

# United States Senate

WASHINGTON, DC 20510

October 29, 2018

Inspector General David Hunt  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Dear Inspector General Hunt,

This month, the New York State Attorney General, Barbara D. Underwood, subpoenaed at least fourteen trade groups, political firms, advocacy organizations, and consultants in its investigation into fraudulent comments filed in the Federal Communications Commission's (FCC or "the Commission") Restoring Internet Freedom docket.<sup>1</sup> Members of Congress, on a bipartisan and bicameral basis, have repeatedly expressed their concerns over the campaign of impersonation within millions of comments. Although we near the one-year anniversary of the FCC's order – longer since comments were filed – the Commission has taken no action to account for potential fraud in the rule-making process. We are concerned that the Commission has failed to address fraudulent comments and has not cooperated with other investigations. We write to seek answers regarding the Commission's assistance with these investigations and the FCC's own handling of the matter.

When the FCC proposed to rollback net neutrality protections in April 2017, millions of Americans sought to speak out in defense of the internet. At the same time, other groups began to flood the FCC's public comment system with fake comments to trample on the rule-making process and silence authentic voices. Of the 22 million comments filed to the docket, at least 9.5 million are believed to have used stolen identities.<sup>2</sup> This fraud targeted Americans from every state and background: according to the NY AG's initial investigation, at least 20,000 Connecticut residents, including disabled and deceased veterans, were impersonated.<sup>3</sup> These millions of false statements were a carefully concerted attempt to distort the public record and must be taken seriously.

The Commission's disinterest has left the responsibility for accountability to others. The New York State Attorney General's investigation has reportedly found at least four separate

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<sup>1</sup> Collier, Kevin. "14 Groups Have Been Subpoenaed Over The Millions Of Anti-Net Neutrality Comments Filed Without People's Permission." BuzzFeed News. October 16, 2018.

<https://www.buzzfeednews.com/article/kevincollier/new-yorks-ag-has-subpoenaed-14-groups-over-the-net>.

<sup>2</sup> Grimaldi, James V. "New York Attorney General's Probe Into Fake FCC Comments Deepens." The Wall Street Journal. October 16, 2018. <https://www.wsj.com/articles/new-york-attorney-general-probes-fake-comments-on-net-neutrality-1539729977>.

<sup>3</sup> "A.G. Schneiderman Releases New Details On Investigation Into Fake Net Neutrality Comments." New York State Attorney General. December 13, 2017. <https://ag.ny.gov/press-release/ag-schneiderman-releases-new-details-investigation-fake-net-neutrality-comments>.

groups of fraudulent comments.<sup>4</sup> Based on press accounts of the investigation, the recipients of subpoenas reportedly include: Broadband for America, Center for Individual Freedom, Century Strategies, CQ Roll Call, LCX Digital, Media Bridge, the Taxpayers Protection Alliance, and Vertical Strategies. Additionally, subpoenas were also sent to pro-net neutrality organizations, including Free Press, Demand Progress, and Fight for the Future.

The investigation of many of these organizations is well founded and overdue. An email turned over in a Freedom of Information Act request to the activist Jason Prechtel indicates CQ Roll Call had submitted “millions of individual comments” for a client in the broadband privacy docket.<sup>5</sup> In 2014, during the Open Internet Order proceedings, Broadband for America portrayed several community organizations, veterans’ groups, and small businesses as opponents of net neutrality when they reportedly had no position on the issue, were unaware of the coalition’s position, or had never heard of the group.<sup>6</sup> When the Sunlight Foundation studied the same docket, it identified a concerted attempt by American Commitment to flood the record with duplicative comments.<sup>7</sup> Media Bridge claimed responsibility for this campaign, pitching prospective clients that “[i]f your organization wants to stop “showing” and start dominating the issues, pick up the phone and give Media Bridge a call.”<sup>8</sup> The Center for Individual Freedom drafted one of the most frequently submitted comments in the 2017 proceeding about the “unprecedented regulatory power the Obama administration imposed on the internet.” A Wall Street Journal investigation found that 72% of those comments may have been falsely submitted.<sup>9</sup>

Despite concerns that the rule-making process was subverted by fraudulent comments and manipulated by special interests, including possible Russian interference, the FCC has seemingly ignored the issue, failed to provide answers to Congress, and dismissed public concerns. In the end, analysis of real comments demonstrated widespread support for net neutrality in the Restoring Internet Freedom docket, across political parties and geographies.<sup>10</sup> However, when questioned, one FCC spokesperson instead maligned critics and asserted that the “most suspicious activity has been by those supporting Internet regulation.”<sup>11</sup> While the

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<sup>4</sup> Confessore, Nicholas. "New York Attorney General Expands Inquiry Into Net Neutrality Comments." The New York Times. October 16, 2018. <https://www.nytimes.com/2018/10/16/technology/net-neutrality-inquiry-comments.html>.

<sup>5</sup> Emails between FCC and CQ Roll Call. <http://jasonprechtel.com/FOIA/FOIA-Prechtel-FCC-CQRollCall.pdf>

<sup>6</sup> Fang, Lee. "Community Groups Were Duped Into Joining the Telecom Industry's Anti-Net-Neutrality Coalition." Vice. June 09, 2014. [https://www.vice.com/en\\_us/article/4w747j/community-groups-were-duped-into-joining-telecom-industrys-anti-net-neutrality-coalition](https://www.vice.com/en_us/article/4w747j/community-groups-were-duped-into-joining-telecom-industrys-anti-net-neutrality-coalition).

<sup>7</sup> Apendleton, and Bob Lannon. "One Group Dominates the Second round of Net Neutrality Comments." Sunlight Foundation. December 16, 2014. <https://sunlightfoundation.com/2014/12/16/one-group-dominates-the-second-round-of-net-neutrality-comments/>.

<sup>8</sup> "Media Bridge Client “Dominates” in the Battle for the Net." Media Bridge. December 16, 2014. <https://www.mediabridgellc.com/1019>.

<sup>9</sup> “New York Attorney General's Probe Into Fake FCC Comments Deepens.”

<sup>10</sup> According to the Stanford study, within a sample of unique the approximately 800,000 non-form letter comments, 99.7 percent opposed the FCC’s proposal to repeal the net neutrality rules.

<https://cyberlaw.stanford.edu/files/blogs/FilteringOutTheBotsUnique2017NetNeutralityComments.pdf>

<sup>11</sup> Fung, Brian. "FCC Net Neutrality Process 'corrupted' by Fake Comments and Vanishing Consumer Complaints, Officials Say." The Washington Post. November 24, 2017. <https://www.washingtonpost.com/news/the-switch/wp/2017/11/24/fcc-net-neutrality-process-corrupted-by-fake-comments-and-vanishing-consumer-complaints-officials-say/>.

Commission has not provided a thorough accounting of fraudulent comments, Chairman Pai was able to produce statistics on pro-Title II comments in his response to Senators Merkley and Toomey's letter.<sup>12</sup>

The Commission's apparent disinterest in investigating fraudulent comments risks undermining public trust in the FCC's rule-making process. Presently, the only efforts at accountability have been led by the New York State Attorney General and the Government Accountability Office, prompted by a request from Congress. The status of cooperation with both is unclear, and the FCC has previously resisted requests from the NY AG.<sup>13</sup> Moreover, while journalists have sought to conduct their own research through FOIA requests, the Commission has ignored these requests and withheld documents under dubious exemption claims. Given the seriousness of the issue, the FCC should respond transparently and thoroughly, and fully cooperate with all attempts to investigate fraudulent comments.

In order to resolve lingering questions, we ask that your office investigate the FCC's handling of the fraudulent comments and look into its cooperation with other investigations into the matter. We specifically request that you address the following concerns:

1. What are the FCC's policies and procedures with regard to investigating and addressing fraudulent comments? If such policies exist, did the FCC take appropriate action?
2. When did the FCC become aware of the fraudulent comments? Did it report the matter to any other agencies, discuss the matter internally, and collect information on the deceptive activities?
3. What knowledge did the FCC have regarding the source and nature of fraudulent comments in the Restoring Internet Freedom docket? Did the Commission conduct any investigation or research into the matter, and what did it find?
4. Is the Commission fully cooperating with the New York State Attorney General's investigation of fraudulent comments? Has the Commission withheld any documents or information requested by the Attorney General for any reason? If so, why?
5. Is the Commission fully cooperating with the Government Accountability Office's investigation of fraudulent comments? Has the Commission withheld any documents or information requested by the GAO for any reason? If so, why?
6. Has the Commission handled FOIA requests regarding fraudulent comments in an appropriate and timely manner, including:<sup>14</sup>

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<sup>12</sup> Letter from FCC Chairmen Ajit V. Pai to Senator Jeff Merkley "regarding the record in the Restoring Internet Freedom rulemaking proceeding and the Federal Communications Commission's Electronic Comment Filing System." July 6, 2016. <https://docs.fcc.gov/public/attachments/DOC-352536A1.pdf>

<sup>13</sup> "A.G. Schneiderman Releases New Details On Investigation Into Fake Net Neutrality Comments."

<sup>14</sup> Such as those submitted by Mr. Prechtel and the New York Times.

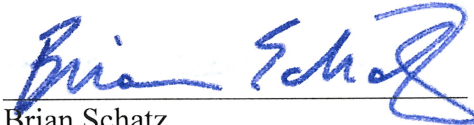
- a. Did the Commission address FOIA requests in a timely and consistent basis?
- b. Were redactions and claims of exemptions appropriate? Are the FCC's stated cyber security and privacy concerns regarding server logs proper? Could the Commission take steps to satisfy such requests without incurring excessive risk?
- c. What technical capacity does the FCC lack that prevents it from fulfilling the FOIA requests filed by the New York Times, or any other pertinent request for information?<sup>15</sup>

Thank you for your prompt attention to this important matter.

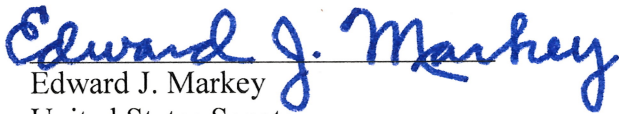
Sincerely,



Richard Blumenthal  
United States Senate



Brian Schatz  
United States Senate



Edward J. Markey  
United States Senate

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<sup>15</sup> The New York Times Company, Nicholas Confessore, and Gabriel Dance v. Federal Communications Commission. <https://www.courtlistener.com/recap/gov.uscourts.nysd.501225/gov.uscourts.nysd.501225.1.0.pdf>