

Congress of the United States
Washington, DC 20515

December 4, 2017

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dodaro:

We are writing to request that the U.S. Government Accountability Office (GAO) investigate and report on the extent and pervasiveness of fraud and the misuse of American identities during federal rulemaking processes, including, for example, the net neutrality rulemaking process used by the Federal Communications Commission (FCC) (WC Docket No. 17-108) pursuant to the Administrative Procedure Act (APA).

Earlier this summer, Ranking Member Pallone requested that the FBI look into this potential fraud, fearing it amounted to a violation of federal law.¹ Further, on November 21, 2017, Eric T. Schneiderman, the Attorney General of New York, sent a letter to the FCC conveying significant evidence that fake commenters “made up names and addresses” and “misused the real names and addresses of actual people as part of the effort to undermine the integrity of the comment process.”² He added:

My office analyzed the fake comments and found that tens of thousands of New Yorkers may have had their identities misused in this way. (Indeed, analysis showed that, in all, hundreds of thousands of Americans likely were victimized in the same way, including tens of thousands per state in California, Georgia, Missouri, Ohio, Pennsylvania, Texas, and possibly others.)³

In addition to implicating state law, these activities appear to violate 18 U.S.C. §1001, which makes it a felony for any person to “knowingly or willfully” make “any materially false, fictitious, or fraudulent statement or representation” in any matter under the Executive Branch’s jurisdiction. Submitting comments to the FCC or any other federal entity using someone else’s identity appears to violate this very prohibition.

¹ Letter from Ranking Member Frank Pallone, Jr., House Committee on Energy and Commerce to Jeffery B. Sessions III, Attorney General, U.S. Department of Justice and Andrew G. McCabe, Acting Director Federal Bureau of Investigations (June 28, 2017) (online at democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/DOJ.FBI_.%202017.06.28.%20Letter%20re%20federal%20law%20violations%2C%20stolen%20identities%2C%20and%20FCC%20open%20comments.%20CAT.%20OI.pdf).

² Letter from Attorney General Eric T. Schneiderman, State of New York, to Chairman Ajit Pai, Federal Communications Commission (Nov. 21, 2017) (online at <https://medium.com/@AGSchneiderman/an-open-letter-to-the-fcc-b867a763850a>).

³ Id.

We are also concerned that the FCC appears to be withholding information requested by Attorney General Schneiderman to allow him to investigate these abuses. As he stated in his letter:

Successfully investigating this sort of illegal conduct requires the participation of the agency whose system was attacked. So in June 2017, we contacted the FCC to request certain records related to its public comment system that were necessary to investigate which bad actor or actors were behind the misconduct. We made our request for logs and other records at least 9 times over 5 months: in June, July, August, September, October (three times), and November.

We reached out for assistance to multiple top FCC officials, including you, three successive acting FCC General Counsels, and the FCC's Inspector General. We offered to keep the requested records confidential, as we had done when my office and the FCC shared information and documents as part of past investigative work.

Yet we have received no substantive response to our investigative requests. None.⁴

We understand that the FCC's rulemaking process requires it to address all comments it receives, regardless of who submits them. However, we do not believe any outside parties should be permitted to generate any comments to any federal governmental entity using information it knows to be false, such as the identities of those submitting the comments.

For these reasons, we ask GAO to investigate the prevalence of outside parties generating comments to federal rulemakings by utilizing false or stolen identities. We request that you begin with the FCC's net neutrality rulemaking process, but ask that you identify any other rulemaking processes you deem appropriate for this review. In addition, we request that you examine the information the FCC is withholding from the Attorney General of New York, and whether that information bears on potential violations of 18 U.S.C. §1001. Finally, we request that GAO investigate whether federal agencies have established proper controls for detecting and preventing fraudulent comment submissions during the federal rulemaking process, as well as provide any recommendations for improvements.

If you have any questions regarding this request, please contact Ernie Jolly of Rep. Meeks' staff at (202) 225-3461 or Tim Lynch of Ranking Member Cummings' staff at (202) 225-5051. Thank you for your consideration of this request.

Sincerely,



Gregory W. Meeks
Member of Congress

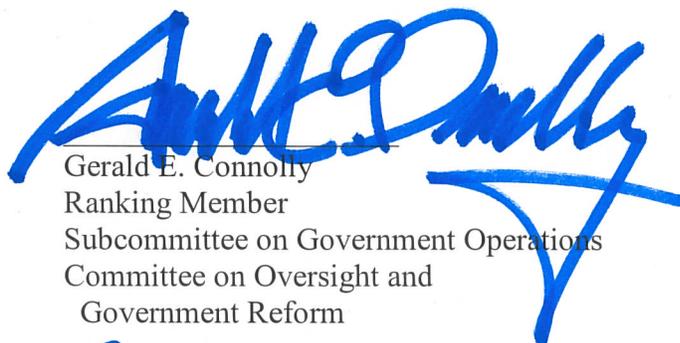


Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform

⁴ Id.



Frank Pallone, Jr.
Ranking Member
Committee on Energy and
Commerce



Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations
Committee on Oversight and
Government Reform



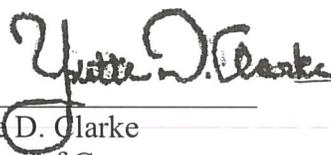
Eliot L. Engel
Member of Congress



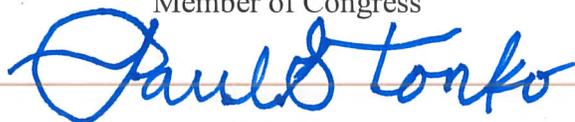
Carolyn B. Maloney
Member of Congress



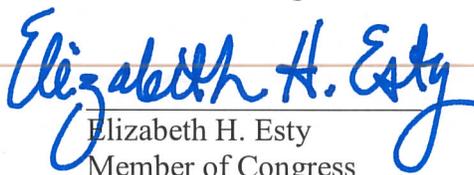
Nydia Velázquez
Member of Congress



Yvette D. Clarke
Member of Congress



Paul Tonko
Member of Congress



Elizabeth H. Esty
Member of Congress



Hakeem S. Jeffries
Member of Congress

cc. The Honorable Trey Gowdy, Chairman
Committee on Oversight and Government Reform

The Honorable Greg Walden, Chairman
Committee on Energy and Commerce