



Federal Communications Commission  
Washington, D.C. 20554

Thomas M. Johnson, Jr.  
General Counsel

April 16, 2018

The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

The Honorable Michael F. Doyle  
Ranking Member  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
United States House of Representatives  
239 Cannon House Office Building  
Washington, D.C. 20515-3814

Dear Representatives Pallone and Doyle:

I write in response to your March 26, 2018 letter, addressed to Chairman Ajit Pai and Commissioners Michael O’Rielly and Brendan Carr, regarding their recent appearance at the Conservative Political Action Conference (CPAC) hosted by the American Conservative Union (ACU). At CPAC, the three Commissioners took part in a panel discussion entitled “To Infinity and Beyond: How the FCC is Paving the Way for Innovation.”

Your letter suggests that the Commissioners’ participation at CPAC may have been “ethically questionable.” To the contrary, their participation was consistent with a long tradition of Commissioners contributing to robust debate on issues of importance to the agency and the nation. For example, at the CPAC panel in question, the Commissioners discussed topics ranging from empowering entrepreneurs to develop new technologies to expanding broadband access to Americans in rural areas. The Commissioners’ ability to accept prominent speaking engagements like this one helps promote transparency and accountability and encourages public participation and interest in Commission rulemakings, without contravening applicable ethics obligations.

Indeed, because the Commission consists of Presidentially appointed members from both political parties, Commissioners routinely speak at events sponsored by groups or attended by individuals whose viewpoints span the legal and political spectrum. In recent years, Commissioners have made appearances at events sponsored by the Center for American Progress, the Rainbow/PUSH Coalition, the Progressive Policy Institute, the Heritage Foundation, and the Federalist Society, to name a few examples. This tradition of bipartisan participation in a broad array of legal and public policy conferences does not, and has never been understood to, violate applicable ethics rules.

As your letter notes, the Hatch Act, its implementing regulations, and federal ethics rules place important limitations on the activities of public officials. Accordingly, career ethics attorneys in the Commission's Office of General Counsel regularly train and advise Commissioners and their staff on compliance with the Hatch Act and other legal and ethical requirements. As explained below, however, our career agency ethics officials have consistently treated the Commissioners' participation on panels at events such as CPAC as well within the bounds of what applicable rules allow. Indeed, career ethics officials advised the Chairman's Office prior to the event that it would be appropriate for the three Commissioners to appear together on the panel in question.

The Hatch Act places certain limitations on covered Executive Branch employees (including Commissioners) who participate in political activity. Political activity, however, is narrowly defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101. By participating in a panel at CPAC this year and in past years, the Chairman and Commissioners were not engaging in partisan political activity. Rather, they were presenting information on behalf of the Commission, including both facts and opinions on public policy issues within the agency's purview.

The mere fact that the leadership or audience at an event may lean in one political direction does not transform an organization into a "partisan political group" under the Hatch Act. The ACU, a tax-exempt 501(c)(4) organization, describes itself as "the leading entity in providing conservative positions on issues to Congress, the Executive Branch, State Legislatures, the media, political candidates, and the public." American Conservative Union, <http://conservative.org/about/>. While ACU has a conservative outlook, it is not affiliated with any one political party, and tickets to CPAC are available for sale to the public regardless of political affiliation. Similarly, the Center for American Progress, a 501(c)(3) organization, describes itself as "dedicated to improving the lives of all Americans, through bold, progressive ideas," but has no formal party affiliation—despite partnering with a 501(c)(4) that engages in some political advocacy. Center for American Progress, <https://www.americanprogress.org/mission/>.

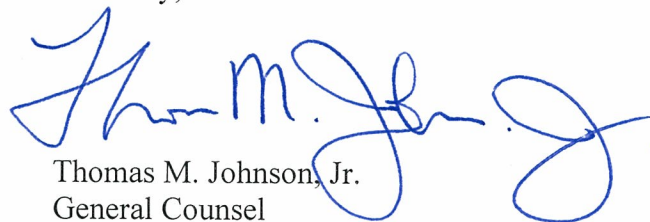
The U.S. Office of Special Counsel, which is tasked with interpreting and implementing the Hatch Act, has reviewed these common arrangements among non-profit organizations and concluded that even though 501(c)(4)s like ACU are permitted to participate in some political activity on behalf of or in opposition to candidates, they are not "partisan political group[s]" for purposes of the Act because political activity is not their primary activity. U.S. Office of Special Counsel, <https://osc.gov/Pages/HatchAct-FAQs.aspx>.

Because participation at CPAC is not political activity, as defined by the Hatch Act, there was no need for any Commissioner to abide by the limitations that the Act places on the use of appropriated funds, official staff, or agency resources in connection with such activity. *See* 5 C.F.R. § 734.503. Rather, it was entirely appropriate for those Commissioners to use staff resources to prepare remarks and otherwise assist them in appearing before CPAC.

Nor did the Commissioners violate any legal or ethical rule by accepting free admission to CPAC. Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, when an agency official is asked to speak at an event, his or her attendance is not a gift for ethics purposes, nor is the attendance of accompanying staff. *See* 5 C.F.R. § 2635.203(b)(8). Relatedly, as the Commissioners appeared at the event to discuss FCC programs and policies, the inclusion of the Commissioners' photos along with other speakers in materials about the event was appropriate and consistent with ethical rules and standards.

The Commission and the Office of General Counsel take our ethical responsibilities very seriously, and when issues arise, we take prompt action to address them, including, where appropriate, cooperating and coordinating with the Office of Government Ethics and the Office of Special Counsel. The Commissioners, however, acted well within their rights under the Hatch Act and federal ethical rules by participating in the CPAC panel and consistent with the practice of past Commissioners appointed under both Democratic and Republican Presidents. I trust this information has been helpful to you and thank you for your inquiry.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas M. Johnson, Jr.", with a large, stylized flourish at the end.

Thomas M. Johnson, Jr.  
General Counsel