

United States Senate

WASHINGTON, DC 20510

March 6, 2018

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

The Honorable Henry Kerner
Special Counsel
Office of the Special Counsel
1730 M Street, NW Suite 218
Washington, D.C. 20036

Dear Mr. Hunt and Mr. Kerner:

We write to raise concerns regarding recent conduct by a commissioner of the Federal Communications Commission (FCC) and to request your offices examine whether this action may have violated ethics rules or laws that protect the integrity of the agency. Additionally, we request an update on any guidance FCC staff have received for the purpose of preventing these types of incidents.

As you know, the Hatch Act of 1939 explicitly prohibits political appointees from engaging in partisan political activity while on duty.¹ Furthermore, the U.S. Office of Special Counsel (OSC) has issued guidance to administration officials indicating that, because President Trump's Federal Elections Commission (FEC) paperwork has been filed, the Hatch Act "prohibit(s) federal employees, while on duty or in the workplace, from expressly advocating for or against (the President's) reelection in 2020."² This law was passed to ensure that federal programs are administered in a fair and objective fashion, free from presidential influence or political control. The FCC's important mission to oversee our nation's cable, radio, and internet systems and its mandate as an *independent* agency make it all the more important that the agency act free from the influence of any political organization.

On February 23, 2018, FCC Commissioner Michael O'Rielly attended the annual Conservative Political Action Conference (CPAC). When O'Rielly was asked a question by the audience regarding the best ways to avoid "regulatory ping-pong," he answered as follows: "I think what we can do is make sure as conservatives that we elect good people to both the House, Senate and make sure that President Trump gets reelected."³ At the time he answered this question, Mr. O'Rielly was appearing in his official capacity and promoting a political candidate who has already filed election paperwork with FEC.

¹ 5 U.S. Code § 7324

² Guidance on President Trump's Status as a Candidate and Its Effect on Activity in the Federal Workplace. U.S. Office of Special Counsel. (Feb. 7, 2017) <https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf>

³ CPAC 2018 - To Infinity and Beyond: How the FCC is Paving the Way for Innovation. See 11 minute mark

According to Mr. O’Rielly’s spokesperson, he “tried to respond in a factual way without engaging in advocacy.”⁴ Mr. O’Rielly’s statement however, appears to directly meet the definition of advocacy and, if so, is clearly in violation of guidance issued by OSC and by consequence the Hatch Act. This warrants further review.

According to public reports, Mr. Hunt’s office has already initiated an investigation into whether Mr. O’Rielly’s colleague, FCC Chairman Ajit Pai, may have inappropriately coordinated FCC action with Sinclair Broadcast Group in advance of their upcoming merger with Tribune Media. This followed reports that Pai had met numerous times with Sinclair’s top executives as he took action to eliminate existing rules that may have hampered their expansion.⁵ These actions occurred after the Administration officials struck a deal for better media coverage from Sinclair Broadcast Group during the Presidential campaign.⁶

Taken in concert, these actions raise serious questions about the leadership of the FCC and its commitment to fairness and impartiality. The agency oversees some of our nation’s most critical technologies that allow Americans to communicate and practice free expression. By enforcing this law, we ensure that our nation’s communications systems are free from partisan considerations and safeguard the free and independent press that is foundational to our nation’s values. Given the importance of maintaining the FCC’s integrity and independence, we hope your offices will look into this matter and keep us apprised of any developments.

Thank you for your time and attention.

Sincerely,



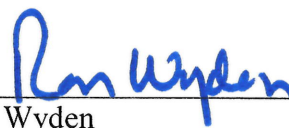
Catherine Cortez Masto
United States Senator



Tom Udall
United States Senator



Margaret Wood Hassan
United States Senator

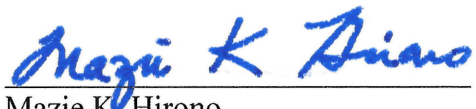


Ron Wyden
United States Senator

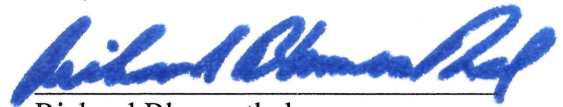
⁴ The FCC’s Republicans went to a conservative confab. One won a gun, the other an ethics complaint. Washington Post. (Feb. 23, 2018) https://www.washingtonpost.com/news/the-switch/wp/2018/02/23/the-fccs-republicans-went-to-a-conservative-confab-one-won-a-gun-the-other-an-ethics-complaint/?utm_term=.2982cc231291

⁵ New York Times, “FCC Watchdog Looks into Changes that Benefited Sinclair.” February 15, 2018. <https://www.nytimes.com/2018/02/15/technology/fcc-sinclair-ajit-pai.html>

⁶ Politico, “Kushner: We struck deal with Sinclair for straighter coverage.” December 16, 2016. <https://www.politico.com/story/2016/12/trump-campaign-sinclair-broadcasting-jared-kushner-232764>



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Richard Blumenthal
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