

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515-6143

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February 18, 2015

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

Dear Chairman Wheeler:

On February 6, 2015, the Committee initiated an investigation into the Federal Communications Commission's (the Commission) process to determine whether there is merit to media reports alleging the agency's draft Open Internet order was improperly influenced by the White House.¹ The Committee's February 6 letter asked the Commission to preserve three categories of documents relevant to the investigation. It is my understanding the Commission's Office of General Counsel (OGC) issued a staff-wide preservation notice, but that notice did not cover two out of the three categories of documents identified in the preservation request. Accordingly, I am concerned that documents that could show the extent of the White House's involvement in the rulemaking process, if any, might not be preserved.

On February 13, 2015, OGC lawyers met with a bipartisan group of Committee staff to discuss the Commission's response to the Committee's request. Committee staff expressed concerns about the scope of the preservation notice, and asked for a copy in order to identify potential gaps that could undermine the Commission's effort to preserve relevant documents. The Commission's lawyers refused to provide the notice, but did not assert a privilege—or cite any legal basis whatsoever—to justify withholding it.

The three categories of documents covered by the Committee's preservation request, as a whole, would show whether discussions between the administration and the FCC crossed the boundary from ordinary to inappropriate. A shallow or incomplete production of documents will require the Committee to consider using its full range of tools to obtain the complete universe of relevant records, and I am concerned about this lack of cooperation. The Committee and the

¹ Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Hon. Tom Wheeler, Chairman, Fed. Communications Comm'n (Feb. 6, 2015).

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Commission have a shared interest in ensuring that relevant documents are preserved so they can be produced promptly, and to avoid the costly burden of restoring them.

Please provide a copy of the preservation notice to both the Majority Staff and the Minority Staff no later than February 19, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Chaffetz". The signature is stylized and cursive.

Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member