



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BY EMAIL & U.S. MAIL

December 13, 2017

Thomas M. Johnson, Jr.
General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Mr. Johnson:

I write in response to your letter, dated December 7, 2017 (received December 11, 2017), in which you state that the FCC has decided to refuse assistance to the law enforcement investigation by the New York State Attorney General's Office ("NYOAG") into who illegally—and likely criminally—misused potentially *one hundred thousand*¹ New Yorkers' identities to manipulate the FCC's "Restoring Internet Freedom" public comment process.

One might expect a federal agency to harbor a great deal of concern when faced with strong evidence of a massive fraud uncovered by multiple sources—including, most recently, *The Wall Street Journal*²—that appears to have thoroughly infected its most important rulemaking since the establishment of net neutrality more than a decade ago. Yet, over the objections of a growing bipartisan coalition of over thirty members of both houses of Congress, 18 state attorneys general, and FCC Commissioners Jessica Rosenworcel and Mignon Clyburn, the Commission's leadership appears determined to proceed with its December 14 vote. Moving forward with this vote would make a mockery of the notice and comment process mandated by the Administrative Procedure Act and reward those who perpetrated this fraud in service of their own hidden agenda.

¹ While NYOAG's prior analysis showed approximately one million comments with stolen identities for citizens nationwide, including tens of thousands of New Yorkers, our continuing investigation has established that stolen identities were used in approximately two million comments, including approximately one hundred thousand New Yorkers. We are continuing to analyze comments for likely stolen identities and expect the numbers for the nation and for New York to continue growing.

²James B. Grimaldi & Paul Overberg, "Millions of People Post Comments on Federal Regulations. Many Are Fake." *Wall Street Journal* (Dec. 12, 2017).

None of the assertions in your letter justify the FCC's refusal to share evidence of who committed these illegal acts:

- You claim the FCC provided public participation and transparency by receiving millions of comments and permitting additional comments during the past two weeks, after it published the interim draft rule. Such steps are entirely negated, however, by your actions to permit many millions of fraudulent comments to crowd out or negate millions of Americans' real comments.
- You claim NYOAG never identified any state law that was violated, but NYOAG's many letters and emails to FCC officials over six months repeatedly state that it is investigating illegal conduct that could constitute, among other potential violations, criminal impersonation under New York law.³
- You argue that NYOAG's previous correspondence "cite[s] 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." First, as repeatedly set forth in previous correspondence, we are not investigating the FCC's rulemaking; rather, we are investigating the potential abuse and impersonation of New Yorkers. Second, as is common practice among government agencies, NYOAG requested the FCC's *voluntarily* assistance with its investigation into the misuse of Americans' identities, as the FCC voluntarily assisted NYOAG in past investigations.⁴
- You claim sharing the Internet Protocol ("IP") records NYOAG has requested would invade the personal privacy of legitimate commenters, and be overly burdensome to the agency.⁵ Yet, the NYOAG has repeatedly stated that it would keep such records *confidential*, as our agencies have done when sharing sensitive information previously.⁶ Moreover, it is routine in internet crime investigations for government investigators to query logs of IP addresses and run searches using sample sets. This practice is central to many cybercrime investigations.

Your letter refers three times to the FCC's desire to protect and preserve its "integrity." Yet blithely ignoring clear evidence that two million of the comments it received stole Americans' identities (not to mention another eight million that used entirely fabricated identities), stonewalling a state law enforcement investigation, and insisting upon a vote on a sweeping and controversial policy change despite a growing widespread outcry from Americans and a bipartisan chorus of elected officials and state law enforcement officers will irreparably damage the FCC's integrity. I urge you to postpone the December 14 vote and reconsider your decision not to cooperate with NYOAG's investigation.

³ See, e.g., letters and emails from NYOAG to various FCC top officials (names available on request), dated July 21, August 10, September 29, October 3, October 17, November 16, and November 21.

⁴ This too was stated repeatedly in NYOAG's previous correspondence. See *id.*

⁵ Your letter ignores NYOAG's request for data about API keys and their use in submitting comments that have been identified as fake.

⁶ NYOAG repeatedly stated this as well in its previous correspondence. See, *supra*, note 3.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eric T. Schneiderman

cc: Ajit Pai, FCC Chairman
Brendan Carr, FCC Commissioner
Mignon Clyburn, FCC Commissioner
Michael O'Rielly, FCC Commissioner
Jessica Rosenworcel, FCC Commissioner
David Hunt, FCC Inspector General

John Thune, Senate Commerce Committee Chairman
Bill Nelson, Senate Commerce Committee Ranking Member
Roger Wicker, Senate Communications Subcommittee Chairman
Brian Schatz, Senate Communications Subcommittee Ranking Member

Greg Walden, House Commerce Committee Chairman
Frank Pallone, House Commerce Committee Ranking Member
Marsha Blackburn, House Communications Subcommittee Chairman
Michael Doyle, House Communications Subcommittee Ranking Member