



UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: November 26, 2018

TO: David L. Hunt, Inspector General

FROM: (b) (7)(C)

THROUGH: Sharon Diskin, Acting Assistant Inspector General for Investigations (b) (7)(C)

SUBJECT: Allegations of material omissions and failure to disclose information related to interactions between the White House and Chairman Pai or his office regarding the review of the proposed merger between Sinclair Broadcast Group, Inc. and Tribune Media Company

Overview

In response to a request from Representative Frank Pallone, Jr., Ranking Member of the House Committee on Energy and Commerce, the Federal Communications Commission (FCC or Commission) Office of Inspector General (OIG) conducted an investigation into the conduct of FCC Chairman Ajit Pai (Chairman Pai) regarding his interactions with the White House concerning the Sinclair-Tribune merger.¹ The letter further requested FCC OIG to review the phone records and emails of FCC staff to determine whether others has such interactions. A

¹ On July 19, 2018, the FCC designated the applications seeking to transfer control of Tribune subsidiaries to Sinclair for hearing (HDO). On August 9, 2018, Tribune terminated its merger agreement with Sinclair.

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FCC Office of Inspector General
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REPORT OF INVESTIGATION (continuation sheet)

copy of this letter is included as Attachment 1.

Our investigation did not reveal evidence that Chairman Pai acted improperly with respect to the request from Congress that he disclose information related to his interactions with the White House regarding the proposed merger, nor did he make material omissions at the July 25, 2018, House Energy and Commerce Committee hearing or at any other time related to the proposed Sinclair-Tribune merger. Further, our investigation did not reveal evidence of any other White House communications with FCC staff.

Background

The FCC is an independent federal agency created by Congress to regulate interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories.² The agency is governed by five presidentially appointed Commissioners subject to confirmation by the Senate.³ The FCC Commissioners are from both political parties, however only three commissioners may be members of the same political party.⁴ This bipartisan structure is intended to ensure that the agency remains free of partisan political pressure, and independent of the policy aims of the Executive Branch. Because the FCC is an independent regulatory agency, it is to remain free from undue influence. The Commission must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi legislative.⁵

On May 8, 2017, Sinclair issued a press release announcing it entered into a definitive agreement pursuant to which Sinclair would have acquired 100% of the issued and outstanding shares of Tribune for an aggregate purchase price of approximately \$3.9 billion plus the assumption of approximately \$2.7 billion in net debt.

On June 26, 2017, the FCC accepted for filing applications seeking consent to the transfer of control of subsidiaries of Tribune holding the licenses of full-power broadcast television stations (and related broadcast auxiliary facilities), low-power television stations, and TV translator stations to Sinclair.

² 47 USC § 151.

³ 47 CFR § 0.1; 47 USC § 154.

⁴ 47 USC § 154(b)(5).

⁵ See *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

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On July 6, 2017, the Commission released a public notice (DA 17-647) announcing that the Commission’s Media Bureau was establishing a pleading cycle for applications to transfer control of Tribune to Sinclair (MB Docket No. 17-179). The public notice indicated interested parties must file petitions to deny no later than August 7, 2017, oppositions to petitions to deny must be filed no later than August 22, 2017, and replies must be filed no later than August 29, 2017.

On November 13, 2017, FCC Inspector General David Hunt (Hunt) received a letter from United States Representatives Pallone and Elijah Cummings requesting assistance in “investigating whether ... Chairman Ajit Pai has taken actions to improperly benefit Sinclair Broadcast Group (Sinclair)” and stating that Chairman Pai has “repeatedly refused to adequately respond to Congressional inquiries on this subject.” As a result of this request, FCC OIG opened a full investigation into this matter.

On November 15, 2017, Inspector General Hunt received a letter from United States Senators Cantwell, Blumenthal, Markey, Warren, Wyden, Duckworth, Masto, Udall, Murray, Franken, Durbin, Sanders, Markley, Booker, and Leahy requesting that Hunt “commence an investigation into whether the chairman ... is executing his leadership of the FCC free from influences that compromise his objectivity and impartiality.” The letter goes on to state that “we have strong concerns that the FCC’s ongoing review of the proposed merger of Sinclair Broadcast group (Sinclair) and Tribune Media (Tribune) may be tainted by a series of actions and events that raise questions about the independence and impartiality of the FCC.”

On July 19, 2018, the FCC designated the applications seeking to transfer control of Tribune subsidiaries to Sinclair for hearing (HDO).⁶ On August 9, 2018, Tribune terminated its merger agreement with Sinclair.

On July 25, 2018, the House Committee on Energy and Commerce held a hearing at which Chairman Pai was asked “[i]f the President or anyone in the White House discusses or discussed the Sinclair-Tribune merger with you or anyone at the FCC, will you commit to disclosing that in the public docket?” Chairman Pai replied he would do so, consistent with the *ex parte* rules.

⁶ Specifically, the HDO stated that “substantial and material questions of fact exist regarding whether: (1) Sinclair was the real party in interest to the sale of WGN-TV, KDAF (a Dallas station), and KIAH (a Houston station); (2) if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with Section 73.3555 of the Commission’s rules, the broadcast ownership rules. Accordingly, in this Hearing Designation Order, we commence a hearing before the Administrative Law Judge to determine whether the above-captioned applications should be granted or denied.”

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On August 16, 2018, the Senate Committee on Commerce, Science and Transportation held a hearing at which Chairman Pai revealed he was contacted by Don McGahn, Counsel to the President on July 16 or 17, who inquired in a phone call as to the status of the Commission’s decision regarding the proposed Sinclair-Tribune merger.

On August 24, 2018, FCC OIG issued a Report of Investigation (ROI) responding to the allegations raised in the November 13 and November 15, 2017, requests from Congress. In that ROI, the Inspector General indicated the investigation “revealed no evidence of impropriety, unscrupulous behavior, favoritism towards Sinclair, or lack of impartiality related to the proposed Sinclair-Tribune Merger.”

Investigation

To conduct the investigation, FCC OIG investigators:

1. Reviewed the transcript provided in the August 20, 2018, letter from United States Representative Frank Pallone, Jr., describing the conversation between Representative Pallone and Chairman Pai at the July 25, 2018 hearing on “Oversight of the Federal Communications Commission” before the House Committee on Energy and Commerce, Subcommittee on Communications and Technology.
2. Reviewed the transcript provided in the August 20, 2018, letter from United States Representative Frank Pallone, Jr., describing the conversation between Senator Blumenthal and Chairman Pai at the August 16, 2018, hearing on “Oversight of the Federal Communications Commission” before the Senate Committee on Commerce, Science and Transportation.
3. Obtained and reviewed email correspondence from and to FCC Chairman Ajit Pai; Matthew Berry, Chief of Staff in the Office of the Chairman; Nicholas Degani, Senior Counsel in the Office of the Chairman; Commissioner Brendan Carr, Commissioner Michael O’Rielly, and Commissioner Jessica Rosenworcel for the period from January 1, 2018, to August 24, 2018.
4. Obtained and reviewed desk phone records from Chairman Pai; Matthew Berry; Nicholas Degani; Commissioner Carr; Commissioner O’Rielly; and Commissioner Rosenworcel for the period from December 1, 2017 to August 24, 2018.

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5. Obtained and reviewed mobile phone records from Chairman Pai; Matthew Berry; Nicholas Degani; Commissioner Carr; Commissioner O’Rielly; and Commissioner Rosenworcel for the period from December 1, 2017 to August 24, 2018.

Findings

Question #1 – Did Chairman Pai make material omissions or fail to disclose information related to the interactions between the White House and Chairman Pai or his office on the Sinclair-Tribune merger during his testimony on July 25th?

This question relates to the following exchange between Ranking Member Pallone and Chairman Pai at the July 25, 2018 hearing:

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?

Chairman 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.

Ranking Member Pallone’s question specifically addresses whether or not Chairman Pai will include discussions with the White House in the public docket and the Chairman indicates that he will (consistent with the *ex parte* rules governing the process for restricted proceedings). Ranking Member Pallone did not directly ask if there already had been discussions with President Trump or anyone in the White House related to the Sinclair matter; his concern was that any such contacts be placed in the public docket. Chairman Pai’s response was tailored to the question that was asked, and he committed to comply with Ranking Member Pallone’s request, to the extent permitted by the *ex parte* rules. Although Chairman Pai could have disclosed his discussion with White House Counsel McGahn in response to this question, we do not believe that Chairman Pai made a “material omission” or failed to “disclose information related to the interactions between the White House and Chairman Pai or his office on the Sinclair-Tribune merger” during this exchange with Ranking Member Pallone.

Notably, as described below, Chairman Pai revealed the details of the McGahn phone call during

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the Senate hearing on August 16, 2018, and followed up with a letter on August 22, 2018, to Senator Blumenthal, as requested. Moreover, he also revealed this information in an interview with the OIG on August 8, 2018, as was reported in the OIG ROI issued on August 24, 2018.

Question #2 – Was Chairman Pai required to disclose publicly the conversation with White House Counsel Don McGahn on July 16th or 17th?

The FCC’s *ex parte* rules govern presentations made to Commission decision-making personnel in Commission proceedings. The *ex parte* rules define a presentation as a “communication directed to the merits or outcome of a proceeding.” See 47 C.F.R. §1.1202(a). This definition applies to both permit-but-disclose and restricted proceedings.⁷ In his letter to Senator Blumenthal on August 22nd, Chairman Pai described the conversation with White House Counsel Don McGahn as follows:

“Mr. McGahn told me he had seen in the news that I had proposed that the FCC take action with respect to the pending transaction between Sinclair Broadcast Group and Tribune Media, and asked what that proposed action was. I explained, consistent with and largely tracking the public statement I had issued on July 16, 2018, that I had proposed to my fellow commissioners that the full Commission designate certain disputed issues involving the transaction for a hearing before the agency’s administrative law judge. Mr. McGahn made a brief response along the lines of ”Okay, thanks,” and the phone call then ended. No view on the merits of the transaction was expressed, either directly or by implication on Mr. McGahn’s behalf, or on behalf of anyone else.”

The conversation, as described, does not appear to have been directed to the “merits or outcome of the proceeding.” In fact, Chairman Pai stated specifically in his letter to Senator Blumenthal that “No view on the merits of the transaction was expressed, either directly or by implication on Mr. McGahn’s behalf, or the behalf of anyone else.” As a result, we do not believe that the Commission’s *ex parte* rules require disclosure of this conversation in the docket.

There are no other Commission rules, policies, or regulations that would have required disclosure of the conversation.⁸

⁷ See 47 C.F.R. §§ 1.1206, 1.1208.

⁸ In Representative Pallone’s letter to OIG, general reference is made to a FCC press conference on August 2, 2018 at which Chairman Pai is asked if anyone from the White House contacted him regarding the Sinclair-Tribune merger. We note that statements to the press do not implicate 18 U.S.C. §1001’s prohibition against false statements and therefore no further analysis of this exchange is warranted.

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Question #3 – Are there other conversations between the White House and the Commission (Office of the Chairman and Offices of the Commissioners) related to the Sinclair-Tribune merger that should have been disclosed (i.e., represent ex parte “presentations”) that have not been disclosed?

We did not identify any other conversations between the White House and the Commission (Office of the Chairman and Offices of the Commissioners) related to the Sinclair-Tribune merger.

Recommendations

Based on our findings, we recommend no further investigation into this issue at this time.

Conclusion

Our investigation, as detailed above, revealed no evidence of concealment or cover-up by Chairman Pai. Chairman Pai did not make material omissions during his hearing. When asked at the House hearing whether he would file the appropriate disclosures regarding any contact with the White House regarding the Sinclair-Tribune merger, he agreed to do so and did not deny the existence of any communications with the White House. Our analysis of his conduct reveals that the conversation with White House Counsel McGahn was not subject to the disclosure requirements pursuant to the FCC’s *ex parte* rules. Nevertheless, within three weeks of the House hearing, he disclosed the existence and the content of the conversation in both the Senate hearing and to OIG. Lastly, we discovered no evidence of any other communications between the White House and FCC staff.

Attachment

Attachment 1 – August 20, 2018 letter from United States Representative Frank Pallone, Jr., Ranking Member of the House Committee on Energy and Commerce, to FCC Inspector General David Hunt.

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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
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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 that reads "Frank Pallone, Jr." in a cursive style.

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"**

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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**

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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”**

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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.