

# United States Senate

WASHINGTON, DC 20510

September 21, 2017

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai:

We write to express our concern that the Federal Communications Commission (FCC) has not provided the American people with an opportunity to comment on valuable evidence in the pending net neutrality proceeding. Although the Commission has undertaken an historic proceeding to undo the Open Internet Order, the FCC has failed to provide stakeholders with an opportunity to comment on the tens of thousands of filed complaints that directly shed light on proposed changes to existing net neutrality protections.

In May 2017, the National Hispanic Media Coalition (NHMC) filed a Freedom of Information Act (FOIA) request that uncovered over 47,000 Open Internet complaints, approximately 1,500 ombudsperson documents, and related documents that cut to the core of several questions posed by the Commission, including whether there exists “evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification,” or “conversely, what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers?”<sup>1</sup> While the Commission confirmed the existence of responsive documents in July, they did not start producing the complaints until a few days before the reply comment deadline in August, and only last week posted them on their website, preventing people from commenting on those complaints.

The public deserves an opportunity to review and analyze evidence that has a direct impact on the proceeding. Moreover, under the Administrative Procedures Act, the Commission has an obligation to consider all relevant data and be able to articulate a rational connection between the facts found and the choices made. An agency may not “promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”<sup>2</sup>

Accordingly, we respectfully request that you answer the following questions:

1. What efforts has the Commission made to analyze the Open Internet Order complaints, carrier responses, ombudsperson, and other documents?
2. Does the Commission plan to incorporate this evidence into the record? If so, when?

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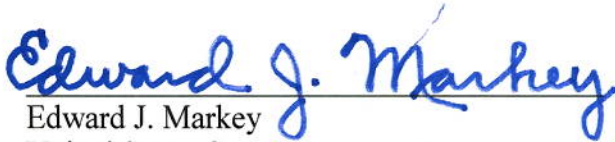
<sup>1</sup> *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60, paras. 50-51 (May 23, 2017).


<sup>2</sup> *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (2008).

3. Will the Commission issue a public notice with its own comment cycle, affording the public adequate time to review and analysis?

We appreciate your immediate attention to this matter. We look forward to hearing your response by October 11.


Sincerely,

  
Edward J. Markey  
United States Senator

  
Charles E. Schumer  
United States Senator

  
Ron Wyden  
United States Senator

  
Al Franken  
United States Senator

  
Richard Blumenthal  
United States Senator

  
Elizabeth Warren  
United States Senator

  
Chris Van Hollen  
United States Senator

  
Brian Schatz  
United States Senator

  
Kamala D. Harris  
United States Senator

Cc: Commissioner Mignon Clyburn  
Commissioner Michael O'Rielly  
Commissioner Brendan Carr  
Commissioner Jessica Rosenworcel