



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 15, 2018

The Honorable Rob Portman
Chairman
Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Portman:

Thank you for contacting the Federal Communications Commission as part of a review by the U.S. Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations of agencies' processes to solicit and accept public comments on proposed rulemakings. I have attached responses to the Subcommittee's questions 1c, 2, 3, 4, and 5, along with two related exhibits. We are still compiling data in response to questions 1a, 1b, and 1d. We will submit additional materials responsive to those questions as they become available.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance as the Subcommittee conducts its review.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ajit V. Pai".

Ajit V. Pai

RESPONSES TO QUESTIONS

1. Over the past five calendar years

a. How many proposed rules did your agency publish for notice and comment?

FCC will provide a supplementary response as this data becomes available.

b. How many man-hours or full-time equivalents were required to collect and review comments for those proposed rules?

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c. How much money did your agency provide to support Regulations.gov?

Because the Commission operates and funds its own electronic filing mechanism—the Electronic Comment Filing System (ECFS)—for the receipt of comments and other records in connection with rulemakings and other FCC proceedings, the FCC did not provide any funding to support Regulations.gov during the relevant time period.

d. In each year, which three proposed rules received the highest number of comments? How many comments did each of those proposed rules receive?

FCC will provide a supplementary response as this data becomes available.

2. List and describe the means by which your agency solicits and receives comments during the notice-and-comment rulemaking process.

The Commission solicits rulemaking comments from the public by issuing notices of proposed rulemaking and publishing proposed rules (and associated documents) in the Federal Register. The Commission receives rulemaking comments from the public via paper or electronic filings, although the majority are submitted electronically. *See* 47 C.F.R. §§ 1.49(f)(2), 1.419.

Electronic filings are received through ECFS. Electronic filings can be made into ECFS using one of two methods: express comments and standard filings. Express comments tend to be shorter submissions made directly into a web form on the FCC comment site. Express comments typically come from individuals since they are the easiest to file and do not include supporting file attachments. Standard filings include supporting file attachments and therefore may be more detailed. These comments are typically filed by industry stakeholders, trade associations, public interest organizations, and law firms representing stakeholders, but also may be filed by individuals. For parties that seek to file a large number of comments, the Commission has also made additional resources available: a public Application Programming Interface (API) and, in some proceedings, an electronic inbox hosted on the public file-sharing system Box.com. All filings submitted through the public API or the Box.com inbox, so long as they were properly formatted and submitted, are entered into ECFS and become part of the official FCC record.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, paper filers must submit two additional copies for each additional docket or rulemaking number. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All paper filings must be addressed to the Commission’s Secretary. Once the paper filing is accepted, Commission staff creates a PDF scan of the paper document and places the electronic PDF scan into ECFS.

The Commission informs the public of these particular filing methods in two ways. First, each of the Commission’s rulemaking documents contains a procedural section with a subsection entitled “Comment Filing Procedures.” The Comment Filing Procedures provide instructions to interested parties about how to file their views with the Commission. An example of these instructions is attached as Exhibit A. Second, the Commission’s ECFS maintains a user help page that includes instructions for filing a comment about a proceeding. More information about how the Commission receives filings, including a step-by-step tutorial, can be found in the Commission’s ECFS 3.0 User Guide, available at this link: <https://www.fcc.gov/ecfs/user-guide/ECFS-3.0-User-Guide.pdf>.

3. For comments filed through Regulations.gov or any other agency electronic filing mechanism, what fields of information are commenters required to provide? What fields are optional?

The Commission’s rules governing notice-and-comment rulemaking proceedings require that commenters specify the docket number that the Commission has assigned to the proceeding and the name and address of either the commenter or the commenter’s attorney. 47 C.F.R. § 1.419.

ECFS serves as the repository for official records in the Commission’s docketed proceedings. Listed below are the fields available for commenters to submit standard filings (e.g., comments, reply comments, or other documents that include attachments) or express comments (which do not include attachments) through ECFS. Please note that ECFS has also been designed to allow the public to submit many other types of documents to the Commission, including filings in non-rulemaking proceedings and non-docketed proceedings.

Type of Filing	Required Fields	Optional Fields
<p>Standard Filing</p>	<p>Proceeding(s) Name(s) of Filer(s) Address of Filer/Law Firm/Author (select from drop down menu) Address 1 City State Zip Document Attachment</p>	<p>Law Firm(s) Attorney/Author Name(s) Primary Contact Email Type of Filing File Number Report Number Bureau ID Number Address 2 4-digit zip extension International (check box if address is outside the U.S.) Email Confirmation (check box to receive an email confirmation)</p>

Express Comments	Proceeding(s) Name(s) of Filer(s) Address 1 City State Zip Brief Comments	Primary Contact Email Address 2 4-digit zip extension International (check box if address is outside the U.S.) Email Confirmation (check box to receive an email confirmation)
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4. All policies and procedures regarding:

a. The collection or validation of commenters’ identities or email addresses

The Commission’s rules require that parties submitting rulemaking comments in electronic form must provide their name and mailing address; filings by parties represented by an attorney must include the name and mailing address of at least one attorney of record. *See* 47 C.F.R. § 1.419(e). Parties also have the option of providing their email addresses. When collecting commenters’ information, the Commission includes a notice to commenters that all information they are submitting, including their contact information, will be publicly available. In ECFS, that notice appears above the submission button and states, “You are filing a document into an official FCC proceeding. All information submitted, including names and addresses, will be publicly available via the web.”

The Commission’s commenting policy emphasizes openness and ease of use. The Commission does not have policies or procedures for validating commenters’ identities or email addresses. ECFS does not require commenters to prove their identities.

b. Detecting and preventing automated activity such as “bots” from submitting comments or spam

ECFS is designed to accept comments in the FCC’s public rulemaking proceedings, which means it accepts comments in virtually any form and from any source. To facilitate the bulk filing of comments, ECFS in 2016 was reconfigured to offer an application programming interface (API) that allows automated programs to make submissions. While the Commission uses commercially provided services and tools to protect ECFS from malware and malicious cyber-attacks, ECFS is fundamentally an open, public-facing system, which limits our ability to shut down inappropriate or malicious bots accessing ECFS.

Following the disruptions ECFS experienced on May 7-8, 2017, the Commission’s IT staff took a number of steps to ensure the availability of ECFS to the public at all times. IT staff worked with the Commission’s commercial cloud providers to ensure that the providers make sufficient hardware resources available to the Commission for high-profile proceedings and to implement solutions that would limit the amount of disruptive bot-related activity in the future. IT staff also instituted a more predictive model for assessing the number of incoming comments and bot-driven activity to ensure that more cloud-based resources are available within a shorter time period to respond to surges in activity. The staff also implemented a control feature that allows humans to continue accessing ECFS even during times of heavy bot activity.

c. The determination of commenters' nationalities.

The Commission does not have policies or procedures for determining commenters' nationalities beyond what the commenter chooses to indicate in the filing. The forms for submitting standard filings and express comments via ECFS include a check box for the filer to indicate whether the address provided is outside the U.S., but this is optional and self-selected by the filer.

d. Any limitations on file formats commenters may submit during the comment process and what types of files your agency accepts (e.g., portable document format, Word, executable files, audio files).

Attachments to standard electronic filings made in ECFS can be any of the following file formats: pdf, text, ppt, pptx, docx, xlsx, doc, xls, rtf, and dwg. Filers may include a maximum of 5 files per submission, and the maximum size for each submission is 25 MB. There is no limit on the number of submissions a filer may make in ECFS. Express electronic filings are made directly into a web form on ECFS and do not include file attachments.

The electronic filings made using the public API must adhere to the same file and size specifications for standard electronic filings. During the comment period in GN Docket No. 14-28 and WC Docket No. 17-108, the Commission also invited the public to submit express comments in bulk by compiling them into a .CSV file. Those bulk filings were required to use a .CSV template in order to have the bulk comments properly recorded in ECFS.

The Commission also continues to accept comments filed on paper through mail, courier, or hand delivery. These are scanned and uploaded to ECFS by Commission staff.

e. The process by which your agency makes comments available to the public, including written guidance on whether and how to review, screen, redact, or summarize any comments before they are made publicly available.

Non-confidential filings submitted into ECFS are made public four times per work day, at 11:00 a.m., 1:00 p.m., 3:00 p.m., and 5:00 p.m. A filing is made public at those times only if it was submitted at least two hours earlier. For example, if something is filed at 10:59 a.m., it will be made available to the public at 1:00 p.m. If something is filed at 11:01 a.m., it will be made public at 3:00 p.m. Anything filed after 3:00 p.m. is made public the next business day at 11:00 a.m. This is our current practice and is subject to change.

For documents that include materials that the filer asks not to be made available to the public, the Commission requires that the confidential document be submitted on paper to the Office of the Secretary since all documents submitted through ECFS are publicly available. In addition to the confidential filing, the Commission generally requires filers to file a redacted, electronic version of the document in ECFS that will be available to the public. *See* 47 C.F.R. § 0.459. Parties subject to a protective order may contact the Commission to obtain access to the non-public, confidential version of the document if needed pursuant to the terms of the protective order.

5. **In any comment period from January 1, 2010, to the present, has your agency received any information that a commenter filed a comment under someone else's identity? If so, please provide**

a. The proposed rule

Yes. The Commission is aware of claims that comments were filed under false names in GN Docket No. 14-28 and WC Docket No. 17-108. The Commission, however, does not independently verify such claims.

b. The comment

With respect to GN Docket No. 14-28 and WC Docket No. 17-108, the Commission became aware of claims that comments were filed using a false name in a variety of ways, including receiving such claims via letter and the Commission's Consumer Complaint Center. The FCC's Consumer and Governmental Affairs Bureau (CGB) responded through the means that were used to contact the Commission. A representative example of the Commission's responses is attached as Exhibit B.

- c. All documents regarding whether the comment was filed under someone else's identity.**

See answer to 5b.

- d. All documents regarding how the agency addressed the filing of a comment under someone else's identity.**

See answer to 5b.

EXHIBIT A

1. Comment Filing Procedures

1. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated [on the first page of the rulemaking document seeking comments and reply comments]. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS"). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

EXHIBIT B



Federal Communications Commission
Washington, D.C. 20554

[REDACTED]

Dear [REDACTED]:

Thank you for contacting us about comments filed under your name in the FCC's *Restoring Internet Freedom* proceeding. You have stated that these comments were not filed by you. We want to make it clear that the FCC does not condone anyone impersonating someone else's identity.

The comments you reference were filed in the proceeding via the FCC's electronic comment filing system (ECFS). ECFS is an open system intended to promote widespread participation in FCC proceedings. To avoid imposing obstacles that might otherwise prevent, limit, or discourage participation and the expression of views, ECFS allows filers to enter the relevant data fields themselves.

Once filed in the FCC's rulemaking record, there are limits on the agency's ability to delete, change, or otherwise remove comments from the record. Doing so could undermine the FCC's ability to carry out its legal obligation, which is to respond to all significant issues raised in the proceeding.

To that end, we continue to encourage you and all members of the public to submit comments to the FCC via ECFS that include accurate identifying information. This will ensure that the record reflects your views. You are welcome to include your correspondence on this matter—including a statement that the comments you reference were not filed by you—in ECFS for the public record.

The FCC has set up a webpage providing detailed and easy to follow instructions that can help you submit your comments via ECFS. That webpage can be found here: <https://www.fcc.gov/restoring-internet-freedom-comments-wc-docket-no-17-108>

Sincerely,

A handwritten signature in black ink that reads "G. Patrick Webre".

G. Patrick Webre, Acting Chief
Consumer & Governmental Affairs Bureau
Federal Communications Commission



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 15, 2018

The Honorable Tom Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Carper:

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3. For comments filed through Regulations.gov or any other agency electronic filing mechanism, what fields of information are commenters required to provide? What fields are optional?

The Commission’s rules governing notice-and-comment rulemaking proceedings require that commenters specify the docket number that the Commission has assigned to the proceeding and the name and address of either the commenter or the commenter’s attorney. 47 C.F.R. § 1.419.

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Type of Filing	Required Fields	Optional Fields
<p>Standard Filing</p>	<p>Proceeding(s) Name(s) of Filer(s) Address of Filer/Law Firm/Author (select from drop down menu) Address 1 City State Zip Document Attachment</p>	<p>Law Firm(s) Attorney/Author Name(s) Primary Contact Email Type of Filing File Number Report Number Bureau ID Number Address 2 4-digit zip extension International (check box if address is outside the U.S.) Email Confirmation (check box to receive an email confirmation)</p>

Express Comments	Proceeding(s) Name(s) of Filer(s) Address 1 City State Zip Brief Comments	Primary Contact Email Address 2 4-digit zip extension International (check box if address is outside the U.S.) Email Confirmation (check box to receive an email confirmation)
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4. All policies and procedures regarding:

a. The collection or validation of commenters’ identities or email addresses

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d. Any limitations on file formats commenters may submit during the comment process and what types of files your agency accepts (e.g., portable document format, Word, executable files, audio files).

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5. **In any comment period from January 1, 2010, to the present, has your agency received any information that a commenter filed a comment under someone else's identity? If so, please provide**

a. The proposed rule

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b. The comment

With respect to GN Docket No. 14-28 and WC Docket No. 17-108, the Commission became aware of claims that comments were filed using a false name in a variety of ways, including receiving such claims via letter and the Commission's Consumer Complaint Center. The FCC's Consumer and Governmental Affairs Bureau (CGB) responded through the means that were used to contact the Commission. A representative example of the Commission's responses is attached as Exhibit B.

c. All documents regarding whether the comment was filed under someone else's identity.

See answer to 5b.

d. All documents regarding how the agency addressed the filing of a comment under someone else's identity.

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EXHIBIT A

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EXHIBIT B



Federal Communications Commission
Washington, D.C. 20554

[REDACTED]

Dear [REDACTED]:

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Sincerely,

A handwritten signature in black ink that reads "G. Patrick Webre".

G. Patrick Webre, Acting Chief
Consumer & Governmental Affairs Bureau
Federal Communications Commission