

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Restoring Internet Freedom
WC Docket No. 17-108

ORDER

Adopted: July 17, 2017

Released: July 17, 2017

By the Chief, Competition Policy Division, Wireline Competition Bureau:

1. On July 7, 2017, the National Hispanic Media Coalition (NHMC or Petitioner) filed a Motion for Extension of Time (Motion) in the above captioned proceeding. Petitioner asks us to extend the initial comment deadline until "60 days after the Commission complies with [NHMC's] outstanding" Freedom of Information Act (FOIA) request. For the reasons set forth below, we deny the Motion.

2. NHMC contends that an extension is warranted to "ensure that all evidence relevant to this proceeding is available to the public, and that the public has adequate time to analyze the evidence and comment accordingly. Specifically, the Commission must produce the approximately 47,000 open Internet complaints that it has received, and documents related to the open internet ombudsperson's interactions with internet users, all of which are the subject of an unfulfilled [FOIA] request filed by NHMC."

3. We find that that NHMC's stated request does not justify the requested lengthy delay in the comment cycle in this proceeding. Under Section 1.46 of the Commission's rules, it is the policy of the Commission that extensions of time shall not be routinely granted. For the reasons discussed below, we conclude that NHMC has not shown that an extension is warranted here.

4. We note that Commission staff could have denied NHMC's FOIA request on its face as unreasonably burdensome under the FOIA. In order to release all 47,000 complaints to NHMC, Commission staff would have had to review and redact personally identifiable information from each

1 National Hispanic Media Coalition Motion for Extension of Time, WC Docket No. 17-108 (filed July 7, 2017) (Motion).

2 Id. at 1-2.

3 Id. at 1.

4 We note that the FCC first released a public version of the Notice of Proposed Rulemaking in this docket on April 27, 2017. The FCC voted to approve the NPRM on May 18 and the agency released it on May 23. The agency specified at that time that comments would be due on July 17 and reply comments would be due on August 16. No other party has sought additional time to file comments in this proceeding.

5 47 CFR § 1.46. See, e.g., Protecting the Privacy of Customer[s] of Broadband and Other Telecommunications Services, Order, 31 FCC Rcd 3943 (WCB 2016); Business Data Services in an Internet Protocol Environment, Order, 31 FCC Rcd 6778 (WCB 2016); Final Report of the Downloadable Security Technology Advisory Committee, Order, 30 FCC Rcd 12351 (MB 2015); Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Order, 31 FCC Rcd 9725 (PSHSB 2016).

one of those complaints, which would have been unreasonably burdensome.⁶ Rather than simply denying the FOIA request, however, the staff has worked diligently with NHMC to provide it with responsive information in a reasonable time frame, while still protecting the personally identifiable information of thousands of consumers. On June 20, 2017, Commission FOIA staff provided NHMC with approximately 1,000 responsive complaints.⁷ Consistent with an oral offer on July 5, 2017, staff made a written offer on July 14, 2017 to provide NHMC by September 1, 2017 an additional 2,000 complaints, the accompanying carrier responses, 1500 related emails, and an Excel spreadsheet of all 47,000 complaint numbers and additional requested data fields.

5. NHMC is free to address the relevance of any additional documents to this proceeding in its reply comments or in ex parte filings, as the docket in this proceeding does not close when the comment cycle has ended.⁸ Rather, it remains open beyond that date for all interested parties to express their views. Commission FOIA staff will continue to work with NHMC to reasonably fulfill its FOIA request. If the Commission made a practice of delaying comment cycles in response to FOIA requests that require extensive redactions, it would provide parties that oppose particular proceedings an avenue to grind those proceedings to a halt. The Commission will continue to strive to enable NHMC to review and comment upon the information that it has requested.

6. In light of all these considerations and NHMC's continued ability to comment in the record, we conclude that NHMC has failed to show sufficient cause to warrant an extension.

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 5, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, and 303(r), and sections 0.91, 0.291, 1.46, and 1.415 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.46, and 1.415, that the Motion for Extension of Time filed by the National Hispanic Media Coalition on July 7, 2017, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Daniel Kahn
Chief
Competition Policy Division
Wireline Competition Bureau

⁶ *People for American Way Foundation v. Dep't of Justice*, 451 F. Supp. 2d 6 (D.D.C. 2006) (agreeing with agency that responding to a FOIA request requiring page-by-page review of 44,000 case files was unreasonably burdensome); *Wolf v. CIA*, 569 F. Supp. 2d 1, 9 (D.D.C. 2008) (finding that requiring agency to spend thousands of hours reviewing records was unreasonably burdensome). Commission staff made clear in its initial communications with NHMC that it could not process the request "as currently framed," see E-mail from Mike Hennigan, Consumer Information Analyst, Consumer and Governmental Affairs Bureau, FCC, to Carmen Scurato, Director, Policy and Legal Affairs, National Hispanic Media Coalition (May 22, 2017, 11:19 EDT), and explained in a follow up phone call with NHMC that Commission staff would have to review each consumer complaint and redact any personally identifiable information before the complaints could be released in response to a FOIA request.

⁷ See Letter to Carmen Scurato, Director, Policy and Legal Affairs, National Hispanic Media Coalition from Nancy Stevenson, Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau, FCC (June 20, 2017).

⁸ See 47 CFR § 1.1206.