

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 20, 2018

The Honorable David L. Hunt
Inspector General
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Mr. Hunt:

I am concerned that Federal Communications Commission (FCC) Chairman Pai may have made material omissions and failed to disclose information related to interactions between the White House and Chairman Pai or his office on the Sinclair-Tribune merger that was requested by Congress at a July 25, 2018 House Energy and Commerce hearing.

Federal law prohibits the falsifying, concealing, or covering up of a material fact to Congress.¹ Recent statements by Chairman Pai disclosing a call with White House Counsel Donald McGahn regarding the Sinclair-Tribune merger during a Senate Commerce hearing last week—taken together with other relevant events—could very well constitute concealment or coverup and require further investigation.

Given the serious nature of the matter, I ask that your office investigate and gather the requisite facts so that Congress and the American people have a clear understanding of the Chairman's conduct. As part of this review, I also request that your office review the call logs and emails of FCC staff and the Commissioners' offices to ensure that records of conversations between the FCC and the White House are properly preserved.

Specifically, on July 25th during the House hearing entitled "Oversight of the Federal Communications Commission," I asked Chairman Pai "If the President or anyone in the White House discusses or has discussed the Sinclair-Tribune merger with you or anyone at the FCC,

¹ 18 U.S.C. § 1001.

will you commit to disclosing that in the public docket? Yes or no?”² Chairman Pai answered, “Yes, except, Congressman, we have *ex parte* rules, because this is now a restricted proceeding. We are limited in what information we can receive and what we can put on the record. But consistent with our restricted *ex parte* rules, we would be happy to accommodate to the extent we can.”³

In his response during the hearing, Chairman Pai did not disclose his discussion with McGahn, which the Chairman’s spokesman now states occurred on July 17, 2018.⁴ Nor did Chairman Pai subsequently place in the public docket a record of the discussion. As the discussion occurred prior to the adoption of the Sinclair Hearing Designation Order (HDO), Chairman Pai’s reference to “restricted *ex parte* rules” are irrelevant.⁵ These discussions were not subject to restricted disclosure – as is evident from the fact that Chairman Pai discussed the previously omitted call during the August 16 Senate Committee on Commerce, Science, and Transportation hearing.⁶

To facilitate your inquiry into this matter, I have included a brief discussion of the timeline surrounding these events that may be useful and an appendix of relevant public statements.

- **July 16, 2018** — Chairman Pai circulates an HDO that would designate certain transactions within the larger Sinclair-Tribune proposed merger for further review before the FCC’s Chief Administrative Law Judge.⁷ At this time, the FCC’s restricted *ex parte* rules do not apply to those specific transitions, as the HDO had not been adopted.⁸ The proceeding remains permit-but-disclose in its entirety, which means that parties are

² House Committee on Energy and Commerce, *Oversight of the Federal Communications Commission*, 115th Cong. (July 25, 2018).

³ *Id.*

⁴ *FCC Chairman: White House Counsel Inquired About Sinclair-Tribune deal*, Politico (Aug. 16, 2018) (“Following the hearing, FCC spokesman Mark Wigfield said the call occurred on July 17, a day after Pai said he had “serious concerns” about the transaction.”).

⁵ Federal Communications Commission, *Applications of Tribune Media*, Hearing Designation Order, MB Docket No. 17-179, FCC 18-100 (Rel. July 19, 2018).

⁶ Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, 115th Cong. (Aug. 16, 2018).

⁷ Federal Communications Commission Office of the Chairman, *Statement of Chairman Ajit Pai on Sinclair/Tribune Transaction* (July 16, 2018) (“I have shared with my colleagues a draft order that would designate issues involving certain proposed divestitures for a hearing in front of an administrative law judge”).

⁸ See note 5 (being adopted on July 18, 2018).

allowed to comment directly to the FCC as long as those comments are disclosed publicly on the Commission's website.⁹

- **July 17, 2018** — Unknown to the public, White House Counsel Don McGahn calls Chairman Pai's Office and has a discussion directly with the Chairman because, according to Chairman Pai, he "wanted to know what [the FCC's proposed] decision was."¹⁰
- **July 18, 2018** — The FCC adopts the HDO and the restricted *ex parte* rules begin to apply, but these restricted rules only apply on a forward going basis to the transactions specifically called out in the HDO, while the other transactions within the merger remain permit-but-disclose.¹¹
- **July 25, 2018** — Chairman Pai testifies before the House Committee on Energy and Commerce at which the exchange cited above occurs.¹²
- **August 2, 2018** — At the FCC's press conference following the August Open Meeting, Chairman Pai was asked by a reporter "Has the White House – anyone in the White House, contacted you or your staff about the Sinclair-Tribune merger?" Pai responded that "no one in the White House has contacted us to express a view about the merger." When the reporter followed-up by asking "What about to ask any questions?" Pai's response is inaudible and then they quickly moved on to another reporter's question.¹³
- **August 16, 2018** — Chairman Pai testifies before the Senate Committee on Commerce, Science, and Transportation. During that hearing, in response to questioning, Chairman Pai publicly discloses, for the first time, that he had a personal discussion over the phone with White House Counsel Don McGahn regarding the Sinclair-Tribune HDO on July 17, prior to its adoption.¹⁴

⁹ Federal Communications Commission, *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket No. 17-179, DA 17-647 (Rel. July 6, 2017).

¹⁰ See note 6.

¹¹ See note 4 at fn. 6. ("While the applications designated for hearing will be restricted under our *ex parte* rules, 47 CFR 1.1208, the remaining applications will remain permit but-disclose.").

¹² See note 2.

¹³ Press Conference with Federal Communications Commission Chairman Ajit Pai, Margaret McGill, Politico (Aug. 2, 2018).

¹⁴ See note 6.

The Honorable David L. Hunt
August 20, 2018
Page 4

Given this series of events, it appears that Chairman Pai failed to disclose his discussions with the White House Counsel to the House Energy and Commerce Committee and the American people when requested. Such omissions by the Chairman appear to be material given the scope of the questioning at the July 25 hearing and subsequent engagements. Moreover, as demonstrated in your recent report regarding the false cyberattack on the Commission's public comment system, this would not be the first time that the FCC has made inaccurate and misleading statements to Congress.¹⁵

For these reasons, I request that your office review this matter to bring the facts surrounding this omission to light. I further request that your office review the phone records and emails of all relevant FCC employees and FCC Commissioners to ensure that others at the Commission did not have relevant communications with those at the White House that similarly were not disclosed.

Thank you for your attention to this matter. I request that you inform the Committee regarding any other issues of concern that you may uncover during your review. If you have any questions, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink, reading "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.
Ranking Member

Enclosure

¹⁵ Federal Communications Commission, Office of Inspector General, *Alleged Multiple Distributed Denial-Of-Service Attacks involving the FCC's Electronic Comment Filing System* (June 20, 2018).

July 25, 2018 ¹

**House Committee on Energy and Commerce
Subcommittee on Communications and Technology
Hearing on “Oversight of the Federal Communications Commission”**

--

Mr. Pallone. All right. Now, let me ask those questions of Chairman Pai. I know we only have 3 minutes or so. Given the President's politicization of the Sinclair merger, will you commit to ensuring that a comprehensive and thorough review is conducted by the ALJ, insulated from the President or anyone purporting to speak on his behalf, yes or no?

Mr. Pai. Congressman, we have already issued the hearing designation order, and my understanding is that it is now within the purview of the administrative law judge under our rules.

Mr. Pallone. But, I mean, you are going to ensure that a comprehensive and thorough review is conducted by ALJ?

Mr. Pai. Consistent with the HDO. Those are the issues that will be -- have been referred to the ALJ, yes.

Mr. Pallone. Okay. If the President or anyone in the White House discusses or has discussed the Sinclair-Tribune merger with you or anyone at the FCC, will you commit to disclosing that in the public docket, yes or no?

Mr. Pai. Yes, except, Congressman, we have ex parte rules, because this is now a restricted proceeding. We are limited in what information we can receive and what we can put on the record. But consistent with our restricted ex parte rules, we would be happy to accommodate to the extent we can.

Mr. Pallone. Yes, basically. All right.

¹ House Committee on Energy and Commerce, *Hearing on Oversight of the Federal Communications Commission*, 115th Cong. (July 25, 2018).

August 2, 2018 ²

**Federal Communications Commission
August 2018 Open Commission Meeting
Open Agenda Press Conference**

--

Mr. Pai. That is it for me. So I would open the floor up to your questions.

Ms. Pelkey. Margaret.

Ms. Harding McGill. Hey, Margaret McGill, Politico. Has the White House – anyone in the White House, contacted you or your staff about the Sinclair-Tribune merger?

Mr. Pai. No one in the White House has contacted us to express a view about the merger.

Mr. Harding McGill. What about to ask any questions?

Mr. Pai. [inaudible].

Ms. Pelkey. Monty, go ahead.

Mr. Tayloe. Monty Tayloe, CommDaily—can you tell us ...

² Press Conference with Federal Communications Commission Chairman Ajit Pai, Margaret McGill, Politico (Aug. 2, 2018).

August 16, 2018³

**Senate Committee on Commerce, Science, and Transportation
Hearing on “Oversight of the Federal Communications Commission”**

--

Mr. Blumenthal. Chairman Pai, during the FCC Oversight hearing last year you committed to informing Congress if the White House, or anyone on behalf of the White House, ever directed or advised you to take action in any matter. I believe you recall that testimony. Regarding the Sinclair-Tribune merger, has anyone in the Administration contacted you, prior to or after, the July decision?

Mr. Pai. Senator, no one has called from the White House to express a view. We received one status inquiry.

Mr. Blumenthal. And who was that from?

Mr. Pai. From the Counsel to the President.

Mr. Blumenthal. When was it received?

Mr. Pai. I believe it was July 16th or 17th.

Mr. Blumenthal. Could you provide the Committee with a copy of the document?

Mr. Pai. There's no document—it was just a phone call.

Mr. Blumenthal. Was it from the White House Counsel himself?

Mr. Pai. Yes sir.

Mr. Blumenthal. Don McGahn?

Mr. Pai. Yes.

Mr. Blumenthal. To you, directly?

Mr. Pai. Yes.

Mr. Blumenthal. And what was the substance of the conversation?

³ Senate Committee on Commerce, Science, and Transportation, *Hearing on Oversight of the Federal Communications Commission*, 115th Cong. (Aug. 16, 2018).

Mr. Pai. I just wanted to know what — he saw something in the news, wanted to know what our decision was — what the action was — proposed action.

Mr. Blumenthal. Maybe you could repeat that. He wanted to know what the action was?

Mr. Pai. He just wanted to know what it was.

Mr. Blumenthal. Well, since I have only a limited amount of time, I'd like from you a written summary of that conversation, if that's possible.

Mr. Pai. Yes, Senator.

Mr. Blumenthal. Thank you.