

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

211

COMMITTEE ON ENERGY AND COMMERCE

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March 26, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai, Commissioner O’Rielly, and Commissioner Carr:

We write to request that your offices provide information and legal analysis about your decision to speak at the Conservative Political Action Conference (CPAC) on February 23, 2018.¹ Your willingness to attend and help promote a political rally raises serious concerns about your roles as leaders of an independent federal agency, and the potential of taxpayer dollars being spent towards political ends.

As you know, Congress created the Federal Communications Commission (FCC) to operate as an independent federal agency,² insulated from the politics affecting the executive branch. As the Supreme Court explained in a 1935 decision, the public should be able to expect that independent agencies will carry out their responsibilities in a nonpartisan manner, acting with “entire impartiality” and “charged with the enforcement of no policy except the policy of

¹ *FCC Republican Faces Ethics Complaint After Calling for Trump’s Re-Election*, Ars Technica (Feb. 26, 2018) (available at www.arstechnica.com/tech-policy/2018/02/ajit-pai-accused-of-violating-ethics-rules-by-getting-nra-courage-award).

² 47 U.S.C. § 154; *see also* Congressional Research Service, *The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape* (CRS Report No. RL32589) (Dec. 15, 2017).

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the law.”³ This independence instills public confidence in the agency’s decisions, insulating it from “suspicion of partisan direction.”⁴ Yet under your collective leadership, the FCC has become not only more partisan, but increasingly political.

Despite the Congressional intent set out in the Commission’s authorizing statute, Commissioners seem to be using their positions during this administration as a platform to promote and even raise funds towards a political agenda.⁵ Indeed, some statements by Commissioners made during recent events have created deep partisan divide at the FCC.⁶

Most recently, this pattern of behavior was amplified when you—the three Republican FCC Commissioners—participated in the CPAC, a political conference and fundraiser for the American Conservative Union.⁷

Predictably, your attendance at CPAC led to a number of ethically questionable situations. For instance, just weeks after the terrible tragedy in Parkland, Florida, Chairman Pai was presented with the National Rifle Association’s “Charlton Heston Courage Under Fire Award” and a handmade firearm in recognition of the FCC’s efforts to repeal net neutrality.⁸ While we commend Chairman Pai’s ultimate decision to turn down the award from the NRA, we are nonetheless concerned about how an FCC Chair allowed himself to be put in a situation where such an ethically questionable award could be presented to him.⁹ Additionally,

³ *Humphrey’s Executor v. United States*, 295 U.S. 602, at 624-25 (1935) (analyzing the FTC’s independence from the Executive branch).

⁴ *Id.*

⁵ Americans for Tax Reform, *FCC Chairman Ajit Pai on the Grover Norquist Show: Repealing Title II Regulations* (May 22, 2017) (<https://www.atr.org/fcc-chairman-ajit-pai-grover-norquist-show-repealing-title-ii-regulations>); FreedomWorks, *FreedomWorks and Small Business & Entrepreneurship Council Host Ajit Pai: ‘The Future of Internet Regulation’* (April 24, 2017) (press release).

⁶ *FCC Chairman Weighs in on Net Neutrality Debate*, *Fortune* (April 26, 2017).

⁷ Agenda, *Conservative Political Action Committee 2018* (available at <https://docs.google.com/viewerng/viewer?url=http://cpac.conservative.org/wp-content/uploads/sites/2/2018/02/CPAC-2018-Agenda-Draft-2.22.18.pdf>)

⁸ *FCC Chair Pai Receives NRA Gun Award for Courage*, *The Hill* (Feb. 23, 2018).

⁹ *Shaub Presses FCC Chief Over Possible Ethics Violation with NRA Gift*, *The Hill* (Feb. 25, 2018).

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Commissioner O'Rielly may have violated the Hatch Act by calling for President Trump's reelection,¹⁰ leading to a complaint being filed with the Office of Special Counsel.¹¹

In order to ensure that taxpayer dollars are not being spent for inappropriate political purposes, we request that you each, separately, provide answers to the following inquiries:

1. Did you seek advice from your General Counsel about whether you could attend CPAC under the FCC's or other relevant ethics rules? Please provide any written legal analysis you received approving your attendance for this event.
2. Did you or your staff conduct any research prior to attending CPAC about how the organization or the American Conservative Union would use the funds raised at this event? Did you ensure that no funds raised at the event would be spent for political purposes or to influence elections? Please provide any internal analysis that resulted from this research.
3. Your likeness was included in advertising for the event, specifically for the purpose for increasing attendance at the event and potentially raising funds for political purposes. According to the CPAC website, tickets for the fundraiser were offered for \$5,000 or more. Did you seek guidance from your General Counsel about whether your likeness or your official title could be used in advertising for this event? Please provide any written legal analysis you received approving the use of your likeness or your official title in advertising for this event.
4. Are you aware of any prior FCC Chairs or Commissioners who attended CPAC while they were serving in office? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
5. Are you aware of any other heads of independent agencies that have attended CPAC? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
6. Did you appear at CPAC during business hours? If so, did you earn a government salary during that time? Please provide timesheets indicating whether you took the time off to attend or prepare for the event. Please also provide copies of all communications

¹⁰ American Oversight, *FCC Commissioner Calls for Trump's Reelection, Violates Hatch Act* (February 23, 2018) (available at www.americanoversight.org/fcc-commissioner-calls-trumps-reelection-violates-hatch-act).

¹¹ *Id.*

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between you, or other Commission employees working on your behalf, and representatives of the American Conservative Union or CPAC, related to your appearance at CPAC.

7. Did any member of your staff help you write your speech or otherwise prepare for your appearance at the event? If so, how much of their time was spent in preparation? Did it occur during FCC business hours? Please provide time sheets for all staff members who assisted you in preparing for your appearance at CPAC, as consistent with the Privacy Act,¹² indicating whether they took time off to assist you in preparing for the event.
8. Did any member of your staff accompany you to CPAC? For any staff members who attended the event with you, please provide their FCC time sheets, as consistent with the Privacy Act,¹³ indicating whether they took time off to accompany you to the event.
9. Were government-owned or leased vehicles used for transportation to or from CPAC? If so, please provide all specific accounting for the use of these vehicles carrying FCC employees to and from the event.
10. Please provide a specific accounting of how all federal funds were used to support your appearance at CPAC, including pro-rated staff time and the use of any federal resources that were used for the purpose of facilitating your appearance.

We appreciate your attention to this important matter, and we hope that we can work together to restore the FCC’s standing as an independent, non-political, and expert agency. Please provide individual responses to this letter by April 16, 2018. Should you have any questions regarding this request, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,


Frank Pallone, Jr.
Ranking Member


Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology

¹² 5 U.S.C. § 552a.

¹³ 5 U.S.C. § 552a.