate in a hearing before the Committee prior to a Federal Communications Commission (FCC) vote on unprecedented changes to how the Internet is regulated. Your testimony may have shed light on and allayed concerns that the FCC rulemaking process was insufficiently transparent and independent. The Committee canceled today's hearing in light of your unwillingness to participate.

On February 4, 2015, allegations appeared in the media that "an unusual, secretive effort inside the White House" influenced the agency's draft Open Internet Order.[1] On February 6, 2015, the Committee requested documents and information related to those allegations.[2] The Committee also requested that the Commission preserve several categories of documents.[3] The Commission's Office of General Counsel (OGC) subsequently issued a document preservation notice, but refused to provide a copy to the Committee, even after my staff raised concerns about the scope of the notice.

I requested a copy of the preservation notice by letter on February 18, 2015.[4] As I explained in that letter, the notice did not cover two out of the three categories of documents described in the original preservation request. The next day, the Commission produced the original notice, and explained that the notice would be modified to address the Committee's concerns about its scope.

The Commission's posture with respect to the Committee's investigation changed, however, during a meeting with a bipartisan group of Committee staff on February 24, 2015. During that meeting, the Commission's lawyers once again refused to provide the modified preservation notice, and failed to assert any valid legal privilege to justify withholding it. Further, OGC lawyers informed Committee staff that the Commission has not instructed its entire staff to preserve any e-mails in personal or non-official e-mail accounts relating to net neutrality, the open internet proceeding, the classification of broadband, or

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[1] Gautham Nagesh and Brody Mullins, *Net Neutrality: How White House Thwarted FCC Chief*, WALL ST. J., Feb. 4, 2015.
[2] Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Hon. Tom Wheeler, Chairman, FCC (Feb. 6, 2015).
[3] *Id.*
[4] Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Hon. Tom Wheeler, Chairman, FCC (Feb. 18, 2015).

the regulation of broadband internet access service. E-mails relating to official agency business, even those sent or received using personal e-mail accounts, are defined as records under the Federal Records Act and are also covered by the preservation request in the Committee's February 6, 2015, letter. As the Committee's February 18 letter stated, "the Committee and the Commission have a shared interest in ensuring that all relevant documents are preserved so they can be produced promptly, and to avoid the costly burden of restoring them. Therefore, please ensure all Commission staff are notified immediately of the need to preserve any relevant e-mails in personal or non-official e-mail accounts."

Once that has been effectuated, I request that you provide *all* preservation notices related to the Committee's February 6 letter. The Committee's expectation is that you provide this information by no later than 5:00 p.m. on Friday, February 27, 2015. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Additionally, as we were not able to gain information from your testimony before the Committee, please arrange for Committee staff to be briefed no later than March 11, 2015, by the Chiefs of the Commission's Wireline and Wireless Bureaus, as well as their team members who worked on the draft Open Internet Order. Should you have questions about this request, please contact Tristan Leavitt or Brian Daner of the Committee staff at (202) 225-5074.

Thank you for your prompt attention to this matter.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

The Honorable Jessica Rosenworcel
Commissioner, Federal Communications Commission

The Honorable Ajit Pai
Commissioner, Federal Communications Commission

The Honorable Mignon Clyburn
Commissioner, Federal Communications Commission

The Honorable Michael O'Rielly
Commissioner, Federal Communications Commission