Description of document:	Closing documents for nineteen (19) Federal Communications Commission (FCC) Inspector General (OIG) investigations closed 2012-2016
Requested date:	2017
Released date:	13-September-2017
Posted date:	23-October-2017
Source of document:	FOIA Request Federal Communications Commission 445 12th Street, S.W., Room 1-A836 Washington, D.C. 20554 Electronic FOIA (E-FOIA) Request Form Email: FOIA@fcc.gov Fax: 202-418-0521

Federal Communications Commission
Washington, D.C. 20554

September 13, 2017

Re: FOIA Control No. 2017-0323

This letter responds to your Freedom of Information Act (FOIA) request for "A digital/electronic copy of the final report, Report of Investigation (FOI), Closing Memo, Referral Memo and Referral Letter (i.e. the conclusory document)" for twenty-three FCC Inspector General investigations.[1]

With three exceptions, the FCC-OIG ROIs are enclosed with this letter. The exceptions are as follows:

1. Two ROIs for OIG-I-15-0013 are withheld in their entirety pursuant to FOIA Exemption 5.[2] Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context. The attorney work-product privilege is incorporated into Exemption 5. The ROIs for OIG-I-15-0013 are attorney work-product.

2. The ROI for OIG-I-12-0044 is withheld in its entirety pursuant to FOIA Exemption 7(B). Exemption 7(B) protects "records or information compiled for law enforcement purposes [the disclosure of which] would deprive a person of a right to a fair trial or an impartial adjudication."[3] The subjects of this investigation are currently involved in administrative adjudications regarding the matters discussed in the report. As such, although OIG's investigation into this matter has closed, OIG estimates a considerable likelihood that disclosure of the report could impact the subjects' respective court proceedings in such a manner as to deprive subjects of their right to a fair trial or impartial adjudication.

3. The ROI for OIG-I-15-0009 has not yet been drafted.

---

[1] OIG-I-12-0064; OIG-I-14-0015; OIG-I-14-0027; OIG-I-14-0038; OIG-I-15-0011; OIG-I-15-0012; OIG-I-15-0013; OIG-I-15-0016; OIG-I-15-0020; OIG-I-15-0030; OIG-I-16-0001; OIG-I-12-0044; OIG-E-12-0005; OIG-I-15-0006; OIG-I-15-0017; OIG-I-13-0022; OIG-I-16-0011; OIG-I-16-0017; OIG-B-15-0022; OIG-I-16-0014; OIG-I-15-0009; OIG-I-15-0027; and OIG-I-16-0013

[2] 5 U.S.C. § 552(b)(5).

[3] 5 U.S.C. § 552(b)(7)(B).

With regard to the ROIs for the remaining twenty-one closed investigations, as indicated on the ROIs, certain material has been redacted pursuant to FOIA exemptions 6, 7(C) and 7(E). Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."[4] Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were the subjects of our investigations. We have determined it is reasonably foreseeable that disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

Exemption 7(C) protects "records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to constitute an unwarranted invasion of personal privacy."[5] Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute an unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were/are employed at this agency. These names were compiled during the course of our investigations and in instances such as this, the balance favors not releasing these names. We have determined it is reasonably foreseeable that disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7 is intended to protect.

Exemption 7(E) protects "records or information compiled for law enforcement purposes [the production of which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk a circumvention of the law."[6] Information redacted under this Exemption concerns specific information regarding data gathering techniques and procedures OIG investigators utilized during the course of investigating that, if made public, may allow targets to avoid detection in future investigations. We have determined that it is reasonably foreseeable that disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7(E) is intended to protect.

The FOIA requires that "any reasonably segregable portion of a record" must be released after appropriate application of the Act's exemptions.[7] However, when nonexempt information is "inextricably intertwined" with exempt information, reasonable segregation is not possible.[8] The redactions and/or withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

---

[4] 5 U.S.C. § 552(b)(6).
[5] 5 U.S.C. § 552(b)(7)(C).
[6] 5 U.S.C. § 552(b)(7)(E).
[7] 5 U.S.C. § 552(b) (sentence immediately following exemptions).
[8] *Mead Data Cent. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

We also reviewed the responsive documents to determine if discretionary release is appropriate.[9] The materials protected from disclosure under Exemption 6 are not appropriate for discretionary release in light of the personal privacy interests involved. The materials protected from disclosure under Exemption 7 are not appropriate for discretionary release in light of the law enforcement sensitivities involved.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.[10] To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.[11]

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters."[12] As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.[13] The production did not involve more than 100 pages of duplication and took less than two hours of search time. Therefore, you will not be charged any fees.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.[14] You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director,
Performance Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440

---

[9] *See* President's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).
[10] *See* 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.
[11] 47 C.F.R. § 0.470.
[12] 47 C.F.R. § 0.466(a)(8).
[13] 47 C.F.R. § 0.470(a)(3)(i).
[14] 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road–OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

Jay C. Keithley
Assistant Inspector General-
Investigations

Enclosures
cc: FCC FOIA Office

(b) (7)(C)

Subject: FW: (b) (7)

Per conversation with Jay today, closing out the CMS file at this point due to the DOJ-OIG agent leaving DOJ and the reason for keeping the CMS file open (waiting for S&D proceedings) has a low probability of coming to fruition. Will reopen CMS file to update if S&D occurs.

I have checked with [redacted] and the closing of this case file has not been reported in prior SAR periods or reports to Congress.

(b) (7)(C)
Attorney-Investigator
Federal Communications Commission
Office of Inspector General
445 12th St., SW, Washington, DC 20554
Office: (202) (b) (7)(C)
Cell: (202) (b) (7)(C)
Fax: (202) 418-2811
Email: (b) (7)(C)

*** Non-Public/Internal Use Only ***

From: Jay Keithley
Sent: Friday, July 11, 2014 3:40 PM
To: (b) (7)(C) >; (b) (7)(C) >
Cc: (b) (7)(C) >
Subject: RE: Navajo

Thanks, [redacted]. Let's load the email chain in CMS and close the case out.

Jay C. Keithley
Assistant Inspector General-Investigations
Counsel to Inspector General
Office of Inspector General
Federal Communications Commission
(202) 418-2319

From: (b) (7)(C)
Sent: Friday, July 11, 2014 3:32 PM
To: Jay Keithley; (b) (7)(C)
Cc: (b) (7)(C)
Subject: FW: (b) (7)

FYI – OnSat/(b) (7)(C) declination from the Civil Division. This was the matter (b) (7)(E) [redacted]

(b) (5) [redacted].

I'm cc'ing [redacted] as I'm not sure this fits within the most recent request for information.

-[redacted]

(b) (7)(C) [redacted]
Investigatory Attorney
Federal Communications Commission
Office of Inspector General
445 12th St., SW, Washington, DC 20554
Office: (202) (b) (7)(C)
Cell: (202) (b) (7)(C)
Fax: (202) 418-2811
Email (b) (7)(C) [redacted]

*** Non-Public/Internal Use Only ***

From: (b) (7)(C) [redacted] (CIV) [mailto:(b) (7)(C) [redacted]
Sent: Friday, July 11, 2014 3:26 PM
To: (b) (7)(C) [redacted]. (OIG); (b) (7)(C) [redacted]
Subject: (b) (7) [redacted]

(b) (5) [redacted]

(b) (5)
(b) (5)

(b) (5)

[redacted]

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: March 13, 2015

TO: David L. Hunt, Inspector General

CC: Tom Cline, Deputy Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, [redacted] Attorney-Investigator

SUBJECT: Investigation of Allegations of Misuse of Parking Fees

---

This investigation is based on an email Hotline complaint sent to the Office of the Inspector General and to the Office of the General Counsel on May 6, 2011, Subject: FCC Accepting Excess Fees. WHISTLEBLOWER, an FCC employee, stated that s/he was filing the complaint after review of the FCC's Facilities Support Services contract (CON03000025). [1]

The WHISTLEBLOWER states that:

> the FCC has potentially been accepting fees in excess and not turning them over to the Department of Treasury. My understanding is that the parking space of 500 spots is part of the lease and the fees paid are collected by employees who pay to park. It is also my understanding FCC was recouping these fees to cover

[1] The employee has since left the Commission

Case Number:	Case Title:
OIG-I-12-0064	MISUSE OF PARKING FEES

> the parking space, whether or not this is correct—I do not know, I'm not familiar with leasing agreements. The part I take exception to is FCC is double parking cars and using these fees which exceed 500 and having the contractor, Natek credit the FCC on its invoice to reduce the overall contract price. [...] I also feel FCC owes this money to Treasury.

Although WHISTLEBLOWER's allegations are not clearly articulated and are based on some erroneous assumptions, we nevertheless conducted an investigation in order to resolve the main issue that we believe [redacted] raised, *i.e.* whether the FCC improperly retained employees parking receipts rather than remitting them to the Treasury.

Background

The FCC uses the parking garage in the building known as Portals Building, Phase II, located at 445 12th Street, S.W., Washington, D.C. 20024, "Portals II." The Portals II Garage is owed by Parcel 49C Limited Partnership (also known as Republic Properties Corporation). Parcel 49C Limited Partnership entered into a lease with the United States of America[2] on January 5, 1998. The Lease is silent regarding how many spaces the FCC may create within the garage, however, it provides that a certain number of spaces are retained by the landlord for its own purposes. The FCC contracted with NATEK[3] and then awarded a follow-on contract to INFUSED SOLUTIONS[4] to furnish the necessary personnel, supplies and materials required to provide parking management services for the FCC garage. One of the tasks of the contractor is to collect monthly parking fees for the garage. Under its contract, the Contractor "shall retain funds from the monies collected for the monthly permits in the amount of the agreed-upon fixed management operating fee." Any fees over and above the fixed management fee are paid to the FCC and applied to the garage lease.

Investigation

Attorney-Investigator [redacted] followed up with [redacted], Assistant General Counsel, in September 2011, to discuss OGC's review of the allegation. OGC concluded that WHISTLEBLOWER's allegations are without merit. Although pursuant to statute, money for the Government from any source must be deposited "in the Treasury as soon as practicable without any charge or claim, 31 U.S.C. § 3302(b), parking fees collected by agencies are exempt

[2] The General Services Administration (GSA) is the contractor for the United States of America and therefore the FCC has an occupancy agreement with the GSA for the building with 49C/Republic as the Landlord.
[3] CON03000025 Facilities and Administrative Support, Period of Performance October 1, 2003 to July 31, 2009
[4] CON11000004 Facilities and Administrative Support, Period of Performance April 1, 2011 to March 31, 2016

from this provision, provided the costs of the garage rent, the costs of maintaining the garage are in excess of the fees collected. *See* 40 U.S.C. § 586(c). OGC maintains that the FCC's annual rent charge for the garage space currently exceeds $2 million, whereas the amount it receives in fees is approximately $1 million. Thus, the Commission is not violating federal appropriations law when it refrains from depositing any money received from parking fees into the Treasury.

In June 2011, (b) (7) (C) interviewed Contracting Officer Representative (COR) (b) (7) (C) in June 2011[5]. [redacted] noted that, at the time, there were 500 marked parking spaces in the garage, but due to "tandem and aisle parking," occupancy of the garage can be as high as 700. On average, there are between 590-600 paid parkers each month. (b) (7)(C) expressed concern that "should be a review of the monthly parking rate of $145 in order to help curb any contract overages and credits."[6]

Conclusion and Recommendations

Because the issue raised by WHISTLEBLOWER, as articulated above, is essentially a question regarding the application of federal appropriations law, we defer to the determination of the OGC that the Commission's retention of the parking fees is authorized by statute.

However, based on our interview with (b) (7)(C) [redacted] coupled with the general, albeit imprecise, concern implied by WHISLTLEBLOWER, we believe additional oversight from OMD or ASC may be advisable. Consequently, while recommend no further investigation into this issue at this time, we recommend an Audit review of the contractor's accounting of parking fees and invoices.

[5] Retired 2013

[6] The parking rate was changed in 2014.

EXHIBIT A

From: (b) (7)(C)
Sent: Wednesday, September 28, 2011 2:41 PM
To: (b) (7)(C)
Cc: (b) (7)(C); (b) (7)(C) (b) (7)(C) (b) (7)(C) (b) (7)(C)
(b) (7)
Subject: FCC Hotline Claim

FOR THE OFFICE OF INSPECTOR GENERAL
NON-PUBLIC INFORMATION
FOR INTERNAL USE ONLY

(b) (7) -

Pursuant to your request, we have examined the basis of a claim received by the FCC Hotline on May 6, 2011, alleging that the FCC was improperly retaining its employee parking fees collected under the Facilities Support Services contract. For the reasons stated below, we do not believe the claim is meritorious because, by statute, the parking fees the FCC receives from employees can be retained by the FCC and applied against the garage rent, the costs of maintaining the garage, and the garage operator's fees. Moreover, a number of factual statements in the email are inaccurate and do not support its allegations.

The claim, which stems from the May 6, 2011, email to the FCC Hotline, states in pertinent part:

> [I] discovered under a Facilities Support Services (CON03000025), the FCC has potentially been accepting fees in excess and not turning them over to the Department of Treasury. My understanding is that the parking space [sic] of 500 spots is part of the lease and the fees paid are collected by [sic] employees who pay to park. It is also my understanding FCC was recouping these fees to cover the parking space, [sic] whether or not this is correct – I do not know. I'm not familiar with leasing agreements. The part I take exception to is FCC is double parking cars and using these fees which exceed 500 and having the contractor, Natik credit the FCC on its invoice to reduce the overall contract price. To my knowledge, FCC is not authorized to accept money through contractual means nor may FCC bypass the laws of Congress to earn more money and not claim it in their budget. I also feel FCC owes this money to

Treasury.

Generally, under the miscellaneous receipts statute § 586(c), "[a]n official or agent of the Government receiving money for the Government from any source [must] deposit the money in the Treasury as soon as practicable without any charge or claim." 31 U.S.C. § 3302(b). But for the statutory exception discussed below, the miscellaneous receipts statute would require the FCC to deposit all of the employee parking fees in the Treasury. However, parking fees received by agencies are excepted from the miscellaneous receipts statute by virtue of 40 U.S.C. § 586(c) which provides:

> (1) In general. – An executive agency, other than the [General Services] Administration, may impose a charge for furnishing space and services at rates approved by the [General Services] Administrator.
>
> (2) Crediting amounts received. – An amount an executive agency receives under this subsection shall be credited to the appropriation or fund initially charged for providing the space or service. However, amounts in excess of actual operating and maintenance costs shall be credited to miscellaneous receipts unless otherwise provided by law.

Thus the parking fees the FCC receives from employees can be retained by the FCC and applied against the garage rent, the costs of maintaining the garage, and the garage operator's fees. Those costs exceed the amount the FCC receives from employees for parking (about $1 million annually). (Given that the FCC's annual rent charge for the garage space currently exceeds $2 million, there is no realistic scenario where parking receipts could be greater than the FCC's parking-related costs.) Because all of the employee parking fees thus fall under 40 U.S.C. they need not be turned over to the Treasury. To the extent, however, that any excess parking fees were applied to non-parking related accounts, e.g., used to credit other aspects of the facilities Support Services contract, we are advising OMD's Chief Financial Officer that any errors in the recording of such fees should be corrected.

As to factual inaccuracies, the May 6, 2011, email refers to 500 parking spots being part of the lease. It is true that the FCC provides an average of about 583 spaces for employees, but it is not accurate that this number of spaces is specified in the lease. The Portals II lease does not rent a specific number of parking spaces to the Government. Rather, it provides the agency with the right to use and control the parking areas located on the Maine Avenue and the C-2 and C-3 Levels in the building. See Supplemental Lease Agreement No. 4 between Parcel 49C

Limited Partnership and the United States of America (Jan 5, 1998) (SLA No. 4) at 2; Exhibit A to SLA No. 4 at 1. The only provision specific to a set number of parking spaces is a provision reserving 13 identified parking spaces for the Landlord's use. Id. The lease also provides the Landlord with parking permits for an additional ten unassigned spaces. Id. All 23 spaces are provided free of charge to the Landlord pursuant to the lease are exempt from paying FCC parking charges.

Based on our understanding of the facts, and in light of the above analysis, we do not believe the allegation in the email that the FCC was required to turn over all parking receipts to the Department of Treasury states a valid claim against the FCC.

Please let us know if you have any additional questions.

[redacted]

OFFICE OF THE GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION
OFFICE (202)418-1720; FAX (202)418-7540

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: May 3, 2016

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C)

SUBJECT: Allegations of Ethics Violations by Deputy Bureau Chief ((b) (7)(C))

I. Scope of Investigation

On March 27, 2013, Whistleblower (CS-HQ-004) provided a written complaint alleging several ethics violations by (b) (7)(C), Deputy Bureau Chief of (b) (7)(C) including: 1) representing and drafting proposed legislation (b) (7)(C) while at the FCC, 2) investing in (b) (7)(C) while at the FCC, and 3) engaging in improper hiring practices.

Based on CS-HQ-004's written allegations, OIG investigators reviewed federal and FCC-specific regulations governing personal and business relationships, and spoke to (b) (7)(C) Assistant General Counsel for Ethics, Office of General Counsel (OGC) and the Chief Ethics Officer for the FCC. Investigators also interviewed (b) (6), Office of the Managing Director (OMD) and former em(b) (7)(C), (b) (6), former employee in (b) and currently on detail to (b) (7); and (b) (7)(C), (b) (7)(C) of the (b) (7)(C). Investigators reviewed (b)'s Executive Branch Personnel Public Financial Disclosure Report OGE Form 278 (OGE 278) Public Financial Disclosure Reports for 2010, 2011, and 2012.

II. Background

(b) (7)(C)

III. Relevant Statutory and Rule Provisions.

Under the Standards of Ethical Conduct for Employees of the Executive Branch, employees of the FCC are prohibited from participating in an official capacity in any matter - whether it is a specific adjudication of an issue between particular parties or a general industry-wide rulemaking - in which they, or certain other persons whose interests are imputed to them, have a financial interest, if the matter will have a direct and predictable effect on that financial interest, unless they have received advance permission from the FCC's legal officials.[1] The interests of a spouse, minor child or general business partner, for example, would be imputed to an employee, under the standards of conduct.[2] (b) (7)(C)) explained that most employees are governed by a "one year cooling off period" concerning interaction with a previous employer or client in any type of adjudicatory manner with which they were involved while working in the private sector

[1] See 5 CFR 2635.502 - Personal and business relationships, Standards of Ethical Conduct for Employees of the Executive Branch and 47 CFR 19.735-202 - Financial interests prohibited by the Communications Act.
[2] Id.

and must recuse themselves in those instances.[3] An exception to the one year cooling off period can be granted by the Commission if the government determines it requires the input and expertise of the individual.[4]

Additionally, the agency has a rule, independent of the statue, which requires an employee who had been personally involved in a specific proceeding before the Commission prior to his/her tenure at the FCC, to be completely removed from both adjudications and rulemakings, on any matter dealing with that specific issue for the entire time they are employed at the Commission.[5] Determining whether recusal pursuant to this rule is appropriate is determined by evaluating the position the employee held in private practice and specifically how much actual involvement the employee had regarding the proceeding.[6] (b) (7)(C) described a situation where a senior attorney with a longstanding relationship with a client may be recused because of intimate knowledge with the issue, while a summer associate who was fact-checking the brief, with just a cursory review of the topic, would possibly be allowed to work on the same issue. Moreover, even someone with who had significant involvement may be allowed to participate in any rulemaking or adjudication if, in the opinion of FCC leadership, the expertise of the individual is necessary in the matter.[7]

IV. Allegations and Findings

A. (b) (7)(C) [redacted]

(b) (7)(C) [redacted]

[3] 5 CFR 2635.502(b)(1)(iv)
[4] 47 U.S.C. 154(b)(2)(B)(i), permits the Commission to waive the prohibitions at 47 U.S.C. 154(b)(2)(A).
[5] 5 C.F.R. § 2635.502(d)(5)
[6] 47 U.S.C. 154(b)(2)(B)(i)
[7] 5 C.F.R. § 2635.502(d)(3) and (5).
[8] (b) (7)(C) [redacted]
[9] (b) (7)(C) [redacted]

(b) (7)(C)

(b) (7)(C)

[11] (b) Memorandum of Interview, page 2

[12] (7)(b) Memorandum of Interview, page 2.

[13] (b) (7) Memorandum of Interview, page 3.

[14] (b) (7)(C) Memorandum of Interview, page 2

Case Number:	Case Title:
OIG-I-13-0022	Allegations of Ethics Violations by Deputy Bureau Chief

[redacted]

Overall, there is no direct evidence that [redacted] is advocating interests of former clients in her position in [redacted] in violation of ethics rules. It would appear that [redacted] has actively consulted OGC about her role and obligations as an FCC employee vis a vis interactions with prior clients. Due to [redacted] 's prior consulting service, it is understandable that she would have some relationship with [redacted], however there is no evidence that she has acted in a manner as a result of these relationships that could be deemed to violate the federal or Commission rules governing her actions as an employee at the FCC.

B. [redacted] Investment in [redacted]

CS-HQ-004 noted that [redacted] represented [redacted][15] while in private practice prior to returning to the Commission in [redacted]. CS-HQ-004 believed that [redacted] had and may still have stock ownership in [redacted]. [redacted] did represent [redacted] as a policy consultant when she owned [redacted].[16] Investigators reviewed [redacted] 's OGE 278s for 2010, 2011, 2012 and found no ownership of [redacted] or other [redacted] reported by [redacted].

C. [redacted] Hiring Practices

[redacted] had hired several new employees. For various reasons, CS-HQ-004 thinks these hires were improper and that the hiring decisions were driven by the individuals' relationship and friendship with [redacted] rather than their expertise.

Most of [redacted] 's hires were [redacted] All of the staff interviewed agreed that Commission management hires "experts in the field" because of their knowledge and that [redacted] was doing nothing different. Nevertheless, interviewees thought that the [redacted] "new hires" were "too close to the information that they used in previous jobs" but had no belief that any of the new hires used the information improperly.

[15] [redacted]

[16] [redacted]

As described above, employees are governed by a "one year cooling off period" concerning interaction with a previous employer or client in any type of adjudicatory manner with which they were involved while in the private sector and must recuse themselves in those instances.[17] An exception to the one year cooling off period can be granted by the Commission if the government determines it requires the input and expertise of the individual.[18] [redacted] did not describe any discussions with [redacted]'s hires about requested waivers under the ethics rules nor did he indicate that the work these new hires performed was in violation of the rules. In particular, these employees were full-time employees of the FCC who had specific experience with the subject matters at hand and therefore their knowledge is vital to work at the Commission. Without indication of additional wrongdoing or evidence of the existence of a "covered relationship[19] between the provider and FCC employee, there is no apparent violation of ethics rules.

III. Recommendation

We found no evidence that [redacted] directly violated any federal of FCC ethic rules. Regardless, several employees at the Commission believe [redacted]'s relationships with prior clients [redacted] and her involvement with legislation appeared inappropriate, and thus may have raised the spectre of impropriety. However, because [redacted] sought guidance from and followed the directions of the FCC Ethics Officer on the very matters raised by the employees, no evidence revealed in our investigation leads us to conclude that the advice and counsel given to her and her corresponding actions were improper so as to merit further investigation.

[17] 5 CFR 2635.502(b)(1)(iv)
[18] 47 U.S.C. 154(b)(2)(B)(i), permits the Commission to waive the prohibitions at 47 U.S.C. 154(b)(2)(A).
[19] 5 CFR 2635.502(b)(1)(i)

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: May 11, 2015

TO: David L. Hunt, Inspector General

CC: Tom Cline, Deputy Inspector General

FROM: Jay C. Keithley, Assistant Inspector General for Investigations; (b) (7)(C), Investigatory Attorney

SUBJECT: CPC Whistleblower Procurement Integrity Act Violation

---

Background

The FCC-OIG email Hotline received a complaint from an FCC employee (WHISTLEBLOWER) on March 22, 2011.[1] WHISTLEBLOWER submitted this matter after allegedly becoming "aware of a Procurement Integrity Act Violation." WHISTLEBLOWER cites two specific incidents. The first occurred on August 24, 2010, when (b) (7)(C) (b) (7)(C), allegedly released information concerning Solicitation No. SOL10000006, Facilities Support Solicitation to (b) (7)(C) FCC (b) (7)(C). WHISTLEBLOWER claims (b) (7)(C) "has no need to know procurement sensitive information" and maintains (b) (7)(C) "is not authorized to release information regarding contracts to anyone other than contracting personnel, the technical evaluation panel (TEP), and procurement attorneys."

[1] The employee left the Commission December 2011.

Case Number:	Case Title:
OIG-I-14-0015	CPC WHISTLEBLOWER PROCUREMENT INTEGRITY ACT VIOLATION

The second allegation concerns an incident that occurred on September 30, 2010 when [redacted], as well as the TEP allegedly "engaged in further violations of the Procurement Integrity Act concerning PUR10000567." WHISTLEBLOWER maintains s/he was involved with this and now that s/he has "searched the file, the memo from the IG office stating they committed a violation is missing from the folder."

PROCUREMENT INTEGRITY ACT

The Procurement Integrity Act (PIA) prohibits the release of source selection and contractor bid or proposal information. *FAR 3.104 - 1-11.* FAR 3.104-3(a)(2) prohibits certain individuals from giving out procurement-sensitive information, specifically anyone who:

> (i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and
>
> (ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

The FAR also prohibits anyone from receiving procurement-sensitive information. The only exceptions are people "authorized, in accordance with applicable agency regulations or procedures, by agency head or the contracting officer to receive such information." *FAR 3.104-4(a).*

Additionally, information that is marked as "protected" is protected from disclosure. However, protected information that is not marked as protected but may be protected by regulation under FAR 2.101:

> "Source selection information" means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations or proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "Source Selection Information – See FAR 2.101 and 3.104" based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

The procurement integrity regulation in the FAR applies only up to the time of award of a contract. FAR 3.104(3)(b). Any procurement sensitive information discovered post-award does not impact the award. Should a contracting officer be notified of a violation or possible violation of the Act, FAR 3.104(7) prescribes how such violation or possible violation of the PIA rules is to be processed. The general test is one of impact. If the contracting officer determines that the reported violation or possible violation has no impact on the pending contract award, the contracting officer is to report that conclusion to the appropriate agency official. With that official's concurrence, the contracting officer may proceed to award. If the official does not concur, the award is withheld and the head of the contracting agency (HCA) makes the final

decision.[2] If the information would impact the award, the contracting officer must promptly advise the HCA of the information disclosed and let the HCA make the final decision. In addition, under FAR 3.104(7)(3) the HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

However, under FAR 3.104(7)(f) if the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

Findings Allegation 1

On August 24, 2010, [redacted] sent an email to [redacted], with CC to [redacted] and [redacted], regarding Solicitation No. SOL10000006, Facilities Support Solicitation. The email contained the following notation:

Source Selection Information - See FAR 2.101 and 3.104
Attorney-Client Privileged Deliberative Materials
Non-Public Information

WHISTLEBLOWER only provided the first page of the email.[6] The context, as far as could be determined, was OGC's legal review and risk assessment of the award determination by the source selection team. SOL10000006 was awarded on March 28, 2011 to Infused Solutions, LLC, with an effective date of April 1, 2011. [redacted] was the contracting officer for the FCC. In an interview with [redacted] in August 2011, [redacted] stated that no PIA violations were reported to [redacted] prior to the award for the Facilities Support contract.

[2] Under Commission rules, the Chairman has the "[a]uthority to act as 'Head of the Agency' . . . for administrative determinations required by required by Federal Procurement Regulations and Federal Management Circulars [;]" 47 C.F.R. §0.211 (e); and the "Managing Director is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission." 47 C.F.R. §0.231(e).
[3] Former Head of FCC Office of Managing Director's (OMD) [redacted]. Left the FCC in [redacted].
[4] Assistant General Counsel, [redacted]
[5] Assistant General Counsel
[6] Upon receipt of WHISTLEBLOWER's complaint, [redacted] immediately asked WHISTLEBLOWER to provide the complete email from [redacted]. WHISTLEBLOWER never provided a complete unredacted email to OIG for review. WHISTLEBLOWER was not a recipient of the email and was not on the solicitation team.

On March 2, 2015, Attorney-Investigator (b) (7) discussed with (b) (7)(C) WHISTLEBLOWER's allegation. (b) (7)(C) followed-up in an email to (b) (7), wherein she stated:

> At all times relevant to WHISTLEBLOWER's allegations, (b) (7)(C) was (b) (7)(C) with overall responsibility for all of the activities supported by the facilities support contract, e.g., mail room, security, garage operations, etc. [...] Further, OGC's 8/24/2010 email regarding the status of the facilities support contracting effort was shared with (b) (7)(C) in connection with both her subject matter and management responsibilities.

Conclusion

FAR 3.104-4(a) allows for procurement sensitive information to be provided to others if doing so it is "in accordance with applicable agency regulations or procedures." (b) (7)(C), (b) (7) was responsible for managing the Contracting and Purchasing Center (CPC). Thus, it was common procedure to include her on email such as the one sent by (b) (7)(C). Moreover, in his instance, the actual contract awarded fell under the auspices of (b) (7)'s office, and so (b) would have a direct interest in its successful administration. Further, (b) (7)(C) appropriately noted on the email that it included non-public information.

In addition, we find that WHISTLEBLOWER failed to notify the contracting officer (b) (7)(C) under FAR 3.104(7) prior to award that there may have been a violation of the rules. Without notification, (b) (7)(C) was unable to make a determination of the impact of the possible violation prior to award.

Overall, we find that because it was agency procedure under FAR 3.104-4(a) to include (b) (7) generally on emails such as the one under consideration in this case, by virtue of her role as (b) (7)(C) managing CPC and specifically on this email by virtue of her role in overseeing the Facilities Support contract, there was no PIA violation. Furthermore, WHISTLEBLOWER failed to follow the FAR and timely notify the contracting office prior to contract award of any PIA violation. Based on our findings, we do not recommend further investigation into this issue at this time.

Findings Allegation 2

This allegation concerns PUR10000567 (RFQ1000013), the solicitation for Audits of Telecommunications Relay Services (TRS). This procurement was in support of an OIG Audit team project. WHISTLEBLOWER alleges "The TEP signed nondisclosure agreements and conflict of interest statements but released source selection sensitive information to their supervisor who then assisted the TEP in making a decision." The TEP team members were [redacted]. [redacted] was the TEP Administrator and [redacted] was Chief Evaluator of the TEP and contracting officer. The TEP supervisor was [redacted].[7]

As part of their duties on the TEP, members were required to sign a Disclosure Statement which stated in part "The undersigned acknowledges his/her obligation not to disclose Request for Proposal information received from Bidders on FCC Solicitation RFQ1000013, for FCC OIG's Audits of Telecommunications Relay Services." Each evaluator was given a copy of the proposals and an evaluation form. The evaluators performed an independent evaluation of each proposal and returned the evaluation form to the TEP Administrator who consolidated the evaluations and then presented them to the Chief Evaluator.

[redacted] and [redacted], when interviewed by [redacted], recalled an incident that occurred on or about September 30, 2010, when Source Selection information was provided to [redacted] at the time, in order to obtain advice from her regarding the procurement. This request occurred during the final moments of review, since the contract needed to be awarded on September 30, 2010. Although [redacted] was provided Source Selection material, including copies of proposals and the Request for Proposal, from [redacted], she did not sign a non-disclosure agreement prior to review. According to TEP member [redacted], once the TEP was advised that [redacted] had reviewed the material without a non-disclosure agreement, they notified the TEP Administrator [redacted]. [redacted] explained to [redacted] that he notified Chief Evaluator, [redacted] on SEPTEMBER 30, 2010 according to the FAR and [redacted] forwarded [redacted] a copy of a "CERTIFICATE OF NON-DISCLOSURE/ Unauthorized Disclosure of Procurement Information (RFQ 10000013)" for signature. [redacted] was not aware if [redacted] signed the form, but knows that the contract was awarded the same day. Review of the CPC contract file shows that there was no documentation to indicate any PIA violation was noted by [redacted] on September 30, 2010. While there is a copy of a draft "CERTIFICATE OF

[7] [redacted] left OIG in [redacted].

NON-DISCLOSURE/ Unauthorized Disclosure of Procurement Information (RFQ 10000013)" in the electronic OIG Audit contract file on the K:/ drive, no such document was retained in the hardcopy CPC file that is the agency file of record.

Contract PUR10000567 was awarded to Williams Adley & Company on September 30, 2010 and signed by contracting officer (b) (7)(C). Review of the CPC file does not indicate that an impact analysis under FAR 3.104(7) was conducted prior to award.

(b) (7)(C) was asked if [redacted] had any knowledge of the alleged PIA violation and she responded, "I do not know what circumstances she is referring to."

Conclusion

Based on the testimony of the TEP members, Source Selection information was improperly shared with (b) (7)(C) and consequently, a Certificate of Disclosure should have been signed. (b) (7)(C), in her role of contracting officer and Chief Evaluator should have evaluated the disclosure to (b) (7)(C) and determined whether, under FAR 3.104-7, if such a disclosure impacted the procurement.

While we have no evidence that (b) (7)(C) in fact considered the impact of the disclosure, it is reasonable to assume that since [redacted] did have notice of the infraction prior to the award, it is likely that [redacted] did not feel the integrity of the contract process was compromised and that (b) (7)(C)'s attempt to obtain (b) (7)(C) 'S signature on the "CERTIFICATE OF NON-DISCLOSURE/ Unauthorized Disclosure of Procurement Information (RFQ 10000013)" was [redacted] endeavor to correct the situation. However, without the completed signature page, (b) (7)(C) failed technically to do so.

Although technical violations of the procurement process did occur, we do not feel any further action need be taken at this time. Efforts were taken to remedy the situation and although not perfected, there was no apparent intent to circumvent the rules. Moreover, the contract at issue ended on September 29, 2011, no protests were lodged and no other apparent consequences resulted from the improper disclosure.

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 16, 2014

TO: David L. Hunt, Inspector General

CC: (b) (7)(C)

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C), (b) (7)(C), (b) (7)(C)

SUBJECT: Gross Mismanagement And Gross Incompetence By (b) (7)

Background of Investigation

On April 3, 2014, a Federal Communications Commission (FCC) employee (WHISTLEBLOWER) in the [redacted] in the Enforcement Bureau (EB) filed a written complaint with the Office of Inspector General (OIG) alleging "(b) (7)(C), my supervisor at the [redacted] is engaged in on-going gross mismanagement and / or abuse and / or waste." On April 7, 2014, WHISTLEBLOWER followed up with an additional email complaint stating, "I'd like to add that (b) (7) is a GS-15 and has not and cannot write anything beyond a simple email. (b) (7) has never written a technical or legal summary of any sort, cannot recommend a policy, cannot give coherent instructions verbally and much less in writing, and (b) (7) cannot review enforcement actions."

Case Number:	Case Title:
OIG-I-14-0020	Gross Mismanagement And Gross Incompetence By (b)

Scope Of Investigation:

OIG reviewed the matter and determined the WHISTLEBLOWER's allegations concerned performance/management-related activities and thus more appropriately fell within the jurisdiction of the operating Bureau.in the first instance. On April 8, 2014, Assistant Inspector General for Investigations (AIGI) Jay Keithley referred the matter to William (Bill) DAVENPORT, Deputy Chief, Enforcement Bureau for action. On July 9, 2014, DAVENPORT forwarded the matter to David STRICKLAND, EB's former Acting Chief of Staff, and Kay WINFREE, EB's new Chief of Staff.

Findings:

On July 14, 2014, EB concluded its review of the WHISTLEBLOWER's complaint and forwarded its report to the OIG. EB's findings indicate that there is a "larger, ongoing management conflict between WHISTLEBLOWER and [redacted]." EB management in [redacted] and in DC have been actively working to resolve this conflict.[1]

Conclusion:

OIG has reviewed EB's response and based on its evaluation, finds the allegations are unfounded and no additional action is warranted. EB management is aware of the situation between management and staff in the [redacted] and is attempting to take proactive steps to mitigate and abate the situation to the satisfaction of the WHISTLEBLOWER, while supporting the mission of EB. Further steps and actions should be address by Labor Relations.

Recommendation:

It is recommended that this case be closed out without further investigation.

[1] Page 1, Enforcement Bureau Response to Office of Inspector General Concerning Grievance filed by Whistleblower

Case Number:	Case Title:
OIG-I-14-0020	Gross Mismanagement And Gross Incompetence By [redacted]

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: Jay C. Keithley, Assistant Inspector General for Investigations

FROM: (b) (7)(C) Attorney Investigator

DATE: October 21, 2015

SUBJECT: Claim of Improper Contracting by FCC Chief Information Officer

---

(b) (7)(C) (b) (7)(C) FCC Information Technology Center (ITC), provided information to the Office of Inspector General (OIG) alleging that (b) (7)(C) improperly entered into personal services contracts. Specifically, (b) (7)(C) asserts that (b) (7)(C) hired a contractor, , to act as a senior advisor in ITC, (b) (7)(C) . (b) (7)(C) states that (b) (7)(C) (b) (7)(C) 's work duties are in violation of the FAR[1]. (b) (7)(C) cited examples in which had been involved in moving personnel from one contract to another, provided instructions on moving funds from one contract to another and provided instruction/direction to federal employees. According to (b) (7)(C) , (b) (7)(C) made statements to the effect that (b) (7)(C) works directly for (b) (7)(C) and only represents (b) (7)(C) in all matters.[2] There are other contracts and federal employees who work for (b) (7)(C) (b) (7)(C) is not the only advisor to (b) (7)(C) .

---

[1] Personal Services Contracts (FAR 37.104 - Personal services contracts). The FAR states that a personal services contract is characterized by the employer-employee relationship and notes that in the normal course, the government is required to obtain its employees by direct hire under competitive appointment pursuant to the civil service laws. FAR 37.104(a). Thus, it precludes agencies from awarding such contracts unless specifically authorized by statute. FAR 37.104(b)

[2] (b) (7)(C) has not provided evidence of when or where these statements were made.

Case Number:	Case Title:
OIG-I-14-0038	(b) (7)(C)

(b) (7)(C) has raised additional contracting issues regarding the FCC "Operation Lift and Shift"[3]. These contracting matters concern the 1) award of contracts and 2) participation of contractors in the drafting of documents and solicitation process.

I. Investigation

1. Interview (b) (7)(C), Contracts and Purchasing Center, FCC
2. Interviews (b) (7)(C) CIO, ITC, FCC
3. Review of Documents provided by (b) (7)(C)
4. Review of Computech Statement of Work (SOW) – ((b) (7)(C) Contract)

II. Findings

Since the original allegation in July 2014, (b) (7)(C) has become a full time federal employee of the FCC, serving as the and (b) (7)(C) Because of this change in employment status, any on-going issue related to improper personal services contracting is moot, as (b) (7)(C) is no longer a contractor.

Based on our interviews and research, we find that concerns related to contracting for "Operation Lift and Shift" would be better conducted by OIG Audits. By this memo, we refer the matter to the Audits Team.

III. Recommendations

Based on the foregoing, it is recommended that the investigation be closed at this time.

[3] Operation Server Lift was a FCC data center consolidation and optimization project that involves a full-scale move of the 200+ physical servers housed at FCC's Headquarters location to a commercially hosted federal-certified facility. The move took place Labor Day weekend 2015. http://intranet.fcc.gov/omd/itc/liftshift/

Case Number:	Case Title:
OIG-I-14-0038	(b) (7)(C)

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: January 29, 2016

TO: Jay Keithley, Assistant Inspector General for Investigations

FROM: (b) (7)(C), Attorney-Investigator

SUBJECT: Allegations of Violations of Commission's Rule Regarding Cellular Applications (47 CFR Part §22.911)

Background of Investigation

On April 14, 2014 an email was received by the Office of Inspector General (OIG) in which WHISTLEBLOWER alleges rule violations under 47 CFR Part 22.911 (Cellular geographic service area) and possible conflicts of interest between staff in the Federal Communications Commission's (FCC) Wireless Telecommunications Bureau Mobility Division and Verizon Wireless, an FCC licensee. OIG Investigators undertook this investigation to determine whether FCC employees (b) (7)(C), and (b) (7)(C) abused their positions by (1) requiring WHISTLEBLOWER to review eight Verizon applications for Radio Service Authorization although previously filed applications for similar authorizations from other carriers were still awaiting review[1] and/or (2) instructing WHISTLEBLOWER to provide clarification and

[1] 47 CFR 1.926 - Application processing; initial procedures provides for the first steps in filing the application. While the WHISTLEBLOWER implies the processing of the Verizon applications was contrary to WTB's policy and procedures, he declined to provide any evidence to support the implication and there is no rule to suggest management does not have the prerogative to assign work as it deems appropriate.

Case Number:	Case Title:
OIG-I-15-0006	Allegations of Violations of Commission's Rule Regarding Cellular Applications

correction under 47 CFR section 22.911 instead of simply notifying Verizon of errors noticed in radial data. Due to lack of cooperation from and a failure to communicate by the WHISTLEBLOWER, OIG was unable to pursue the allegations.

47 CFR Part §22.911 (Cellular geographic service area.)

Pursuant to 47 CFR Part §22.911, the Cellular Geographic Service Area (CGSA) of a cellular system is the geographic area considered by the FCC to be served by the cellular system. The service area of a cell is the area within its service area boundary (SAB). 47 CFR Part §22.911(a) provides that the SAB [Service Area Boundary] of cellular site may either exceed or equal its authorized CGSA. If a carrier believes the method described in paragraph (a) produces a CGSA that departs significantly (±20% in the service area of any cell) from the geographic area within which reliable cellular service is actually provided, the carrier may seek a modification of its CGSA. FCC Form 601 is used to seek such a modification and requires, as an exhibit to an application for modification of the CGSA using FCC Form 601 (Application for Wireless Telecommunications Bureau Radio Service Authorization), a depiction of what the carrier believes the CGSA should be (47 CFR Part §22.911(b)).

FCC Form 601 is reviewed by engineers in the Wireless Telecommunications Bureau. When the radial data points are reviewed utilizing FCC mapping software and if they fail to appear on the CGSA boundary, they are identified as errors that violate the above-cited FCC rule. Generally, when such errors are detected during the review process, the respective carrier is unable to submit an application via the Universal Licensing System (ULS) until the application is amended and/or corrected.[2] The sites can be newly added or reconfigured as part of the network. FCC employees do not conduct the site surveys or engineering assessments for the licensees.

OIG Investigation

[redacted] was the OIG investigator who received the allegations and had initial contact

[2] Public Notice DA-00-1033 Applicants filing electronically have an advantage over those who file paper applications (manual filers) in that the ULS does not permit an applicant to submit an application that contains missing or invalid data. Pursuant to 47 CFR 1.913(b) Electronic filing. "[a]ll applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS." Form 601 is included in Section 1.913(a) as required electronic filing.

with the WHISTLEBLOWER. (b) (7)(C) retired from OIG in October 2014 without additional contact from the WHISTLEBLOWER. On October 23, 2014, (b) (7)(C) sent an email to WHISTLEBLOWER asking for all documents related to the case. On December 1, 2014, WHISTLEBLOWER forwarded the same allegations he/she had provided to OIG in April 2014. (b) (7)(C) spoke to WHISTLEBLOWER to explain that OIG would review the documents. On March 1, 2015 (b) (7)(C) emailed WHISTLEBLOWER asking to set up a meeting to discuss the allegations and documents. WHISTLEBLOWER did not return the email. On March 17, 2015, (b) (7)(C) called and left a voicemail for WHISTLEBLOWER to follow-up on the March 1, 2015 email. WHISTLEBLOWER did not return the voicemail. (b) (7)(C) called WHISTLEBLOWER again on March 24, 2015 with no answer. As of the date of this Report, WHISTLEBLOWER has not returned any emails or phone calls to the OIG and has not submitted follow-up documentation to their allegation.

Recommendation

Because WHISTLEBLOWER failed to cooperate with OIG and did not provide additional information regarding the allegations, we are unable to find merit to the claims as set forth. It is recommended that this case be closed without further investigation.

Case Number:	Case Title:
OIG-I-15-0006	Allegations of Violations of Commission's Rule Regarding Cellular Applications

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: March 20, 2015

TO: David L. Hunt, Inspector General

CC: Tom Cline, Deputy Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C), Investigatory Attorney

SUBJECT: Investigation into Allegations of EB (b) (7)(C) Supervisor Perjury in EEO Investigation

On October 21, 2014, (b) (7)(C), an Agent with the Federal Communications Commission (FCC) Enforcement Bureau (EB), (b) (7)(C) Office, submitted an email to the Office of Inspector General (OIG) request[ing] "… that the OIG investigate the written perjury of my supervisor, (b) (7)(C), in an official EEO investigation which obstructed the official EEO investigation." (b) (7)(C) alleges that (b) (7)(C) 1) committed perjury and 2) made false statements in [redacted] written statements submitted on August 8, 2014, in a complaint filed by (b) (7)(C) with the FCC Office Workplace Diversity in July 2014.[1]

EEO/OWD Case Background

[1] File FCC-EEO-14-02. (b) (7)(C) has requested a hearing at the Equal Employment Opportunity Commission (EEOC).

Case Number:	Case Title:
OIG-I-15-0011	EB (b) (7)(C) SUPERVISOR PERJURY IN EEO INVESTIGATION

[redacted] has been the District Director for the [redacted], Enforcement Bureau (EB) since December 2003. [redacted] directly reports to [redacted], [redacted] Director EB and to Travis LEBLANC, Bureau Chief, EB.

In July 2014, [redacted], an employee of [redacted], filed a complaint against [redacted] alleging that [redacted] 1) was subjected to sexual harassment and 2) was subjected to a hostile work environment because of [redacted] sex ([redacted]).[2]

On August 8, 2014, [redacted] submitted [redacted] affidavit in FCC-EEO-14-02. Specifically, on page 10 of [redacted]'s affidavit, [redacted] was asked and answered:

> 27. The Complainant alludes to submitting a four-page complaint with the Office of the Inspector General that you were engaged in on-going gross mismanagement and/or waste/or abuse sometime in April/May 2014? Are you aware of this matter? Please elaborate?
>
> A) *I have no knowledge of this matter.*

The matter referred to in interrogatory question #27, cited above, pertains to an April 3, 2014, complaint emailed by [redacted] to the FCC Office of Inspector General (OIG). Copied on the email were Travis LeBlanc, William Davenport[3], [redacted], Rebecca Dorch, [redacted][5], [redacted], [redacted], Thomas Wyatt[8], Ana Curtis[9], and [redacted]. The subject of the correspondence was "Gross Mismanagement and Gross Incompetence By [redacted]." In the complaint, [redacted] alleged that, "[redacted] my supervisor at the Denver Office is engaged in on-going gross mismanagement and / or abuse and / or waste."

[redacted] Affidavit Page 3
[3] EB, Deputy Bureau Chief
[4] EB, Chief Engineer
[5] EB, Deputy Director [redacted]
[6] EB, [redacted], Counsel
[7] FCC Office of Workplace Diversity (OWD), Equal Opportunity Specialist
[8] FCC Director of the Office of Workplace Diversity (OWD)
[9] FCC Attorney Advisor, Wireline Competition Bureau (WCB) and President, Chapter 209, National Treasury Employees Union (NTEU)
[10] EB, Field Agent, [redacted]

On May 29, 2014, [redacted] conducted [redacted]'s annual performance review. On [redacted] Performance Review form, Competency #4 – Working with Others, [redacted] wrote "NEEDS IMPROVEMENT." [redacted] asked for clarification. [redacted] explained, "You continue to send disparaging emails to my chain of command." [redacted] asked [redacted] again for clarification and [redacted] repeated, "You continue to send disparaging emails to my chain of command."

Scope Of Investigation

FCC OIG staff conducted this investigation to determine whether [redacted] committed perjury when [redacted] claimed, in [redacted] affidavit in [redacted]s EEO proceeding that that [redacted] had no knowledge of the complaint sent to OIG wherein [redacted] alleged mismanagement and incompetence. In support of [redacted] allegation, [redacted] asserts the following: (1) even though [redacted] was not a recipient of his April 3, 2014 correspondence/complaint to the OIG, because [redacted] supervisors were copied on the email, [redacted] must have been told about it; and (2) because, during the course of [redacted]s performance review, [redacted] mentioned that [redacted] sent disparaging emails to [redacted] chain of command, [redacted] must have been referring to the email/complaint sent to the OIG.

Interview with [redacted] (January 13, 2015)

[redacted] asked [redacted] to describe [redacted]'s performance review conducted at the end of May 2014. Specifically, [redacted] asked [redacted] to explain why [redacted] told [redacted], "You continue to send disparaging emails to my chain of command." [redacted] responded that [redacted] "would send disparaging emails to my chain of command to the point that my management, namely [redacted], had to counsel me in my own performance review in how to manage [redacted] in [redacted] interaction with [management]." [redacted] went through the list of recipients of the April 3, 2014 email, asking if any of them had forwarded or discussed [redacted]'s email with [redacted]. [redacted] stated that none of them had forwarded the email to her. [redacted] indicated that [redacted] had spoken to [redacted] before [redacted]s performance review in May 2014, but it was not about the [April 3, 2014] email.

Interview With [redacted] (March 2, 2015)

[redacted] asked [redacted] if [redacted] had forwarded or discussed the April 3, 2014 email with SH[redacted] and D[redacted] said to the best of [redacted] recollection, [redacted] did not forward to, or share with [redacted], the content of [redacted]s April 3, 2014 complaint to the IG. However, [redacted] did

admit to copying [redacted] on an April 3, 2014, email sent to other managers at FCC Headquarters, including William DAVENPORT, [redacted], Frederick BUCHER, and [redacted] wherein [redacted] stated, "With [redacted]'s recent escalation of complaints against [redacted] immediate supervisor, [redacted] I believe I have an obligation now to raise yet again my concerns regarding [redacted] with all of you, and to request more holistic guidance and advice." In sum, while [redacted] lays out in detail [redacted] significant concerns about [redacted]s actions and generally references [redacted] recently-filed OIG complaint, [redacted] does not specifically reveal it is about [redacted].[11]

April 3, 2014 [redacted] Email Recipients

On March 10, 2015, [redacted] emailed all of the April 3, 2014 [redacted] email recipients and asked them if they had "forwarded or contacted [redacted] regarding [redacted]s email. EB Managers in [redacted] direct reporting structure, [redacted], DAVENPORT and LEBLANC have no recollection of forwarding or discussing [redacted]s April 3, 2014 email with [redacted]. Other EB Staff, [redacted], also have no recollection of forwarding or discussing [redacted]s April 3, 2014 email with [redacted]. Ana CURTIS, who is President of the National Treasury Employees Union (NTEU), "did not" forward or discuss the email with [redacted].[12]

Thomas WYATT and [redacted] of Office of Workplace Diversity (OWD) have not responded to requests from OIG.

---

[11] On April 4, 2014, there was a conference call with EB managers [redacted], DAVENPORT, [redacted], Wanda SIMS (Office of Managing Director), Fred BUCHER (Security Office), and [redacted] (Labor Relations) to discuss [redacted]'s behavior and develop a plan of action. On April 4, 2014 [redacted] sent an email summarizing the teleconference to DAVENPORT, [redacted]. On April 7, 2014, [redacted] sent an email to the same addressees of the "proposed next steps plan of action for near term handling of the personnel situation in [redacted] pending a more permanent solution or a dramatically improved environment." The plan includes [redacted] not being alone in the [redacted] office with [redacted], giving direct non-judgmental instructions, setting specific "talk and meet" times, and giving [redacted] "direct order assignments with deadlines." [redacted] is coached to "respond to [redacted]s email complaints with 'so noted' and issues prompt warning/letter of concern to [redacted] for really offensive, insolent comments/behavior." Other EB personnel are advised "can and should ignore comments and complaints made in [redacted] EEO and IG complaints." [redacted] did not forward these emails to [redacted] but told [redacted] that [redacted] discussed the proposed plans of handling [redacted] with [redacted] including [redacted] interaction with management. This occurred prior to [redacted]s May 2014 performance review.

[12] GERSTEN is a bargaining unit employee.

Case Number:	Case Title:
OIG-I-15-0011	EB [redacted] SUPERVISOR PERJURY IN EEO INVESTIGATION

Findings

There is no evidence that (b) (7)(C) knew of the contents of (b) (7)(C) s April 3, 2014 email and thus perjured (b) (7)(C) in her August 8, 2014 affidavit. Our investigation indicates that there are numerous other reasonable explanations for the statement (b) (7)(C) made to (b) (7)(C) in [redacted] performance review related to [redacted] sending disparaging emails to [redacted] chain of command, including inferences (b) (7) could have drawn from both the April 3, 2014 e-mail (b) (7) received from (b) (7)(C) and well as from conversations (b) (7) had with (b) (7).

Recommendation

Because we find no merit in the allegations presented by (b) (7)(C), it is recommended that this case be closed out without further investigation.

Case Number:	Case Title:
OIG-I-15-0011	EB (b) (7)(C) [redacted] SUPERVISOR PERJURY IN EEO INVESTIGATION

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: David L. Hunt, Inspector General

CC: Thomas Cline, Deputy Inspector General

FROM: Jay C. Keithley, Assistant Inspector General for Investigations; (b) (7)(C), Attorney-Investigator; (b) (7)(C), Attorney-Investigator

SUBJECT: StingRay Equipment Authorization Procedure

DATE: March 30, 2015

I. Basis for Investigation

The American Civil Liberties Union (ACLU) sent a letter to FCC Chairman Thomas Wheeler on September 17, 2014, requesting an investigation of the FCC's grant of equipment authorization applications submitted by the (b) (6) Corporation for the StingRay technology (surveillance devices used to facilitate real-time tracking of cell phone locations and interception of cell phone signals).

The ACLU alleges that (b) (6) Corporation gave FCC Office of Engineering and Technology (OET) staff misleading information about the purpose of StingRay devices when, in a 2010 email, it stated that the purpose of StingRay "is only to provide state/local law enforcement officials with authority to utilize this equipment in emergency situations." The ACLU explains that, long before 2010, state and local law enforcement agencies were routinely

using StingRay devices for purposes other than emergencies, and that (b) (6) should have known this at the time of their 2010 email.

In the letter, the ACLU states, "The FCC task force and FCC Inspector General should do a full investigation, one that reviews all applications related to this controversial technology and consults with a broad group of stakeholders, including technical experts and public interest organizations." OIG learned of the ACLU letter from news reports and proactively started this investigation.

II. Scope Of Investigation

OIG commenced this investigation to determine whether OET, when it granted the StingRay equipment authorization applications, relied on misleading information about the purpose of the StingRay devices, specifically, language in emails from (b) (6) Corporation to OET staff stating "the purpose is only to provide state/local law enforcement officials with authority to utilize this equipment in emergency situations."[1]

FCC OIG staff conducted interviews and reviewed and analyzed relevant materials as detailed below.

In November 2014 and February 2015, FCC OIG staff interviewed: (1) Bruce Romano, Associate Chief (Legal) OET; and (2) Rashmi Doshi, Chief, OET Laboratory Division.

FCC OIG staff reviewed:

(1) emails between (b) (6) Corporation and OET staff, including the emails that the ACLU cited and quoted in its September 2014 letter;

(2) the certification grants issued to (b) (6) Corporation, and relevant portions of the underlying application submissions, for the StingRay devices under the following FCC IDs: NK73092523 ("StingRay"); NK73100176 ("KingFish"); NK73166210 ("StingRay II"); and NK73186795 ("2100/1700 Converter");

(3) OET documentation concerning the inclusion of conditions in certification grants; and

[1] Email from (b) (6) Corporation, to Bruce Romano, FCC (June 24, 2010, 6:13 PM).

(4) written materials concerning the FCC's StingRay working group provided to FCC OIG staff by Zenji Nakazawa, Deputy Chief, Policy & Licensing Division of the FCC's Public Safety and Homeland Security Bureau.

III. Background

A. Authority to Regulate Devices Emitting Radio Frequency Energy

The Communications Act of 1934 grants the Federal Communications Commission (FCC) authority to "make reasonable regulations," consistent with "the public interest, convenience, and necessity," to govern "the *interference potential of devices* which in their operation are *capable of emitting radio frequency energy . . . in sufficient degree to cause harmful interference to radio communications*." 47 U.S.C. § 302a(a) (emphasis added). The Act also prohibits the manufacture and sale of devices that fail to comply with regulations promulgated under this authority. 47 U.S.C. § 302a(b). ("No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."). Acting pursuant to that statutory authority, the FCC generally prohibits the sale of radio frequency devices absent FCC authorization. *See* 47 C.F.R. § 2.803(b).

The statutory and regulatory provisions governing FCC equipment authorizations specifically exempt devices used by the federal government. *See* 47 U.S.C. § 302a(c) (exempting "devices . . . and systems for use by the Government of the United States or any agency thereof" from regulations governing devices which interfere with radio reception); 47 CFR § 2.807(d) (exempting "[r]adiofrequency devices for use by the Government of the United States or any agency thereof" from regulations prohibiting marketing of radio frequency devices not authorized by the FCC).

B. FCC's Equipment Authorization Program and Its Regulatory Framework

The FCC administers an equipment authorization program for radiofrequency (RF) devices under Part 2 of its rules. *See* 47 CFR Part 2, Subpart J. The FCC's Office of Engineering and Technology (OET) administers the equipment authorization program under authority delegated to it by the Commission. 47 CFR § 0.241(b); *see also* 47 C.F.R. § 0.31(a), (i), (j). The equipment authorization program "is one of the principal ways the Commission ensures that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission's rules. All RF devices subject to

equipment authorization must comply with the Commission's technical requirements prior to importation or marketing."[2] "These requirements not only minimize the potential for harmful interference, but also ensure that the equipment complies with [FCC rules addressing] other policy objectives – such as RF human exposure limits and hearing aid compatibility (HAC) with wireless handsets. The specific provisions of the three procedures apply to various types of devices based on their relative likelihood of harmful interference and the significance of the effects of such interference from the particular device at issue."[3]

1. Types of Equipment Authorizations

The FCC's rules generally require that equipment be authorized in accordance with one of three procedures specified in Subpart J of Part 2 of the FCC's rules: (1) verification; (2) declaration of conformity; and (3) certification. The relevant authorization procedure here is certification, as [redacted] Corporation sought and received certification grants for the StingRay devices. The FCC recently described the certification process as follows:

> **Certification,** the most rigorous process for devices with the greatest potential to cause harmful interference, is an equipment authorization issued by the Commission or grant of Certification by a recognized [Telecommunications Certification Body (TCB)[4]] based on an application and test data submitted by the responsible party (e.g., the manufacturer or importer). The testing is done by a testing laboratory listed by the Commission as approved for performing such work and the Commission or a TCB examines the test procedures and data to determine whether the testing followed appropriate protocols and the data demonstrates technical and operational compliance with all pertinent rules. Technical parameters and other descriptive information for all certified equipment submitted in an application for Certification are published in a Commission-maintained public database, regardless of whether it is approved by the Commission or a TCB. Examples

[2] FCC Report & Order, ET Docket No. 13-44, RM-11652 (Adopted Dec. 17, 2014) ("2014 FCC EA Order"), at ¶ 3 (footnotes omitted).

[3] *Id.* at ¶ 4.

[4] TCBs are private entities authorized by the FCC to review and grant equipment authorizations applications in accordance with FCC rules. *See* 47 C.F.R. § 2.960. As of December 2014, there were 36 TCBs recognized by the FCC to provide equipment authorization services. 2014 FCC EA Order, at ¶ 15.

> of devices subject to certification include, but are not limited to, mobile phones; wireless local area networking equipment, remote control transmitters; land mobile radio transmitters; wireless medical telemetry transmitters; cordless telephones; and walkie-talkies. All certified equipment is listed in a Commission database, regardless of whether it is approved by the Commission or a TCB.[5]

2. Applications for Certification

A party seeking certification must submit a written application to the Commission and a technical report containing, among other things, the operating instructions for the user, detailed descriptions of how the device operates, and various measurements and test data to show compliance with FCC technical requirements. 47 C.F.R. § 2.1033.

3. Standards for Deciding Applications for Certification

The Commission "will grant an application for certification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that: (1) The equipment is capable of complying with pertinent technical standards of the rule part(s) under which it is to be operated; and, (2) A grant of the application would serve the public interest, convenience and necessity." 47 C.F.R. § 2.915(a). Grants must be "made in writing showing the effective date of the grant and any special condition(s) attaching to the grant." 47 C.F.R. § 2.915(b).[6]

"If the Commission is unable to make the findings specified in § 2.915(a), it will deny an application." 47 C.F.R. § 2.919. "The equipment authorization process does not permit the filing of petitions to deny an application for certification. As a practical matter, then, an application for certification is denied only when there is an issue about the performance or operation of the equipment itself." Brief for the FCC, *Transportation Intelligence, Inc. v. FCC,* No. 02-1098, 2003 WL 25586291 (D.C. Cir. 2003). A person aggrieved by an action taken on an equipment authorization application may file with the Commission a petition for reconsideration or an application for review. 47 C.F.R. § 2.923.

4. OET's Practices Regarding the Use of Conditions on Certification Grants

When OET or a TCB approves an application for certification, it issues a "grant" – a certificate signifying the approval that includes information particular to the certification in a

[5] 2014 FCC EA Order, at ¶ 4 (internal footnotes omitted).

[6] The Rules in Subpart J of Title 47 of the CFR do not further define or reference the "special condition(s)" mentioned in 47 C.F.R. § 2.915(b).

prescribed format. The grant document contains a "Grant Notes" section where the issuer (OET or a TCB) can include comments, notes, and conditions related to the approval of the applicant's device. According to OET's written guidance to TCBs, "[s]ome grant remarks are basically informative only (e.g., how a device was tested), while some are restrictive, placing bounds on operations within the scope of the application (i.e., grant conditions)."[7] Because an equipment authorization certification is valid for and based on the representations and test data submitted by the applicant, many grant notes convey information about the intended operating conditions for the device and the scope of the testing done (e.g., antenna set up and use requirements, minimum safety distance to avoid danger to human subjects, etc.).[8]

C. Licensing of Radio Spectrum Use

The Communications Act generally prohibits unlicensed use of devices which transmit energy, communications, or signals by radio within the United States, *see* 48 U.S.C. § 301, and authorizes the FCC to regulate the licensing of radio frequency use, *see* 48 U.S.C. § 303. However, the federal government's use of radio frequencies is exempt from the FCC's regulatory jurisdiction and licensing requirements. 47 U.S.C. § 305(a).

D. Legal Restrictions on Communication Intercepting Devices

Section 2512 of Title 18 of the U.S. Code imposes criminal penalties for any person who intentionally manufactures, possesses, or sells any device knowing that "the design of such device is primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications." 18 U.S.C. § 2512(1)(b). Section 2512 exempts from such criminal liability those same activities if carried out by "an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof." 18 U.S.C. § 2512(2)(b). The intentional use of electronic surveillance devices to intercept communications is a separate crime under 18 U.S.C. § 2511, which also contains exceptions for use by law enforcement personnel, among others.

---

[7] FCC OET Draft Publication No. 821551, *Comments, Notes, and Conditions Listed on OET Equipment Authorization Certification Grants* (Oct. 2011), p. 2.

[8] *Id.* at 2. A review of OET's standard grant notes – a non-exhaustive list of commonly used grant notes – shows that only one standard note contains a restriction based on the identity of the user of the device – grant note #45 states: "Marketing must be restricted to Federal, state and local law enforcement, highway maintenance or safety organizations, or organizations performing highway maintenance or improvements in accordance with terms specified by such organizations." OET Standard Equipment Authorization Grant Notes, available at https://apps.fcc.gov/oetcf/eas/reports/GrantNotesList.cfm.

IV. Findings

A. (b) (6) Corp.'s Equipment Authorization Applications

Between 2009 and 2010, (b) (6) Corporation and OET staff met several times to discuss the StingRay devices and confidentiality issues in the certification process.[9]

In late April 2010, (b) (6) Corporation submitted to OET four applications for equipment authorization certifications for the StingRay devices – the StingRay, StingRayII, KingFish, and 2100/1700 Converter.[10] In confidential letters submitted with the applications, (b) (6) Corporation included the following statement and request:

> (b) (6) has agreed with the Federal Bureau of Investigation ("FBI") to request that the Commission condition its equipment authorization for the StingRay® product in order to address concerns over the proliferation of surreptitious law enforcement surveillance equipment.
>
> *Requested Condition Language:*
>
> *"State and local law enforcement agencies must advance coordinate with the FBI the acquisition and use of the equipment authorized under this authorization."*
>
> As noted in (b) (6)' Request for Confidentiality, the (b) (6) StingRay® product is intended for use by federal, state, and local law enforcement entities in order to perform surreptitious law enforcement surveillance. These activities are a significant and increasingly important component of the investigative techniques and procedures employed by state and local law enforcement officials. The StingRay® product is a prohibited technology that can only be utilized by authorized users in accordance with 18 U.S.C. § 2512. The description of the StingRay® product's capabilities, such as technical information regarding the

[9] Email from (b) (6) [redacted] Corporation, to Bruce Romano, FCC (Apr. 23, 2010, 2:54 PM).

[10] *See* OET Equipment Authorization System Records for FCC IDs: NK73092523 ("StingRay"); NK73100176 ("KingFish"); NK73166210 ("StingRay II"); and NK73186795 ("2100/1700 Converter"). The OET Equipment Authorization System is available at https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm .

> performance parameters, design and operation of the technology, and information regarding the identity of the entities proposing to use the StingRay® product should be protected from public disclosure under 47 C.F.R. § 0.459 and 47 C.F.R. § 0.457(g).[11]

Throughout the pendency of the applications between May 2010 and April 2011, OET staff sent (b) (6) Corporation correspondence requesting various technical and descriptive information, data, and revised test reports in connection with OET's review of the applications, and in response (b) (6) submitted correspondence and revised application materials.[12]

In June 2010, OET staff requested information about the intended use of the devices for the purpose of identifying and categorizing how the equipment would relate to FCC's licensing programs for radio services.[13]

In an email dated June 24, 2010, (b) (6) Corporation representative (b) (6) wrote, in response to OET's request for clarification about the use of StingRay, that "it sounds as if there is some confusion about the purpose of the equipment authorization application. As you recall, purpose is only to provide state/local law enforcement officials with authority to utilize this equipment in emergency situations."[14] According to Romano, this June 24, 2010 email was among the first communications between him and Hanna regarding the StingRay applications.

---

[11] Letter from (b) (6) Corp. to FCC re: Request for Grant Condition, in NK73092523 (May 6, 2010) (confidential). *See also* Letters from (b) (6) Corp. to FCC re: Request for Grant Condition in NK73100176, NK73166210, and NK73186795 (May 6, 2010) (confidential) (containing language identical to the language quote above except that the relevant product names – StingRayII, KingFish, and 2100/1700 Converter – replace the references to "StingRay® product").

[12] Most of the application materials and correspondence between OET and (b) (6) Corporation concern technical matters not relevant to this investigation. This report describes only the correspondence and application materials relevant to understanding: (1) the context of the allegedly misleading email from (b) (6) Corporation to OET; and (2) the restrictive conditions that OET included in the certification grants it issued for the StingRay devices.

[13] *See* Letter from (b) (6) Corp. to FCC re: Req. for Info., FCC Corr. No. 38958, in NK73092523 (July 2, 2010) (confidential) (quoting OET staff's requests for "[a]dditional details about intended operations within FCC licensed radio services . . . are also needed to facilitate continued OET-Lab application review and processing . . . Given that the basic purpose of FCC-OET Certification equipment authorization is to identify equipment acceptable for licensing, please explain how . . . licensing for this unique operation is intended to be handled / applicable"); Letter from (b) (6) Corp. to FCC re: Req. for Info., FCC Corr. No. 38979 (July 2, 2010) in NK73166210 (confidential) (quoting similar OET staff requests); *see also* Email from (b) (6) Corporation, to Bruce Romano, FCC (June 24, 2010, 6:13 PM) (indicating that OET's requests about licensing predate June 24, 2010).

[14] Email from (b) (6) Corporation, to Bruce Romano, FCC (June 24, 2010, 6:13 PM).

On July 2, 2010, (b) (6) Corporation sent a confidential letter and PowerPoint presentation in response to OET's request for information about the intended use of the devices for licensing purposes.[15] In the letter, (b) (6) Corporation stated: (1) "The attached slide deck . . . provides details regarding the intended operations of the StingRay® device within the FCC license radio services and clarifies how the unique use . . . is appropriate and vital to assisting the activities of law enforcement;" (2) "the StingRay® equipment is a vehicular (hence mobile) device that transmits on a downlink frequency to locate cellular phones for law enforcement purposes;" (3) "While this is unique in relation to the typical equipment licensing processes, in the context of the intended operations of the equipment for law enforcement it should be clear why the equipment deviates from the FCC's normal licensing convention;" and (4) (b) (6) notes that the operation of the StingRay® equipment by law enforcement falls under the Communications for Law Enforcement Act and all operation of the equipment is coordinated with cellular service providers in the impacted areas."[16]

In April 2011, OET granted (b) (6) Corporation's four equipment authorization applications for the StingRay devices. Each grant document included the following restrictive language (the "Restrictive Conditions"):

> (1) The marketing and sale of these devices shall be limited to federal, state, local public safety and law enforcement officials only; and (2) State and local law enforcement agencies must advance coordinate with the FBI the acquisition and use of the equipment authorized under this authorization.[17]

According to Romano, these Restrictive Conditions were essentially adopted verbatim from the language proposed by (b) (6) Corporation in its equipment authorization applications.[18]

---

[15] *See* Letter from (b) (6) Corp. to FCC re: Req. for Info., FCC Corr. No. 38958, in NK73092523 (July 2, 2010) (confidential); Letter from (b) (6) Corp. to FCC re: Req. for Info., FCC Corr. No. 38979 (July 2, 2010) in NK73166210 (confidential).

[16] *Id.*

[17] *See* Equipment Authorization Grant NK73092523 (Apr. 19, 2011); Equipment Authorization Grant NK73100176 (Apr. 8, 2011); Equipment Authorization Grant NK73166210 (Apr. 8, 2011); and Equipment Authorization Grant NK73186795 (Apr. 8, 2011).

[18] OIG staff notes that Romano appears to be only partially correct in stating that the Restrictive Conditions were adopted verbatim as proposed by (b) (6) Corporation in its applications. (b) (6) Corporation's applications proposed the only the second clause of the Restrictive Conditions ("State and local law enforcement agencies must advance coordinate . . . "). Although the origin of first clause ("marketing and sale of these devices shall be limited to . . .") was not clear from the OET record and interviews with OET staff, that clause likely reflects statutory prohibitions

B. OET Staff's Explanation of the StingRay Equipment Authorization Process

In interviews with FCC OIG staff, Romano explained that OET handles equipment authorizations, the focus of which is on a device's emission of radiation or radio frequency energy. Sometimes OET limits use of a device with a condition in the certification grant. In the case of the StingRay certification grants, the Restrictive Conditions limit who can use it. However, OET does not have a component that enforces who uses the devices it authorizes because, as a general matter, OET's analysis in deciding whether to grant an equipment authorization under FCC rules do not require OET to address the intended use or users of a device, and, in many cases, OET does not know the intended use or users of devices submitted for equipment authorizations.[19]

Romano said that OET did not consider the "emergency situations" language "very relevant" to OET's process for approving the equipment authorizations. OET did consider certain other language significant. Romano stated that the Restrictive Conditions language included in the certification grants for the StingRay devices is verbatim the language that [redacted] Corporation offered, and it was "the essential element for [OET] to make the grant."

OIG staff asked Romano whether OET would have granted the StingRay applications if [redacted] Corporation had not requested the Restrictive Conditions as part of its applications. Romano responded that, if [redacted] Corporation had not requested those Conditions in its applications, he cannot say one way or the other whether OET would have granted the applications, but OET would have had to grapple with various issues in deciding whether to grant the application. Romano declined to speculate as to what those issues would have been. Romano verified that, in deciding whether to grant applications for certification under 47 C.F.R. § 2.915(a), OET focuses on the "first part" of the standard – "the technical compliance" prong, and that "if the first part is met then we assume that the second part is met."[20] Doshi agreed

---

on the sale and distribution of electronic surveillance equipment except if conducted by a party under contract with federal, state, or local government, as codified in federal criminal law at 18 U.S.C. § 2512.

[19] To the extent the FCC considers and licenses end usage, Romano noted that the Wireless Telecommunications Bureau (WTB) has jurisdiction over those matters. However, if the user of device operates under the auspices of the federal government, that user does not need a license. *See* 47 U.S.C. § 305(a) (exempting federal government use of radio frequencies from FCC licensing requirements for radio broadcasting).

[20] *See* 47 C.F.R. § 2.915(a) (providing that the Commission "will grant an application for certification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that: (1) The equipment is capable of complying with pertinent technical standards of the rule part(s) under which it is to be operated; and, (2) A grant of the application would serve the public interest, convenience and necessity").

stating that "the first part is the most important part." Romano said that the proposed Restrictive Conditions for the StingRay devices took that challenging decision making away from OET.[21]

Romano further stated that all of this begs the question of whether OET relied upon the alleged misrepresentation, but that he does not think it was a "considered representation." In other words, Romano's position is essentially that OET gave little to no consideration to the statement that the devices would be used "only . . . in emergency situations" because OET's role in granting the certifications focused on compliance with the technical specifications and generally did not consider the context in which the devices may be used, aside from the proposed Restrictive Conditions requiring state and local government law enforcement agencies to coordinate use of the devices with the federal government.

Both Romano and Doshi asserted that nothing has changed with OET's policies and procedures as result of the ACLU's September 2014 letter or any other issues related to the StingRay equipment authorizations.

C. FCC's StingRay Task Force

A little over a month before the ACLU sent its letter to Chairman Wheeler, Representative Alan Grayson sent Chairman Wheeler a letter stating that he was "disturbed by reports which suggest that the FCC has long known about the vulnerabilities in our cellular communications networks exploited by IMSI catchers[22] [(such as StingRay)] and other surveillance technologies," and requesting various information about actions taken by the FCC to protect cellular networks, among other things.[23] On August 1, 2014, Chairman Wheeler responded to Representative Grayson in a letter stating that he had established "a task force to initiate immediate steps to combat the illicit and unauthorized use of IMSI catchers."[24]

The "task force" described by Chairman Wheeler has been spearheaded by FCC's Public Safety and Homeland Security Bureau (PSHSB), and includes members of Office of General

[21] The statutory and regulatory provisions governing FCC equipment authorizations specifically exempt devices used by the federal government. *See* 47 U.S.C. § 302a(c) (exempting "devices . . . and systems for use by the Government of the United States or any agency thereof" from regulations governing devices which interfere with radio reception); 47 CFR § 2.807(d) (exempting "[r]adiofrequency devices for use by the Government of the United States or any agency thereof" from regulations prohibiting marketing of radio frequency devices not authorized by the FCC).

[22] IMSI stands for International Mobile Subscriber Identity. An IMSI-catcher is a telephony eavesdropping device used for intercepting mobile phone traffic and tracking movement of mobile phone users.

[23] Letter from Rep. Grayson to Chairman Wheeler (July 2, 2014).

[24] Letter from Chairman Wheeler to Rep. Grayson (Aug. 1, 2014).

Counsel (OGC), Wireless Telecommunications Bureau (WTB), and OET. The task force's mission is to understand the operational capabilities of StingRays and similar devices, work with partners at the Department of Homeland Security, the Department of Justice, and the FBI to combat the unauthorized use of StingRays, and serve as a technical and regulatory resource to better inform the press and public of the FCC's role in the equipment certification process with respect to these devices. The task force does not formally meet, but has ad hoc meetings with members and addresses inquiries from Congress and the news media.

Both Romano and Doshi stated that they are aware of the "task force" but are not members of the team.

On March 19, 2015, Chairman Wheeler, in testimony before Congress, responded to questions about the status of the FCC's StingRay Task Force and FCC's role in oversight of the StingRay device. Chairman Wheeler stated: "The Task Force did look into the situation, and what we found is as follows: [(1)] our jurisdiction and our authority is to certify the electronics and the RF components of such devices for interference questions, and [(2)] that, if the application was being made in conjunction with law enforcement, then we would approve it – this was for the technology, not for who buys it – that we would approve it, and [(3)] that, from that point on, [the device's] usage was a matter of law enforcement, not a matter of a technological question whether or not the piece of hardware interfered with other RF devices."[25] Chairman Wheeler further stated that he thought the FCC "would have enforcement jurisdiction on an unauthorized use of an RF device if it were in fact being sold illegally."[26]

V. Discussion and Recommendation

The ACLU's concern that OET relied on [redacted] Corporation's statement that the StingRay devices would be used "only . . . in emergency situations" is misplaced. The ACLU's letter misunderstands the scope of the FCC's role with respect to equipment authorizations. The focus of the equipment authorization process is on whether a device meets technical requirements necessary to ensure that devices operate properly within intended bands of the radio spectrum, with minimal interference to other devices (i.e. unwanted and spillover

[25] C-SPAN Video, FCC Oversight Hearing, House Subcommittee on Communications and Technology, March 19, 2015, available at http://www.c-span.org/video/?324931-2/federal-communications-commission-oversight-hearing (checked Mar. 19, 2015), at approx. 1:20:00 – 1:23:00.

[26] *Id.*

radiofrequency emissions), and do not emit energy levels that may be harmful to human subjects.

The intended use and the identity of the user of a device matter for the purposes of certification to a limited extent, primarily for jurisdictional reasons, and sometimes for specific policy reasons (e.g., hearing aid compatibility, human subject safety requirements). As a jurisdictional matter, devices operated by state and local governments and private actors require equipment authorization prior to use, whereas devices used by the United States are not required to obtain equipment authorizations. *See* 47 U.S.C. § 302a(c) (exempting the federal government from regulations governing the use of devices which may interfere with radio reception); 47 CFR § 2.807(d) (exempting "[r]adiofrequency devices for use by the Government of the United States or any agency thereof" from regulations prohibiting marketing of radio frequency devices not authorized by the FCC).

Here, (b) (6) Corporation sought certification to allow state and local governments to use the StingRay devices under the auspices of the federal government. For OET purposes, the only issues that mattered were that: (1) the devices were for state and local law enforcement use, such that certification from the FCC was required; (2) the StingRay devices met the technical requirements necessary for certification; and (3) (b) (6) Corporation specifically requested the Restrictive Conditions pursuant to an agreement with the FBI, such that state and local law enforcement agencies use of the devices would be under the auspices and oversight of the federal government. Beyond that, it was immaterial to OET what situations the devices might be used in. In sum, OET's determination that StingRay did in fact meet the requirements of FCC's rules was in no way impacted by any statement by (b) (6) regarding the ultimate use of the device in emergencies or otherwise.

Therefore, we find no merit in the ACLU's implied assertion that the StingRay devices were improperly certified as a result of (b) (6) Corporation providing FCC Office of Engineering and Technology (OET) staff misleading information about the purpose of StingRay devices.

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: March 8, 2016

TO: Jay Keithley, Assistant Inspector General for Investigations and Acting Inspector General

FROM: (b) (7)(C), Computer Forensics Investigator, (b) (7)(C), Investigatory Attorney

SUBJECT: Unauthorized disclosure of information related to Enforcement Bureau (EB) investigation of (b) (7)(C)

Overview

The Enforcement Bureaus (EB) USF Strike Force is conducting an investigation of (b) (7)(C) related to the company's use of USF High Cost Support. (b) is being represented by the law firm of Fletcher, Heald & Hildreth, P.L.C. (FHH) in this matter and (b) (6) is the lead attorney from FHH. (b) (6) had previously represented (b) (7)(C) in a matter before the (b) Utilities Board and the Commission. During that engagement, (b) (6) was investigated by the (b) Supreme Court Attorney Disciplinary Board for alleged misconduct related to advice he provided to Farmers about back dating bills. Ultimately, the (b) Supreme Court Attorney Disciplinary Board found that, although (b) (6)'s advice to (b) (7) was "troubling," the Board was not "persuaded by convincing proof that respondent intended to mislead the (b) Utilities Board or the FCC on an issue that believed to be relevant to the matters in dispute."

Case Number:	Case Title:
OIG-I-15-0017	Fletcher, Heald & Hildreth

On March 4, 2015, FCC OIG was contacted by (b) (7)(C), (b) (7)(C) in the FCC Office of General Counsel (OGC). (b) (7)(C) advised Jay KEITHLEY, Assistant Inspector General for Investigations, that he had been contacted by an attorney from FHH regarding improper and unethical conduct by (b) (7)(C) of the FCC Enforcement Bureau (EB), and others in EB. On March 9, 2015, KEITHLEY received a letter from (b) (7)(C), an attorney at FHH, providing further information on the matter and including an anonymous letter received by (b) (6) on March 2, 2015 outlining the alleged misconduct and signed by "8th floor friend." The offices of the Chairman, Commissioners, the Office of General Counsel and the Office of Legislative affairs are located on the 8th floor of the FCC's headquarters located at 445 12th Street, S.W. Washington, D.C. Throughout the FCC, as well as throughout the telecommunications industry, the term "8th floor" is often used as a short hand expression to connote any one of these offices.

OIG investigators commenced an investigation to determine whether, if in fact the letter was sent from an employee at the FCC, the employee violated the standards of ethical conduct or any other rules or regulations. The anonymous letter appears to contain litigation strategy information likely known only by FCC employees in OGC and /or EB. The letter notes (b) (5)

The anonymous letter stated: (b) (5)

Legal and Regulatory Overview

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) are codified in 5 C.F.R Part 2635. Section 2635.101 recognizes that "(p)ublic service is a public trust" and that each employee has a "responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical practices above private gain" and to "ensure that every citizen can have complete confidence in the integrity of the Federal Government, the Standards of Ethical Conduct set forth both general principles that government employees are required to adhere to, as well as regulations governing employee conduct in certain specified circumstances."

Section 2635.703 of the Standards of Ethical Conduct, entitled "Use of nonpublic information,"

states that "(a)n employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure."

Section 19.735-203 of the Commission's rules, entitled "Nonpublic information," states that "(e)xcept as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission." 47 C.F.R. § 19.735-203. Commission Directive Number FCC INST 1139.1, effective February 2015, establishes policies and procedures for managing and safeguarding nonpublic information. The Directive states that "Unauthorized disclosure of nonpublic information is prohibited by Section 19.735-203 of the Commission's rules and may result in disciplinary action."

Investigation

In order to determine whether the context of the letter raised issues of ethical and/or rules violations, investigators interviewed (b) (7)(C), who stated believes the letter contains disclosures that constitute a violation of § 2635.703, and is also a violation of 47 C.F.R. § 19.735-203. (b) (7)(C) stated that the anonymous letter's reference to EB's and OGC's decision-making is non-public, deliberative information covered by the rules. added that the interest involved here is "precisely" the interest covered in § 2635.703 – in this case, it is the pecuniary interest of (b) (6) and FHH.

To investigate this matter, OIG investigators conducted a comprehensive review of email correspondence for seven (7) individuals from EB and OGC[1] who have been involved with EB's investigation of (b) (7)(C). The investigators also reviewed documents, spreadsheets, and other artifacts from the network shares for these individuals. In addition, investigators interviewed (b) (7)(C) - EB, to obtain EB's perspective on the disclosure. Based on the interview with (b) (7)(C) and comprehensive review of email correspondence and other records, the investigators determined that further interviews were not warranted.

The investigators also made arrangements with (b) (7)(E)

[1] (b) (7)(C), EB, (b) (7)(C), OGC, (b) (7)(C), OGC, (b) (7)(C), EB, (b) (7)(C), EB, (b) (7)(C), EB, and (b) (7)(C), EB.

Case Number:	Case Title:
OIG-I-15-0017	Fletcher, Heald & Hildreth

(b) (7)(E) [redacted]

Moreover, the in-house review of FCC employee-related evidence also failed to provide information necessary to identify the individual who disclosed the nonpublic information to FHH.

Findings and Conclusion

The anonymous letter appears to contain nonpublic information related to internal deliberative matters and appears to violate the standards of ethical conduct for federal employees (5 CFR 2635.703), FCC rules (47 CFR 19.735-203), and FCC policy (FCCINST 1139.1). Nevertheless, after a comprehensive investigation, we have not been able to ascertain the identity of the author. Consequently, we are unable to make any additional findings or recommendations and recommend that this matter be closed.

[2] (b) (7)(E) [redacted]

NON-PUBLIC
FOR INTERNAL USE ONLY

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 4, 2015

TO: Thomas Reed, Director Office of Communications Business Opportunities, Thomas Green, Acting Chief Human Capital Officer

FROM: David L. Hunt, Inspector General

SUBJECT: (b) (6) [redacted]

Attached hereto, and forwarded with my approval, is a memorandum concluding the Office of Inspector General's inquiry into the above-captioned matter. This investigation resulted from allegations made to a Human Resources Management specialist in the Office of Managing Director that (b) (6) [redacted] was using (b) [redacted] FCC computer to view pornographic images. Our investigation found evidence that (b) (6) [redacted] used an FCC computer to view and store pornographic material in violation of the Commission's directive and policies governing cyber security. A forensic examination identified sixteen (16) unique pornographic images.

Attachment

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 3, 2015

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C) (b) (7)(C) Investigator

SUBJECT: (b) (6)

Overview

On March 30, 2014, (b) (6), a Human Resources Specialist in the Office of Managing Director (OMD), contacted the Assistant IG for Investigations and reported possible computer misuse (pornography) by (b) (6) within the (b) (6). (b) (6) reported that the allegations were made to (b) office by (b) (6). In that referral, (b) (6) reported that (b) (6) viewed pornography on the computer in (b) cubicle and (b) observed the pornography on (b) (6)'s computer. (b) (6) further reported that (b) cubicle is located (b) (6)'s. Based on the allegations, OIG initiated an investigation of (b) (6). Specifically, OIG investigated allegations that (b) (6) used an FCC computer to view pornography.

Our investigation found evidence that (b) (6) used an FCC computer to view and store

Case Number:	Case Title:
OIG-I-15-0020	(b) (6)

pornographic material in violation of the Commission's directive and policies governing cyber security.

Investigation

To investigate this matter, the (b) (7)(C) Investigator (b) (7)(E) :

(b) (7)(E)

[redacted]

Finding: Prohibited Use of Government Equipment (Desktop Computer)

Our investigation found evidence that (b) (6) used an FCC computer to view and store pornographic material in violation of the Commission's directive and policies governing cyber security.

FCC Directive FCCINST 1479.4, entitled "FCC Cyber Security Program" and effective May 1, 2011, establishes policy and assigns responsibilities for assuring optimal levels of protection required for FCC data and information systems. Section 7.12 of the directive, entitled "Authorized Network/Workstation System Users", states that Users must:

- Read, sign indicating acceptance of, and comply with the FCC Computer System User Rules of Behavior;
- Use FCC information system resources only for authorized FCC business purposes, except as provided by the FCC's limited personal use policy;
- Be aware of their responsibilities to comply with this directive;

The Commission's Cyber Security Policy, version 3.5 promulgated by the Office of the

Managing Director and effective June 20, 2013, establishes the security policies, consistent with Federal regulations, mandates, and directives for the protection of FCC data and information systems using a risk-based approach. Section 2.0.2 of the Cyber Security Policy, entitled "Broad Organizational Policies", states the following:

- Staff must adhere to the security policies contained in FCCINST 1479.4, this policy document, and the FCC Computer System User Rules of Behavior (FCC Form A-201).

- Staff using FCC information systems or accounts must not participate in unethical, illegal or inappropriate activities such as: for-profit commercial activities, pirating software, stealing passwords, stealing credit card numbers, and viewing/exchanging inappropriate written or graphic material (e.g., pornography).

Section 2.8 of the Cyber Security Policy, entitled "Policy Violation and Disciplinary Action," states that "Cyber security-related violations are addressed in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635); FCC employees may be subject to criminal, civil, or disciplinary action for failure to comply with the FCC security policy."

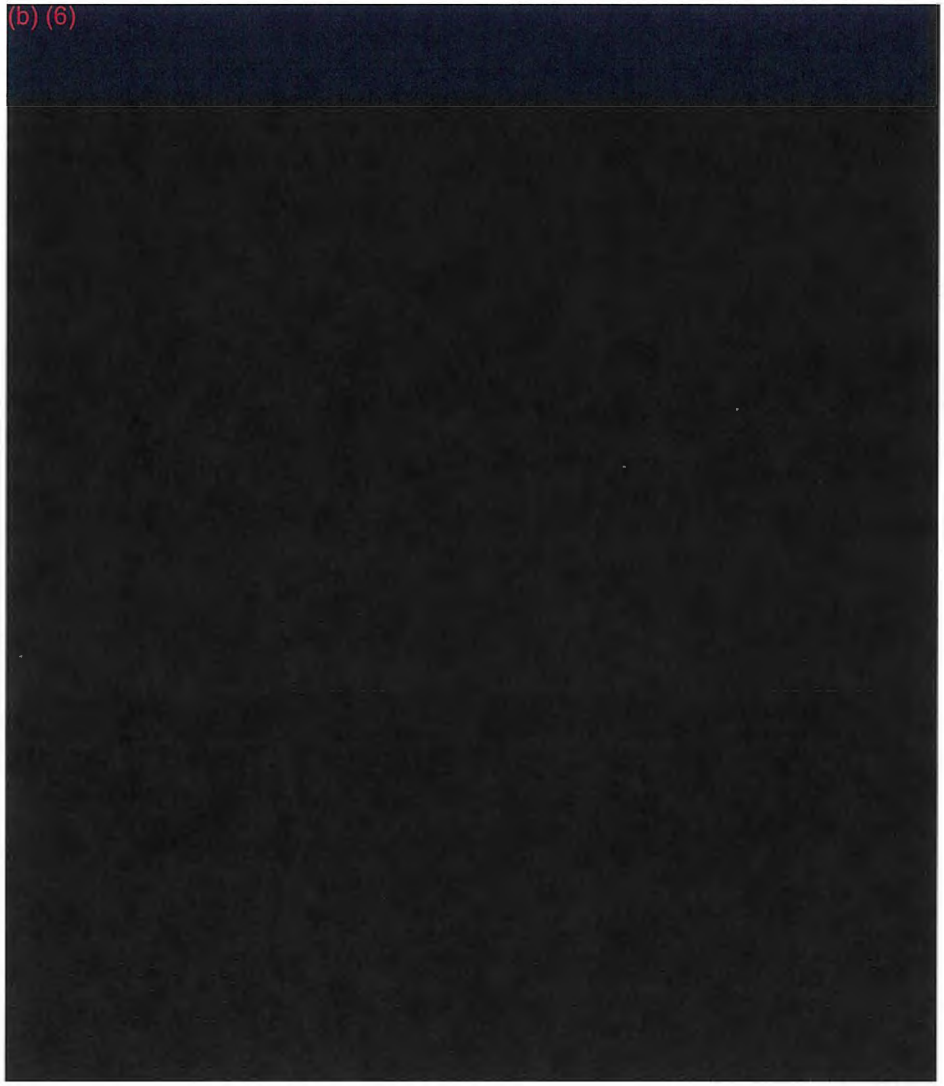
Section 2.11 of the Cyber Security Policy, entitled "Internet Usage," states that "You must not use the Internet to view or download pornography."

FCC Form A-201, entitled "FCC Computer System User Rules of Behavior" revised in January 2006, states that "Use of all computer resources, including personal computers, laptops, all parts of the FCC Network, communication lines, and computer facilities are restricted to FCC-authorized purposes only." A copy of FCC Form A-201 signed by (b) (6) is included as Attachment #1 to this Report of Investigation.

To investigate the allegation, the (b) (7)(C) Investigator (b) (7)(E)

The (b) (7)(C) Investigator identified five (5) pornographic images stored on (b) (6) 's network share. All of the five (5) images were located in the Network Share directory /My Documents/Pix/ and all of the images appear to have come from the same series (i.e., same individual, same setting, etc.). A censored example of an image from the series is as follows:

(b) (6)



The (b) (7)(C) Investigator identified eleven (11) unique pornographic images during the examination of temporary internet files[1]. The files were all identified in temporary internet file directories associated with (b) (6) 's windows account (i.e., (b) (6) 's account was logged

[1] Temporary Internet Files is a folder on Microsoft Windows which serves as the browser cache for Internet Explorer to cache pages and other multimedia content, such as video and audio files, from websites visited by the user. This allows such websites to load more quickly the next time they are visited.

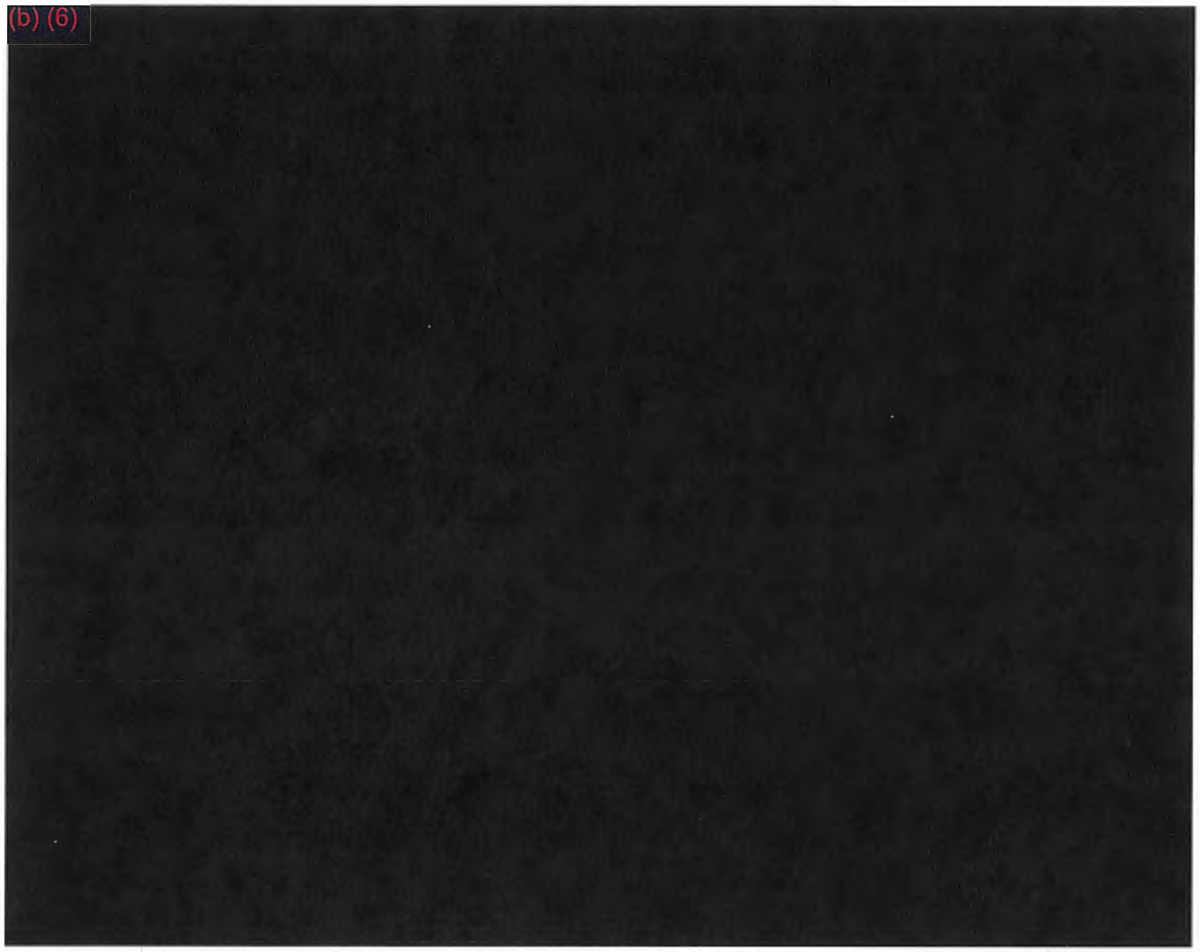
in when the images were cached). A censored example of an image recovered from temporary internet files is as follows. This image, named (b) (6) , was obtained from [root]/Users/(b) (6) :

(b) (6)

The (b) (7)(C) Investigator identified ten (10) instances in which (b) (6) used the Google search engine to conduct Internet searches for material that appears to be pornographic. A listing of the searches, search dates, and URL's highlighting the search are as follows:

Search Term	Date and Time (UTC)	URL
(b) (6)		

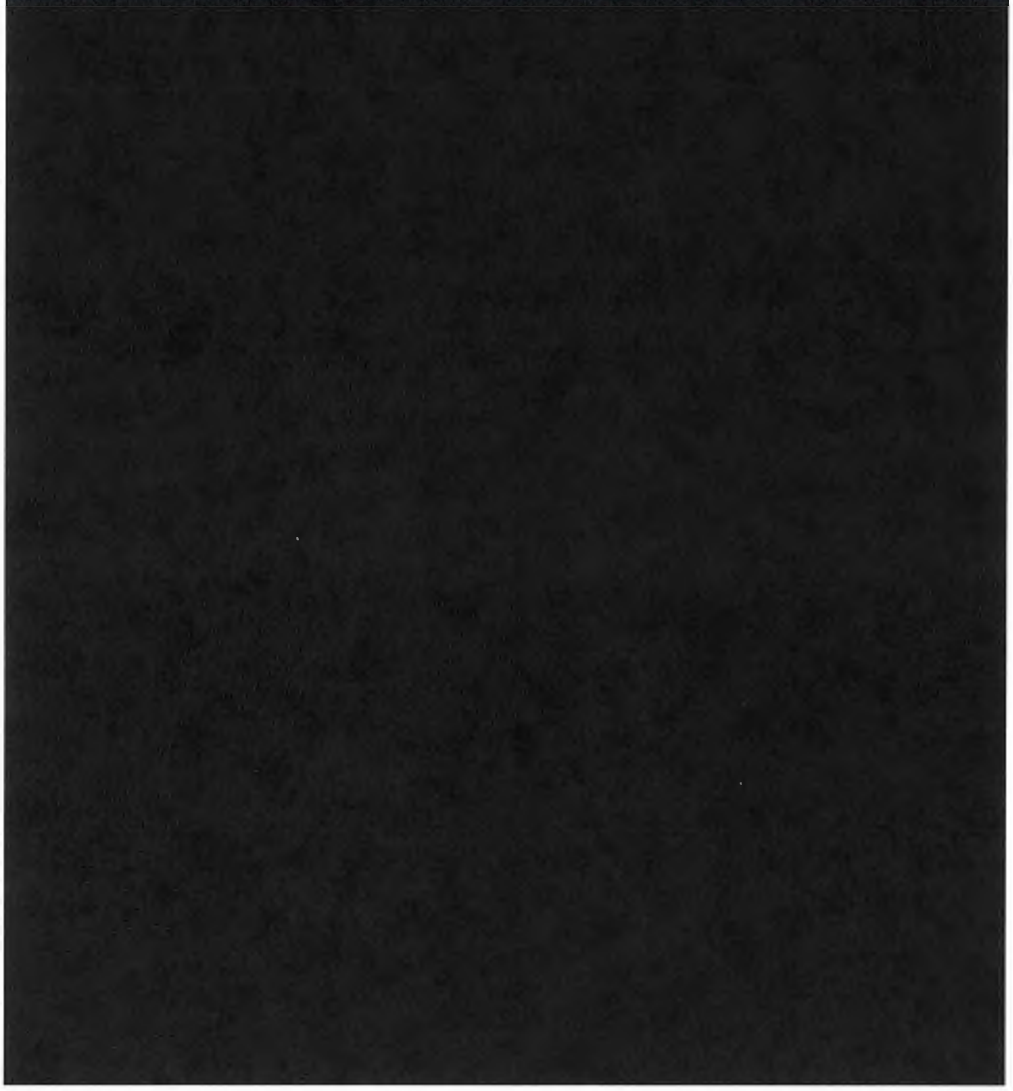
(b) (6)



The (b) (7)(C) Investigator used (b) (7)(E)

Case Number:	Case Title:
OIG-I-15-0020	(b) (6)

(b) (6)



Conclusion

Our investigation found evidence that (b) (6) used an FCC computer to view and store pornographic material in violation of the Commission's directive and policies governing cyber

security.

Recommendations

OIG is referring this matter to OCBO and HR for review and action as they deem appropriate.

Attachment

Attachment #1 FCC Computer System User Rules of Behavior signed by (b) (6) [redacted]

FCC Computer System
User Rules of Behavior

POLICY FOR USE OF COMPUTER RESOURCES.

As an employee or contractor of the Federal Communications Commission (FCC), you are required to be aware of, and comply with the FCC's policy on usage and security of computer resources, per OMB Circular A-130, Appendix III. Use of this system is for FCC authorized purposes only. Any other use may be misuse of Government property in violation of Federal regulations. All information in this system is subject to access by authorized FCC personnel at any time. Individual users have no privacy interest in such information.

YOU ARE RESPONSIBLE FOR ALL ACTIONS PERFORMED WITH YOUR PERSONAL USER ID.

- UserIDs and passwords are for your individual use only, and are confidential FCC information.
- You must not disclose your password to anyone. Furthermore, you must take necessary steps to prevent anyone from gaining knowledge of your password.
- Your UserID and password must be used solely for the performance of your official FCC job functions. (Refer to 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch.")

POLICY, STANDARDS, AND PROCEDURES MUST BE FOLLOWED.

- Use of all computer resources, including personal computers, laptops, all parts of the FCC Network, communication lines, and computing facilities are restricted to FCC-authorized purposes only.
- You must be aware of, and abide by the "Computer Fraud and Abuse Act of 1986" (Public Law 99-474), the civil and criminal penalties of the Privacy Act, the Trade Secrets Act (18 U.S.C. S905), and other Federal Regulations applying to unauthorized use of FCC files, records, and data. Training will be provided to educate you about your responsibilities under these statutes.
- Be aware that all computer resources assigned, controlled, accessed, and maintained by FCC employee and contractor personnel are subject to periodic test, review, and audit.

ACCESS TO INFORMATION MUST BE CONTROLLED.

- Access only the information for which you are authorized, and have "need to know/access."
- Do not leave computers logged on and unattended. Log off, use "lock workstation" feature, or use access control software (i.e., Screen Saver with password) during unattended use.
- If you know that a person, other than yourself, has used or is using your userID, you must report the incident immediately to your supervisor and the Computer Security Officer.
- Take steps necessary to maintain security of computer files and reports containing FCC information.

YOU ARE RESPONSIBLE FOR THE PROPER USE OF YOUR COMPUTER RESOURCES.

- Only use FCC-approved software, and comply with vendor software license agreements.
- Back up your programs and data on a regular basis, and do not store sensitive or mission-critical data on your PC's hard drive.
- All FCC computer resources, including hardware, software, programs, files, paper reports, and data are the sole property of the FCC.

USER CERTIFICATION

I certify that I have read the above statements, fully understand my responsibilities, and agree to comply.
I recognize that any violation of the requirements indicated above may be cause for disciplinary actions.

(b) (6)

Name (please p

Signature: _

Return this form to: Computer Security Officer, Room 1-A325

Form A-201
Revised June 2002

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 22, 2016

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations and Counsel to the IG

SUBJECT: Investigation into Open Internet Order Adoption Process

---

I. Scope of Investigation

In response to a request made on April 15, 2015, by staff from the offices of the Chairman of House Oversight and Government Reform Jason Chaffetz and Ranking Member Elijah Cummings, the Federal Communications Commission's Office of Inspector General (OIG) conducted an investigation to determine if the process followed by the Commission in the development of a Commission order entitled *Protecting and Promoting the Open Internet*[1] was free from "undue influence."[2]

---

[1] *Protecting and Promoting the Open Internet, Memorandum Opinion and Order*, 30 FCC Rcd. 5601 (2015) ("*Open Internet Order*").

[2] Undue influence is "The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective; the exercise of enough control over another person that a questioned act by this person would not have otherwise been performed, the person's free agency having been overmastered." *See* BLACK'S LAW DICTIONARY (10th ed. 2014).

II. 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.[3] The agency is governed by five presidentially appointed Commissioners subject to confirmation by the Senate.[4] The FCC Commissioners are from both political parties, however only three commissioners may be members of the same political party.[5] 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.[6]

III. Introduction

The FCC has had a long history dealing with the complex issue of whether and how to regulate the Internet. At the crux of the matter is the question of how to apply the framework established in the Telecommunications Act of 1996, subjecting "telecommunications service"[7] to significant common carrier regulation under Title II, but sparing "information services"[8] from such regulation, to the Internet.

Numerous Commission orders in the past several years have struggled to develop an appropriate regulatory mechanism, but tracking the Commission's approach is not the subject of this investigation. Rather, at the heart of this investigation is the determination made by the Commission in its most recent pronouncement on the subject. In the *Open Internet Order,* by a 3-2 party-line vote, broadband Internet access service was classified as a "telecommunications service" under Title II of the Communications Act of 1934.[9] This determination, plus

[3] 47 USC §151.
[4] 47 CFR §0.1; 47 USC §154.
[5] 47 USC §154(b)(5).
[6] See Humphrey's Executor v. United States, 295 U.S. 602 (1935).
[7] Telecommunications services are defined as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." 47 U.S.C. § 153(50).
[8] Information services are defined as "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." *Id.* § 153(24).
[9] 30 FCC Rcd 5601 at 5743 – 44 (2015).

provisions in Section 706 of the Act[10] and in Title III,[11] coupled with bright-line rules against prohibited practices[12] were intended to provide the jurisdictional and regulatory framework going forward. Although the Court of Appeals for the District of Columbia has recently affirmed the *Open Internet Order*[13] including the determination that broadband may be categorized and regulated as telecommunications service, we have focused our attention, as the House Oversight and Government Reform staff requested, on whether the FCC decision-making that led to the adoption of the *Open Internet Order* by a split vote was unduly influenced by the President of the United States, White House staff or others. Thus, this investigation is focused on process, not on substance.

IV. Investigatory Process

On April 20, 2015, OIG started (b) (7)(E) for all five Commissioners and thirty-eight Commission staff working in the office of the Chairman, offices of the Commissioners, Office of General Counsel, Wireless Telecommunications Bureau and Wireline Competition Bureau who OIG believed may have exercised supervisory authority in the development of the *Open Internet Order*. In addition, on July 14, 2015, OIG (b) (7)(E) . This was done to ensure that the review included as comprehensive a copy of the record as possible. The process of (b) (7)(E) took place between December 1, 2015 and March 8, 2016. (b) (7)(E) Accordingly, there was no opportunity for anyone within the Commission to subjectively determine that certain documents should be withheld from OIG.

Between June 16, 2015 and June 6, 2016, OIG (b) (7)(E)

[10] 47 USC §706.
[11] 47 U.S.C. §§ 301, 304, 307, 309.
[12] *Id.* at 5647. These rules include: No Blocking, No Throttling, and No Paid Prioritization.
[13] USTA v. FCC & USA, No. 15-1063 (D.C. Cir.).

identified approximately six-hundred thousand email messages warranting further review. (b) (7)(E) (b) (7)(E) During the investigation, a team of 4 attorney-investigators, a computer forensic investigator, and a paralegal were assigned to work on aspects of the investigation at various times.

During the pendency of our investigation, the Majority Staff of the Senate Committee on Homeland Security and Governmental Affairs conducted its own investigation into the matters we were tasked to examine. The staff issued its report, *Regulating the Internet: How the White House Bowled Over FCC Independence,*[15] on February 29, 2016 (Senate Staff Report). The report focused much of its attention on the emails and declarations of FCC career professional staff and concluded that "the FCC bent to the political pressure of the White House, abandoning its work on a hybrid approach to "pause" and then pivot to reclassify broadband as a telecommunications service, subjecting broadband providers to regulation under Title II of the Communications Act."[16]

Upon conclusion of our review of the documents described above, we were satisfied that nothing we found refuted the **factual** findings in the Senate Staff Report, and more importantly, nothing we found in the complete, unredacted record evidenced any undue influence that would have militated in favor of a more comprehensive investigation, including interviews.

V. Findings and Conclusion

On November 6, 2014 Julie Veach, then Chief of the Wireline Bureau, sent an email to Chairman Wheeler, Ruth Milkman (Chief of Staff), Philip Verveer (Senior Counselor to the Chairman), Jonathan Sallet (General Counsel) and Roger Sherman (Chief of the Wireless Bureau) stating:

[14] http://accessdata.com/resources/digital-forensics/forensic-toolkit-ftk-brochure.
[15] http://www.hsgac.senate.gov/download/regulating-the-internet-how-the-white-house-bowled-over-fcc-independence.
[16] *Id.* at 29.

> Roger and I have always been committed to meeting your deadlines and expectations. But, respectfully, we are growing increasingly concerned about circulating an Open Internet Order for the December meeting. The deadline for circulation is now only two weeks away. While our teams have been working around the clock to try to be ready, there are significant obstacles to preparing a legally sustainable order in the time remaining. We are concerned that rushing to circulate a workproduct that is not ready would do more harm than good, by giving opponents additional opportunities to raise a successful challenge in court, a view we understand is shared by OGC.

The last paragraph stated:

> While we remain committed to meeting your expectations, Roger and I recommend that you postpone circulation of the Open Internet item until these outstanding issues can be addressed. In addition, given your direction that we abide by the best process practices, including providing transparency in our proceedings, we suggest that you consider a Further Notice of Proposed Rulemaking to provide better notice on some of the issues identified above and an opportunity for the Commission to respond to a fuller record.

There were follow-up emails from Jonathan Sallet agreeing that additional time was needed to perform legal analysis. Nothing in these, or in any other emails appeared to indicate there was pressure to delay the Order from the December meeting from any source other than concerned FCC staff members. In addition, there was no indication, prior to these emails, that a draft Order had been circulated to senior level decision-makers.

In conclusion, we found no evidence of secret deals, promises or threats from anyone outside the Commission, nor any evidence of any other improper use of power to influence the FCC decision-making process. To the contrary, it appears that to the extent entities outside of the Commission sought to influence the process, the positions were made known in the record, in full view of all. The Chairman acknowledged the President's advocacy in support of modified Title II regulation and stated to the Committee he was not unduly influenced by that activity. Early in 2014, Chairman Wheeler appeared before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives to discuss "Oversight of the FCC." During that Hearing, Wheeler responded to a question about whether he or his staff had spoken to anyone at the White House or OMB on the Net Neutrality subject. He stated, "On this issue, I don't know, but I can assure you from my discussions with everybody, from the President on down, the recognition of the independence of our agency, and I will go further and assure you that never have I or to my knowledge anyone on my staff felt any pressure

to decide any issue."[17] Even after President Obama released his statement on November 10, 2014 acknowledging the FCC's independence and encouraging Title II reclassification,[18] Chairman Wheeler released a statement indicating, in part, "[A]s an independent regulatory agency we will incorporate the President's submission into the record of the Open Internet proceeding. We welcome comment on it and how it proposes to use Title II of the Communications Act."[19] While one could reasonably challenge the Chairman's claim, as was done in the Senate Staff Report, our investigation has found no evidence to refute it.

[17] https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg91268/html/CHRG-113hhrg91268.htm.
[18] https://www.whitehouse.gov/the-press-office/2014/11/10/statement-president-net-neutrality.
[19] https://apps.fcc.gov/edocs_public/attachmatch/DOC-330414A1.pdf.

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 28, 2016

TO: Jay C. Keithley, Assistant Inspector General for Investigations/Counsel to the Inspector General

FROM: [redacted], Investigatory Attorney
[redacted] Investigator
[redacted], Investigator

SUBJECT: [redacted]

Introduction

The Federal Communications Commission (FCC) Office of Inspector General (OIG) investigated allegations that [redacted] committed time and attendance fraud. If true, [redacted] may have violated 18 USC §287 (false claims), 18 USC §641 (theft), and 18 USC § 1001 (false statements) and violated 5 CFR § 2635.101(basic obligations of public service).

Background

In mid-2015, FCC [redacted] employee, [redacted] contacted OIG to complain about matters involving [redacted], and the environment within [redacted]. In November 2015, OIG Investigator [redacted] interviewed [redacted] and, in addition to discussing the environment in [redacted], [redacted] alleged during that interview that [redacted] had

committed time and attendance fraud.[1] [redacted] alleged that [redacted] abused the telework program, particularly [redacted]. [redacted] alleged that during those weeks, [redacted] arrived no earlier than 11:30 am on workdays [redacted] and then left early in order [redacted]. Additionally, [redacted] stated that during the week that [redacted], he was completely AWOL from work. As a result of [redacted]'s time out of the office, according to [redacted], [redacted] did not work a full 80 hours during his Tour of Duty for any given pay period.

Investigation and Findings

OIG obtained [redacted]'s badge-in and badge-out data for the period Aug 10, 2015 through November 9, 2015—this quarter year period included the week in which [redacted]. OIG also obtained [redacted]'s processed time-and-attendance reports for that same quarter year and checked with the FCC's Security Office as to whether [redacted] used temporary badges to enter and leave the building during that quarter year. Additionally, OIG obtained [redacted]'s FCC Telework Request Form and Agreement.

OIG Investigators performed a detailed analysis of [redacted]'s badge-in and badge-out data to determine whether we could corroborate [redacted]'s allegations that: 1) [redacted] arrived after 11:30 on days during [redacted]; 2) [redacted] left HQ early [redacted]; and 3) [redacted] was AWOL during the week that [redacted] remarried.[2]

Initially, we determined how many hours [redacted] was in the FCC's Headquarters building during the measured quarter. This period encompassed 13 weeks, or 6.5 pay periods. [redacted]'s tour of duty for any single pay period was 80 hours. Broken out by pay period, [redacted]'s badge data, combined with his telecommuting and declared leave (administrative, sick and annual) for the examined period is as follows:

[1] [redacted]

[2] [redacted] has not informed investigators as to how [redacted] aware of REED's presence in HQ when [redacted] was not present in HQ.

Case Number:	Case Title:
OIG-I-15—0027	[redacted]

Pay Period	Tour of Duty	Actual Hours Accounted-for
Pay Period 16 of 2015	80	90.25
Pay Period 17 of 2015	80	82.50
Pay Period 18 of 2015	80	64.50
Pay Period 19 of 2015	80	78.75
Pay Period 20 of 2015	80	78.75
Pay Period 21 of 2015	80	78.75
Pay Period 22 of 2015 (week 1)	40	49.25
Totals	**520**	**522.75**

With the exception of Pay Period 18, (b) (7) 's accounted-for hours closely approximate or exceed his 80 hour bi-weekly Tour of Duty. In fact, (b) (7) 's overall hours-worked exceeded the Tour of Duty requirement for the quarter.

With regard to Pay Period 18, special circumstances existed. The FCC's email and telecommunications systems were upgraded from September 8-10, 2015. As the upgrade progressed, phone and office desktop PC's were not working. Employees were encouraged during the upgrade process to work remotely as the Microsoft Office365 access to the FCC's computer systems was remotely available throughout the process.[3] A review of (b) (7) 's Outlook email account reveals that (b) (7)(C) Although (b) (7) 's time and attendance report for Pay Period 18 incorrectly listed him as at HQ, he was in fact working remotely.

With respect to (b) (7)(C) 's specific allegation that (b) (7) arrived after 11:30 am and left early on days during (b) (7)(C) , the badge data indicates otherwise. On only one day, August 27th, does (b) (7) badge in after 11:30 am without investigators finding that he was on approved leave.[4]

[3] Email from John Zentner to all HQ employees, dated Sept. 8, 2015 stated: The FCC will be open on time Wednesday, September 9. However, as the IT upgrades continue, we expect access to e-mail and files via VDI in the headquarters office may not be available for the first part of the day, but should become available during the day on Wednesday. Until such time, systems and email availability will remain as they were today. Office 365 will continue to be available remotely. Therefore, on Wednesday, September 9, headquarters employees have the option of electing to take leave and telework-ready employees have the option to telework.

[4] A review of (b) 's email account reveals that on August 27th, (b) had an out-of-office meeting with an (b) (7)(C) that evening after badging out for the day.

With respect to (b) (7)(C)'s allegation that (b) (7) was AWOL the week of (b) (7)(C) [redacted], the time and attendance report for that period refutes the allegation. (b) (7) 's time and attendance report covering that week states that (b) (7) used 37.5 hours of annual leave and 2.5 hours of credit hours.

Conclusion and Recommendations

The information collected by OIG investigators refutes (b) (7)(C)'s allegations. (b) (7) complied with the assigned Tour of Duty Hours requirement, actually exceeding the overall requirement of hours during the quarter. Time and attendance report errors by (b) (7) are explained by a review of (b) (7) 's emails. Finally, (b) (7)(C)'s allegation that (b) (7) was AWOL for the week of (b) (7)(C) [redacted] is wholly incorrect. Accordingly, we conclude that (b) (7)(C)'s allegations are meritless, and no additional investigative actions in this matter are warranted.

From: Wanda Sims
Sent: Tuesday, July 07, 2015 7:11 PM
To: Jay Keithley; Mark Stephens; (b) (7)(C) ; John Zentner
Cc: David Hunt; Robert McGriff; (b) (6)
Subject: RE: Message from (b) (6)

All,
We compared the HRM separation list for the period July 1, 2014 to June 30, 2015 and the Security departure list (Which went back to January 2014) and we did NOT find anyone else on the list who had departed. (b) (6) was the only person we missed going back to January 2014! As an audit check, in addition to the ASC team reviewing and comparing the separation list against the transit subsidy participants list, we will now have an AO staff person outside of ASC review and compare the lists. This will add additional layer of review and protection against separated employees remaining in the program.

Thank you for bring this matter to our attention. If you have any additional questions or concerns regarding this matter, please do not hesitate to contact me.

Wanda M. Sims
202-418-2990

*** Non-Public: For Internal Use Only ***

From: Jay Keithley
Sent: Monday, July 06, 2015 3:07 PM
To: Wanda Sims; Mark Stephens; (b) (6)
Cc: David Hunt; Robert McGriff; (b) (6)
Subject: RE: Message from (b) (6)

Thank you; we look forward to learning what you find.

Jay Keithley
Assistant Inspector General-Investigations
Counsel to Inspector General
Non-Public For Internal Use Only

From: Wanda Sims
Sent: Monday, July 06, 2015 3:03 PM
To: Mark Stephens; Jay Keithley; (b) (7)(C) ; John Zentner
Cc: David Hunt; Robert McGriff; (b) (6)
Subject: RE: Message from (b) (6)

Thanks Mark and OIG. We are investigating this matter now. We believe this a single event but are checking our databases for to verify our belief. We will let you know the results of our investigation.

Wanda M. Sims
202-418-2990

*** Non-Public: For Internal Use Only ***

From: Mark Stephens
Sent: Monday, July 06, 2015 1:34 PM
To: Jay Keithley; Wanda Sims; [redacted]
Cc: David Hunt; Robert McGriff; [redacted]
Subject: RE: Message from [redacted]

Adding Wanda and [redacted] to handle.

Thx.

From: Jay Keithley
Sent: Monday, July 06, 2015 1:09 PM
To: Mark Stephens
Cc: David Hunt; Robert McGriff; [redacted]
Subject: FW: Message from [redacted]
Importance: High

Mark,

The OIG Hotline recently received the attached voice mail from a retired FCC employee. He tells us his Metro Smart Card is still being credited with the Transit Benefit (months after his retirement). Would you, please, have someone look into this ASAP and let us know if this is single event or if the problem is more prevalent? Would you also let us know how the situation (the single event or a more prevalent situation) is remedied. Thanks.

Jay Keithley
Assistant Inspector General-Investigations
Counsel to Inspector General
Non-Public For Internal Use Only

From: Hotline
Sent: Monday, July 06, 2015 12:59 PM
To: Jay Keithley
Cc: [redacted]
Subject: FW: Message from [redacted]

Former FCC Employee called in to say that his SMART Card (metro) is still accumulating deposits from FCC.

From: unityconnection
Sent: Friday, July 03, 2015 2:10 PM
To: hotline
Subject: Message from [redacted]

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: October 26, 2015

TO: Jay C. Keithley, Assistant Inspector General for Investigations/Counsel to the Inspector General

FROM: (b) (7)(C)

SUBJECT: Citizens for Responsible Media/FCC Enforcement Bureau's Indecency Complaint Process

---

Introduction

On September 15, 2015, Citizens for Responsible Media, LLC (CRM) sent a letter to the FCC's Inspector General alleging that the FCC Staff was deliberately covering up, ignoring or disregarding serious violations of the statutory and regulatory indecency standards.

The case was assigned to Agent (b) (7)(C).

Background

Relevant Statutory and Regulatory Requirements

As relevant here, 18 U.S.C. § 1464 prohibits the broadcast of indecent material, and the

FCC bans the broadcast of indecent material pursuant to section 73.3999 of its rules.[1] "[n]o licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent." 47 C.F.R. § 73.3999(b).

The FCC defines indecent material as "material, that in context, depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards for the broadcast medium." *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, Policy Statement*, 16 FCC Rcd 7999 (2001)(*2001 Policy Statement*) and *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005, Notices of Apparent Liability and Memorandum Opinion and Order*, 21 FCC Rcd 2664 (2006), *recons. granted in part and denied in part, Order*, 21 FCC Rcd 13299 (2006)(*2006 Orders*), *review granted and vacated on other grounds, FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307 (2012). The *2006 Orders* broadened the FCC's prior interpretation of its indecency standard, as set forth in the *2001 Policy Statement*. On review, the Court did not reach a decision on the constitutionality of the FCC's broader indecency standard; rather the Court held that FCC violated networks' due process rights by failing to give them fair notice that, in contrast to prior policy, a fleeting expletive or a brief shot of nudity could be actionably indecent.

Relevant entities

Citizens for Responsible Media, LLC (CRM) is a limited liability corporation registered in Ohio. Scott Williamson is the President of CRM. At the FCC, CRM has filed several complaints alleging that WBNS aired indecent material (indecency complaints) and a petition to deny against WBNS.

WBNS is a licensed television broadcast station operating in the Columbus, OH area. WBNS is a CBS affiliate.

Allegations

CRM has filed 7 indecency complaints that focus largely on two CBS network shows – How I Met Your Mother, that aired at approximately 8:00 pm EST and Two Broke Girls, that

[1] "No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p m. any material which is indecent." 47 C.F.R. § 73.3999(b). Moreover, under the Communications Act of 1934, as amended, the FCC may impose a range of sanctions on broadcasters for violation of section 1464. 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D).

aired at approximately 9:00 pm. EST. The indecency complaints provide specific instances of the language and activities that complainant believes violate the law. In addition, CRM filed a petition to deny WBNS's license renewal application in which CRM asked the FCC to grant WBNS a short term renewal to allow the FCC to complete its investigation of the indecency complaints.

CRM alleges that the FCC staff is deliberately covering up, ignoring or disregarding serious violations of the indecency requirements. CRM notes that, in 2012, then FCC Chairman Julius Genachowski directed FCC staff to act on egregious indecency cases. CRM strongly maintains that the materials aired by WBNS about which it complains are "egregious cases" and that the FCC is covering up the problems as evidenced by (1) the FCC not taking action on any of its complaints, some of which have been pending for over 24 months, (2) the FCC Chairman did not respond to a registered letter it sent regarding its complaints, and (3) scientific evidence that indecent broadcasts harm children.

Investigation

1. On September 23, 2015 Agent (b) (7)(C) received CRM's letter and attachments, including a video of the alleged indecent material.

2. Shortly after receipt of CRM's letter, Agent (b) (7)(C) conducted research on the FCC's indecency rules and standards and then reviewed CRM's attached video.

3. On September 30, 2015 and October 1, 2015, Agent (b) (7)(C) interviewed (b) (7)(C) [redacted], Enforcement Bureau (EB), regarding EB's processes for handling indecency complaints.

4. On October 13, 2015 and in response to Agent (b) (7)(C)'s request, (b) (7)(C) provided to Agent (b) (7)(C) the Enforcement Bureau's internal review of one of CRM's complaints.

(a) FCC EB's Indecency Complaint Process

(b) (7)(C) explained that indecency complaints are filed through the FCC's Consumer Help Center, which was launched in early 2015. The FCC's Consumer and Governmental Affairs Bureau (CGB) oversees the Center (and its predecessor complaint database), which serves as the FCC's single point for filing complaints with regard to all matters

over which the FCC has jurisdiction. EB has access to this database and reviews all indecency complaints to determine whether an investigation should be opened.[2] Although indecency complaints serve as bases for EB to open indecency investigations, the FCC staff does not resolve individual complaints, i.e., staff does not issue decisions to individual complainants. An indecency complaint will go through a series of review, moving from staff to more senior management levels, if EB staff believes that a complaint appears to meet the egregious standard.

In 2011, the FCC had over 1 million indecency complaints pending, largely due to the uncertainty surrounding the FCC's indecency standard. *See FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307 (2012). As explained, the Supreme Court acted in 2012, but did not provide substantive guidance on the FCC indecency standard. Nonetheless, in 2012, the FCC Chairman directed EB to focus its indecency enforcement resources on "egregious" cases and to reduce the backlog of pending broadcast indecency complaints. "Egregious" is not a new legal standard for determining whether content is indecent. Rather, the egregious standard means that the FCC uses its limited resources to investigate and take action on only the most legally sustainable cases. EB also looks at trends in complaints, and may open an investigation if warranted.

Subsequently, EB has decreased the backlog of complaints to fewer than 1,000. Although the majority of that backlog was decreased by internal determinations that the complaints did not merit opening an investigation, many investigations have been opened. Since 2013, the FCC has taken action on 4 "egregious" indecency broadcasts – 3 settled through consent decrees and 1 resulted in a Notice of Apparent Liability.

(b) FCC Action on CRM's filings

Upon OIG request, EB provided its analysis of one of CRM's complaints, IC- 12-WB15082504.[3] EB staff reviewed the complaint on 4/15/2013 and determined that the broadcast was "[p]otentially indecent but not egregious." On 7/11/2014, the matter was "closed pursuant to prosecutorial decision to direct enforcement resources to indecency matters more likely to yield sustainable enforcement actions."

[2] Prior to 2015, the FCC's process for transitioning complaints from their initial filing with CGB to EB was more complicated and burdensome, but all complaints were still reviewed by FCC staff.

[3] This complaint also has an EB case number, CASE No: EB-13-IH-0494. OIG requested this complaint because CRM described the material that was the subject of this complaint as different in the letter to FCC Chairman, Tom Wheeler.

In WBNS's license renewal proceeding, the FCC denied CRM's petition to deny, but noted that the FCC was in the process of investigating CRM's complaints, and negotiated a Tolling Agreement with WBNS that preserved the Commission's ability to issue a Notice of Apparent Liability with respect to the pending indecency complaints for two years after grant of the renewal. *See* Letter to Citizens for Responsible Media, LLC from Barbara Kreisman, Chief Video Division, Media Bureau, dated June 25, 2014.

Findings

As stated, CRM alleges that FCC staff is deliberately covering up, ignoring or disregarding serious violations of the indecency standards, particularly claiming that material about which it complains meets the egregious standard for taking enforcement action on indecency complaints. The results of this investigation show that FCC staff is not deliberately covering up, ignoring or disregarding serious violations of the indecency standards.

FCC staff has shown that its indecency complaint process is reasonable. FCC staff reviews and considers all indecency complaints for investigation and follows specific standards for determining if a complaint merits investigation. At the same time, staff and management also monitor for trends in complaints, which serves to keep the process flexible and consistent with the indecency standard, particularly the "contemporary community standards" aspect of the standard. However, with over 1 million complaints pending in 2012 and continued judicial uncertainty surrounding the FCC's indecency standard, it is reasonable for EB to use its prosecutorial discretion to limit its investigations to those complaints that would be most legally sustainable. Although it is not for the OIG to make a determination regarding whether the material provided by CRM is indecent, OIG recognizes that EB's determination that the materials provided by CRM were "potentially indecent but not egregious" is reasonable.

Recommendations

Based on this information, FCC OIG recommends taking no further action on the case. Although not standard OIG practice, given CRM's prolific activity in this area, it is recommended that OIG send CRM a letter with its determination that it found no FCC staff cover up.

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 16, 2016

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C) Investigator

SUBJECT: Allegations of Misuse of Position by (b) (7)(C) (Enforcement Bureau)

I. Scope of Investigation

On March 29, 2016, (b) (7)(C) provided a written complaint alleging (b) (7)(C) of the Enforcement Bureau (EB) (b) (7)(C), is misusing [redacted] position and engaging in selective enforcement. Specifically, (b) (7)(C) claims [redacted] had improperly terminated the license of John David Watkins III (Watkins) for call sign KG5IDD.[1]

II. Background

In January 2013, Watkins[2] was arrested in San Antonio, TX for creating interference and illegally transmitting over radio bands without having the required radio operator license.

---

[1] It should be noted that Watkins' has not complained about the process or status of his application.
[2] John David Watkins III is known on radio frequencies as "White Noise."

Case Number:	Case Title:
OIG-I-16-0011	(b) (7)(C)

Additionally, Watkins was accused of making terroristic threats over the airways.[3] On February 22, 2013, Watkins received a Cease and Desist letter[4] from [redacted] regarding the same transmissions that resulted in his arrest. Additional charges related to harassment threats by Watkins using his amateur radio were filed against Watkins in February 2014 and April 2014. Watkins was acquitted on March 9, 2016 and all charges were dismissed on March 22, 2016.

Watkins was granted an Amateur License to use call sign KG5IDD on June 24, 2015.[5] The Wireless Telecommunications Bureau (WTB) [6] sent a Set Aside Letter to Watkins terminating his license on June 29, 2015 pending "enforcement review."[7]

III. Relevant Statutory and Rule Provisions

Amateur Radio Service is governed by Part 97 of the CFR[8]. Operation of an amateur station requires an amateur operator license grant from the FCC.[9] Before receiving a license grant, applicants must pass an examination administered by a team of volunteer examiners (VEs) who determine the license operator class.[10] Upon successful completion of the exam and upon review of the Form 605[11], the Volunteer Examiner Coordinator (VEC) forwards the applicant's information electronically to the FCC for processing.[12] The Wireless Telecommunications Bureau (WTB) determines whether to grant or deny the application and updates the license grant information in the Universal Licensing System (ULS) [13] database[14].

---

[3] See Case #451740, #417822, #417821 and refiled #463804 Bexar County Clerk's Office.

[4] In January 2012, (b) (7) , received a Cease and Desist Letter from EB resulting from unauthorized use of 146.520 MHz band to communicate with Watkins, who did not have an amateur license at that time in violation of Section 97.111(a)(1) of the Commission's rules, which states in pertinent part "[a]n amateur station may transmit the following types of two-way communications: [t]ransmissions necessary to exchange messages with other stations in the amateur service . . . ". Watkins received a letter because he did not have a license and because (b) (7) was communicating with an unlicensed operator, he received a letter as well.

[5] http://wireless2 fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3713340

[6] WTB has the authority to grant and revoke amateur licenses before the FCC. EB is responsible for enforcing the provisions of the Communications Act, the Commission's rules, orders, and various licensing terms and conditions. 47 USC § 303 - Powers and duties of Commission

[7] See http://wireless2 fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=9083714 Letter from Terry Fishel, Associate Chief, Mobility Division, WTB to John D. Watkins III re: FCC File Number 0006853120

[8] 47 CFR §97

[9] 47 CFR §97.5 Station license required.

[10] 47 CFR §97.9 - Operator license grant.

[11] FCC Form 605 Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services found at https://transition fcc.gov/Forms/Form605/605 html

[12] 47 CFR § 97.17 Application for new license grant.

[13] http://wireless2 fcc.gov/UlsApp/ApplicationSearch/searchAppl.jsp

[14] Per 47 CFR 97.5(b)(1) The primary station license is granted together with the amateur operator license.

IV. Allegations and Findings

(b) (7)(C) alleges Watkins's application was terminated because (b) (7)(C) misused [redacted] position and engaged in selective enforcement of the rules. Watkins's application has not been "terminated" by the Commission and is currently in "pending" status before WTB.

Although WTB granted Watkins a license in June 2015, the grant was set aside and his application was placed "on hold" pending enforcement review.[15] (b) (7)(C) (b) (7)(C)[16] explained that WTB awarded the license on June 24, 2015 but received an email from (b) (7)(C) that [redacted] needed to check if this was one of [redacted] "bad actors" who was operating without a license in San Antonio and was under investigation by EB.[17] In addition, [redacted] told (b) (7)(C) [18] that Watkins may have entered into a settlement agreement with the local San Antonio District Attorney (DA) and one of the conditions was that he not use a radio[19]. [redacted] supported (b) (7)(C)'s explanation and indicated it is "standard practice for EB to notify and request WTB place applications in 'pending' status because of EB investigations." [redacted] acknowledged "WTB doesn't close the loop" but indicated applications are "routinely handled" in this manner. [redacted] confirmed EB will notify WTB to proceed with their review and license grant determination after the enforcement review is completed.[20]

After reviewing Commission rules and policies governing licensing in the Amateur Radio service, we find that (b) (7)(C) mischaracterized Watkins's license as "terminated" when it is, in fact "pending". Although the license grant was "set aside", it is possible that upon completion of the "enforcement review" the license will be reissued to Watkins.

Because Watkins's criminal case involved allegations of interference and harassment using his amateur radio, [redacted] acted appropriately in conducting an enforcement review and informing WTB that there may be concerns with the license grant. Moreover, upon discussions with FCC staff, we find the interactions between WTB and EB evidenced in this case are typical in the

[15] Pursuant to 47 §CFR 1.113 - Action modified or set aside by person, panel, or board.
[16] (b) (7)(C), WTB
[17] See Email from (b) (7)(C) dated June 27, 2015 Subject: KG5IDD.
[18] (b) (7)(C), Wireless Telecommunications Bureau
[19] [redacted] explained to OIG that Watkins' criminal case had been plagued by changes in defense counsel and the inability of the Bexar County District Attorney to bring his case to trial. Review of the record (Bexar County and District Clerks Records Search https://apps.bexar.org Case #463804) indicates that during the pendency of the court case there had been discussions and pre-trial hearings to discuss Watkins' entering into a settlement agreement as well as present at a jury trial. It was determined there wasn't enough evidence to pursue the charges and Watkins' case was dismissed.
[20] (b) (7)(C) EB Agent, (b) (7)(C) indicated that there are no open enforcement actions against John Watkins.

amateur license process.

Finally, (b) (7)(C) 's complaint came only 3 days after the charges against Watkins were dismissed. We find that the quick timing of his allegations did not give EB enough time to complete its review and notify WTB to proceed with its review of Watkins's application.

V. Recommendation

We found no evidence that [redacted] misused [redacted] position. We find that EB should finalize its enforcement review and notify WTB to proceed with its application review as soon as practicable. Based on our findings, we would recommend no further investigation into this issue at this time.

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 23, 2016

TO: David L. Hunt
Inspector General

FROM: Jay C. Keithley
Assistant Inspector General – Investigation and Counsel

SUBJECT: Lifeline Disclosure

I. Introduction

In a letter dated April 15, 2016, to Federal Communications Commission ("FCC") Chairman Tom Wheeler ("Wheeler" or "the Chairman"), Senator John Thune, Chairman of the Senate Committee on Commerce, Science and Transportation, asked that the FCC address concerns raised by him regarding the potential violation of 47 C.F.R. § 19.735-203, pertaining to disclosure of "nonpublic information . . . directly or indirectly, to any person outside the Commission," as a complaint requiring an investigation pursuant to 47 C.F.R. § 19.735-107(b). Specifically, Chairman Thune expressed concern that information regarding the *2016 Lifeline Modernization Order*, 31 FCC Rcd 3962 (2016) (*Lifeline Order*), specifically news of an agreement among FCC Commissioners O'Rielly, Pai and Clyburn to vote for a hard cap on Lifeline spending set at $2 billion (the "deal" or "compromise"), appeared in the news media publications Politico and Broadcasting & Cable prior to the FCC's vote on the *Lifeline Order*.[1]

[1] Chairman Thune's letter also raised concerns about potential violations of the FCC's *ex parte* rules. The

Subsequently, in a letter from Senator Bill Nelson, Ranking Member of the Senate Committee on Commerce, Science and Transportation to David Hunt, Inspector General, FCC, dated May 12, 2016, Senator Nelson requested the FCC Office of Inspector General (OIG) to conduct a fulsome investigation of all potential sources of leaked information pertaining to the *Lifeline Order*.

II. Applicable FCC Rules

Section 19.735-203(a) of the FCC rules states

> [e]xcept as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly to any person outside of the Commission. Such information includes, but is not limited to, the following: (1) [t]he content of agenda items . . . .

47 C.F.R. § 19.735-203(a).[2] Section 19.735-107 of the FCC rules states that employees may face disciplinary action if they violate any Part 19 rules. 47 C.F.R. § 19.735-107(a). Section 19.735-107(b) requires the Chairman to initiate an investigation when a complaint is brought to his attention and to notify the OIG. 47 C.F.R. § 19.735-107(b) and (c).

III. Investigation

On April 18, 2016, Ruth Milkman ("Milkman"), FCC Chief of Staff, contacted Jay Keithley ("Keithley"), Assistant Inspector General – Investigations and Counsel, regarding Chairman Thune's April 15th letter. In response, OIG commenced an investigation into the potential violation of section 19.735.203 of the FCC's rules.

Starting on April 20, 2016, OIG's Computer Forensics Investigator requested current Outlook Mailboxes and Office 365 Online Archives for FCC staff determined most relevant to

Chairman's response to this concern addressed this matter, finding that a number of interactions occurred among Members of Congress or their staffs and FCC employees, which are exempt under the FCC's *ex parte* rules, and noting one reported violation, which was unrelated to Chairman Thune's concerns. Letter from Tom Wheeler to Chairman John Thune, dated May 2, 2016. The OIG has found no additional evidence in this regard.

[2] Paragraph (b) of this rule prohibits an employee engaged in certain outside activities from using nonpublic information obtained as a result of the employee's government employment in connection with such outside activities unless the Chairman gives written authorization. 47 C.F.R. § 19.735-203(b).

the investigation from the (b) (7)(C) Subsequently, on May 6, 2016, OIG requested the landline and mobile phone call detail records of the same FCC employees. All records requested were provided by the end of May 2016.

OIG used (b) (7)(E) to process the Outlook mailboxes and Office 365 Online Archives. After processing, OIG staff manually reviewed email correspondence for the period from 3/30/2016 through 4/1/2016, (b) (7)(E) Subsequently, staff used keywords identified by the investigative team to search email correspondence for the period from 4/2/2016 through 5/2/2016, (b) (7)(E) . Both (b) (7)(E) reports were provided to the investigative team for further review.

OIG Special Counsel, Deputy Assistant Inspector General-Investigations ("Investigators") and the Assistant Inspector General-Investigations reviewed the (b) (7)(E) reports containing email correspondence, and the Special Counsel reviewed the landline and mobile phone call detail records. In total, the investigative team reviewed four-thousand eight-hundred and thirty-seven (4,837) email messages, including one-thousand four-hundred and thirty-four (1,434) attachments and eighty (80) voice mail messages.[3] This project was completed by June 22, 2016.

Beginning on July 2, 2016, Investigators conducted ten in-person interviews of FCC employees regarding the disclosure of information reported in the Politico and Broadcasting and Cable articles and conducted additional telephone interviews. Some interviews were delayed due to witness unavailability in August.

IV. Findings

(A) FCC Interpretation of 47 C.F.R. § 19.735-203

Investigators interviewed Suzanne Tetreault ("Tetreault"), former Deputy General Counsel, on July 19, 2016.[4] Tetreault, having served as Deputy General Counsel responsible for

[3] (b) (7)(E)

[4] At the time of the interview, Tetreault had just moved to a new position at the FCC; she is now a Deputy Bureau

all non-litigation legal matters arising in the Office of General Counsel (OGC) for approximately four years, was very familiar with section 19.735-203 of the FCC's rules. She recalled analyzing and interpreting the rule approximately two years ago and revisiting the rule after Commissioner Pai raised it in the context of the March 31st *Lifeline Order* vote.

As an initial matter, Tetreault stated that the requirement that permission to disclose nonpublic information be in writing, *i.e.*, subsection (b) of 19.735-203, only applies when an FCC employee wishes to disclose nonpublic information as part of any writing or teaching outside of the FCC. Section (a)(1) tells Commission staff (including the Commissioners) when they may disclose information. However, it does not describe what disclosures are permitted. Rather, the authority to determine what nonpublic information may become public information derives from section 5 of the Communications Act of 1934, as amended, 47 U.S.C. § 155(a), which provides that the Chairman is Chief Executive Officer of the FCC, and sections 0.3 and 0.211 of the FCC's rules, 47 C.F.R. §§ 0.3(4) and 0.211, which define and provide the Chairman's general authority over the affairs of the FCC. Under these provisions, the Chairman has general authority to change the character of information from previously non-public information to information that would be available for public disclosure. That the Chairman has the authority to decide when/what nonpublic information may become public information to be available for public disclosure has been the long-standing position at the FCC.

In addition, Tetreault stated section 19.735-203 does not prohibit a Commissioner from stating his/her position on a particular issue in an FCC Order not yet made public. However, if the Chairman had not authorized it, an FCC employee would violate section 19.735-203 if he/she disclosed to a non-FCC employee information in an FCC Order not yet released. Finally, Tetreault stated that, in her opinion as the former Deputy General Counsel, an FCC employee who disclosed information in an FCC Order not yet released, even if the information had previously been disclosed by someone else, violated section 19.735-203 if the Chairman had not authorized the disclosure.

(B) Disclosure of the Clyburn, Pai and O'Rielly Compromise

Who Disclosed Compromise Lifeline Order Information to Politico

Chief in the FCC's Wireless Bureau. However, during the time period covered by this investigation, Tetreault was the Deputy General Counsel and was the person in OGC who would have provided legal advice on the FCC's interpretation of the FCC rules relevant to this investigation.

Based on Investigators' review of phone records, email messages and interviews, Gigi Sohn ("Sohn"), Counselor to the Chairman, provided some of the information revealed in the Politico story that appeared at approximately 10:49 am on March 31, 2016. In an interview, Sohn revealed that Shannon Gilson ("Gilson"), FCC Communications Director, requested that Sohn call Politico reporter Margaret McGill ("McGill") and inform McGill that the Commission meeting was delayed from 10:30 until 12:00 and that there was a compromise on Lifeline, including the fact that there would be an annual cap on the amount of money available in the Lifeline program. Sohn was instructed not to tell McGill the amount of the agreed-upon cap. In an interview, Gilson explained that throughout the morning of March 31st, the FCC Office of Media Relations had been inundated with calls from the press and that it was clear many reporters and stakeholders were already aware a deal was being crafted by Commissioner Clyburn and the Republican commissioners. Thus, because she felt it would be beneficial to get the story out accurately, Gilson sought and received authorization from Wheeler and Milkman to provide the press with high level details. Gilson exercised her discretion in choosing both Politico and McGill as the appropriate recipients of this information, and instructed Sohn to make the call.

At 10:13 am, Sohn called McGill. Sohn believed that, at the time of the call, McGill may have already known about the deal. Indeed, at the time she made the call to McGill, Sohn knew of at least two Lifeline advocates who had knowledge of the deal on the morning of March 31st – (b) (6) [redacted], and (b) (6) [redacted]. Sohn did not tell McGill the amount of the agreed-upon cap.

Although OIG staff has discovered who provided much of the information to McGill for the 10:49 am Politico story referenced in Senator Thune's letter, we have been unable to determine with certainty who provided McGill with the information on the amount of the agreed-upon cap.[5] The facts we have been able to ascertain are:

(1) Phone records show that Robin Colwell ("Colwell"), Chief of Staff to Commissioner O'Rielly, received a phone call from McGill at approximately 10:31 am on March 31st. That call lasted approximately 2 ½ minutes. In her interview, Colwell did recall speaking with reporters several times on March 31st, however, she did not recall speaking with Margaret McGill at 10:31 am. Colwell also stated, if she had spoken with McGill, she would not have provided detailed information regarding the compromise to her.

[5] In a phone interview McGill exercised her right not to reveal her sources.

(2) Phone records show McGill called Sohn at approximately 10:34 am. That call lasted approximately 1 minute. As stated above, Sohn maintains that, although she told McGill about the compromise, she did not divulge the cap amount.

(3) During this critical time period, McGill also contacted David Grossman ("Grossman"), Chief of Staff to Commissioner Clyburn via email, but there is no evidence that Grossman responded to McGill's email.

Significantly, because our investigation has not revealed with any certainty that anyone within the FCC disclosed the amount of the cap to the media, we cannot discount the possibility that the disclosure of that information to the media came from outside the FCC.

Who Disclosed Compromise Lifeline Order Information to Broadcasting and Cable

We have been unable to ascertain with certainty who disclosed the *Lifeline Order* compromise to Broadcasting and Cable reporter John Eggerton ("Eggerton").[6] However, we have discovered the following information:

(1) At 9:37 am, Eggerton called Nicholas Degani ("Degani"), Legal Advisor to Commissioner Pai. That call lasted approximately 6 minutes. Degani does not recall the nature of the conversation.

(2) At 10:31 am, Robert Bukowski, Staff Assistant to Commissioner O'Rielly sent an email message to Colwell, stating that Eggerton had called and wanted to speak with Colwell.

(3) At 10:36 am, Colwell called Eggerton. The call lasted approximately 10 minutes. Again, although Colwell recalls speaking to reporters several times on March 31st, she does not recall specifically speaking to Eggerton at that time.

Again, because our investigation has not revealed with any certainty that anyone within the FCC disclosed the *Lifeline Order* compromise to Eggerton, we cannot discount the possibility that the disclosure of that information came from outside the FCC.

[6] In a phone interview Eggerton exercised his right not to reveal his sources.

Who Disclosed Compromise Lifeline Order Information in Other Fora

At approximately 11:37 am, Matthew Berry ("Berry"), Chief of Staff to Commissioner Pai, confirmed the compromise, including the agreed-upon cap amount of $2 billion, to (b) (6), reporter for (b) (6), via email message.[7] In addition, between 1:00 pm and 1:07 pm, Berry appeared in the FCC Commission meeting room and stated that Commissioners Clyburn, O'Rielly and Pai had reached a compromise on the *Lifeline Order*, including an annual cap of $2 billion on the Lifeline program and that Commissioner Clyburn had backed out of the compromise.

At approximately 1:06 pm, Colwell responded via email message to Margaret McGill stating "the deal is off." In addition, Colwell sent an email message at approximately 1:14 pm to (b) (6), a reporter with (b) (6), stating that the FCC meeting had been delayed "because our D vote flipped back. No budget."

Finally, at the FCC press conference after the March 31st commission meeting, Commissioner Ajit Pai read from the official Lifeline email chain. He also disclosed the details of the compromise *Lifeline Order*.

(C) *Authorization to Disclose Compromise to Media*

As previously stated, the FCC has determined that the Chairman has general authority to change the character of information from previously non-public information to information that would be available for public disclosure. *See supra* at p. 4. That the Chairman has the authority to decide when/what nonpublic information may become public information to be available for public disclosure has been the long-standing position at the FCC. Thus, as soon as the Chairman authorized Gilson to confirm to the press that a compromise order with a cap on Lifeline may be on the agenda, pursuant to 47 C.F.R. § 19.735-203(a), the character of information changed from previously non-public information to information that would be available for public disclosure. Therefore, neither Sohn's disclosure to Politico, nor the disclosure to Broadcast & Cable (if it was in fact made by someone within the FCC) or Berry's disclosure to (b) (6) about the existence of a compromise violated §19.735-203.[8] However, disclosure of the cap amount was

[7] Berry also confirmed this information to (b) (6), reporter for (b) (6), at approximately 2:00 pm.

[8] Although less clear, the disclosures of the fact that Commissioner Clyburn reversed her position on the compromise likely did not violate §19.735-203 because the nature of the information underlying the disclosures had already been provided to the media by the Commission in its March 8, 2016, Fact Sheet regarding the original draft

not specifically authorized by the Chairman.

(D) Intent and Impact of Meeting Delay and Disclosure

Chairman Thune's letter raises concern, not only about the delay in starting the Commission meeting, but also about the purpose of disclosure of the compromise to media outlets.[9]

The compromise *Lifeline Order* was posted on the *Lifeline Order* email chain at 9:29 am by Commissioner Pai's office. Commissioners O'Rielly and Clyburn's offices weighed in favorably on that *Lifeline Order* at 9:32 am and 9:49 am, respectively. Given that the compromise *Lifeline Order* was posted so close to the start of the meeting, Milkman explained that the meeting was postponed via email from 10:30 am to 12:00 pm to provide all the commissioners time to review the new final order. Milkman stated that the second delay – from 12:00 pm to 1:30 pm -- occurred, in part, to allow Commissioner Clyburn to redraft her statement after she decided she would not vote in favor of the compromise *Lifeline Order*.[10] Evidence suggests that Commissioner Clyburn spoke with Commissioners O'Rielly and Pai between 12:00 pm and 1:00 pm. At 1:11 pm, Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, posted on the email chain that Commissioner Clyburn, after further reflection on the impact of the potential changes, was unable to support the compromise *Lifeline Order*. Immediately thereafter, the previously posted non-compromise *Lifeline Order* was re-posted to the Lifeline email chain. The Commission meeting began at approximately 2:00 pm.

As stated above, Gilson told Investigators that she was the person who recommended to the Chairman that the FCC provide the press with information about the compromise *Lifeline Order* to address the confusion that was already surrounding the item in the media. We have found no evidence that contradicts this statement.

---

order.

[9] *See e.g.,* Chairman Thune's April 15, 2016 letter at 3 ("[t]he disclosure of nonpublic information in the 10:47 am *Politico* article appeared designed to engage outside interest groups to disrupt the deal struck between the Republican Commissioners and Commissioner Clyburn.").

[10] Although Milkman does not know exactly when Commissioner Clyburn changed her decision to vote for the *Lifeline Order* compromise, she knows that Commissioner Clyburn sought to have the Order removed from the agenda meeting. The Chairman would not agree to remove the Order, but instead, he further delayed the meeting.

Moreover, with regard to the impact of the disclosure on Commissioner Clyburn's decision to reverse her support for the deal, Milkman told Investigators that when Chairman Wheeler first called Milkman at approximately 9:30 pm on March 30, 2016 to inform her about the compromise, he stated he planned to follow Commissioner Clyburn's lead on the compromise *Lifeline Order*. An email sent by Milkman, at approximately 5:50 am on March 31, 2016, to certain senior FCC staff corroborates Milkman's statement.[11] Both Milkman and Sohn stated the Chairman indicated he would vote with Commissioner Clyburn, whatever her decision.

In two separate interviews with Investigators, Commissioner Clyburn explained her decision-making process with regard to the compromise. Specifically, she understood there was draft legislation that, if enacted, would decimate the Lifeline program, and she believed capping the Lifeline program's budget could lead Congress to feel legislation was unnecessary. Therefore, on March 30th, she proposed a compromise to Commissioners Pai and O'Rielly, including imposing a hard cap on the Lifeline program's budget, with the intent to obtain a unanimous vote on the *Lifeline Order*.[12] She explained that throughout this process she informed the Chairman of her intentions and kept him apprised of events.

Commissioner Clyburn also stated that, although her conversations over the course of March 30th and 31st with the Chairman regarding the compromise were at times heated, she did not feel pressure from him to change her position on the compromise.[13] Although she never asked him directly as to whether he would vote in favor of the compromise *Lifeline Order*, she took his silence on the vote to mean he would vote with her. Commissioner Clyburn declared that the Chairman is candid, and he would have been candid enough to say he would not vote

[11] Specifically, the email stated: "[a]lot happened with Lifeline last night, to wit MC, AP and MO agreed on a hard cap of $2B. TW told MC he would go along." The email was sent to Jonathan Sallet, then FCC General Counsel, and Philip Verveer, Senior Counselor to the Chairman, with a cc to Louisa Terrell, Advisor to the Chairman.

[12] Commissioner Clyburn also spoke with (b) (6) of the (b) (6) late on March 30th, but does not recall the conversation with any certainty. Commissioner Clyburn provided (b) (6) a general preview of the compromise to see how grassroots organizations would react to a cap on Lifeline.

[13] Notwithstanding conflicting reports regarding what was said in a meeting between Commissioner Pai and Commissioner Clyburn regarding her decision to change her position on the compromise – with Commissioner Pai's staff stating that Commissioner Clyburn told Commissioner Pai that the Chairman had put pressure on her to change her decision and Commissioner Clyburn stating that she did not make such a specific statement – Commissioner Clyburn was consistently and steadfastly firm that she was not pressured by the Chairman to change her decision regarding the compromise.

with her, if that were his plan. [14] Commissioner Clyburn's belief in this regard was rooted in the fact that she generally took the lead on Lifeline issues.

Commissioner Clyburn ultimately came to the conclusion that she would reverse her support for the deal by midday on March 31st, based on several factors, including the concerns expressed by congressional members and their staffs. The tipping point came when she heard rumors she deemed reliable that Commissioner Rosenworcel would not vote for the compromise on the Lifeline cap. The failure to obtain a unanimous vote, especially when the dissenting commissioner would be a member of her own party, led Commissioner Clyburn to conclude she was in "a no win situation" and had to choose "the cooler hell," which was forgoing the compromise.

V. Conclusion

The events surrounding the March 31st Commission vote adopting the *Lifeline Order*, while not unprecedented in their entirety, were certainly unusual. Typically, commissioners do not engage in negotiations resulting in significant policy shifts in the final hours prior to a Commission vote. Thus, while such activity is not improper or illegal, the rarity of the occurrence explains in large measure the interest, speculation and concern the matter has generated. Our investigation has enabled us (1) to reconstruct with a fair degree of precision exactly how information was obtained by the press in advance of the vote and (2) to understand the motivations of key FCC officials relative to significant actions taken with respect to the Order. As explained above, when the Chairman authorized release of the fact that a compromise order with a cap on Lifeline may be on the agenda, pursuant to 47 C.F.R. § 19.735-203(a), the character of information changed from previously non-public information to information that would be available for public disclosure. However, disclosure of the cap amount was not specifically authorized by the Chairman.

Further, we found no evidence that the information was provided to the press in an attempt to unduly influence the outcome of the vote.

[14] *See also supra* at n. 11.

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 2, 2016

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, (b) (7)(C)
(b) (7)(C)

CC: (b) (7)(C)

SUBJECT: FCC (b) (7)(C) Employee (b) (7)(C) Violation of 5 C.F.R § 2635.705 (Use of Official Time)

Background of Investigation

In June 2016, the Office of Inspector General received allegations that (b) (7)(C) (b) (7)(C) (b) (7)(C) (b) (7)(C), is violating the Standards of Ethical Conduct for Employees of the Executive Branch regarding the use of official time. Specifically, that (b) (7)(C) is not completing a full 8 1/2 hour tour of duty on days when [redacted] teleworks.

Part 5 of the Code of Federal Regulations section 2635.705 (5 CFR § 2635.705) entitled "Use of Official Time" states that "(u)nless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties" and that (a)n employee not under a leave system … has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Case Number:	Case Title:
OIG-I-16-0014	(b) (7)(C)

Scope of Investigation

The objective of this investigation was to determine if available evidence supports a conclusion that (b) (7)(C) is not completing a full 8 1/2 hour tour of duty on days when he teleworks.

To conduct the investigation, the (b) (7)(E) investigator performed the following steps.

1. Obtained and reviewed a copy of the FCC Flexible Workplace Program: Administrative Policy for Non-Bargaining Unit Employees (effective June 8, 2000).

2. Obtained and reviewed a copy of the FCC (b) (7)(C) calendar for the period from February 28, 2016 through June 18, 2016. Identified days in which (b) (7)(C) indicated that [redacted] was teleworking.

3. Obtained and reviewed (b) (7)(E) activity for (b) (7)(C) for the period from March 4, 2016 through June 13, 2016. (b) (7)(E) . (b) (7)(E) does not identify when (b) (7)(C) (b) (7)(E) .

4. Obtained and reviewed (b) (7)(E) (b) (7)(E) and extracted into an excel spreadsheet.

5. (b) (7)(E) into a word document identifying the day/date, activity per (b) (7)(C) schedule, (b) (7)(E) Reviewed the schedule to identify anomalous behavior.

Conclusions:

Our investigation did identify the following anomalous behavior:

1. The investigation identified (b) (7)(C) on two (2) days - Wednesday, March 16th and Tuesday, April 19th when the (b) (7)(C) schedule indicates that (b) (7)(C) was in the office; however, the (b) (7)(E) shows (b) (7)(C) logging into the network remotely.

2. The investigation identified five (5) days where there was no (b) (7)(E) when the (b) (7)(C) schedule indicates that (b) (7)(C) was teleworking. On Friday, March 25th, Monday, March 28th, Monday, May 2nd, Friday, May 6th, and Monday, May 9th, the (b) (7)(C) calendar indicates that (b) (7)(C) was teleworking. However, the (b) (7)(E) shows

no [redacted] on those days.

3. The investigation identified numerous days where [redacted] activity indicates that [redacted] well after the start of [redacted] normal tour of duty. [redacted] investigator is aware [redacted] that [redacted] s normal tour of duty is 6:30 am to 3:00 pm. The [redacted] identifies numerous cases in which [redacted] did not [redacted] until well after 6:30 am. For example, on Friday, March 18th, [redacted] until 11:09 am, on Monday, March 21st, [redacted] until 12:11am, and on Friday, April 8th, [redacted] until 2:56 pm.

However, although anomalous activity was identified, the evidence does not substantiate the allegations that [redacted] is not completing a full 8 1/2 hour tour of duty on days when [redacted] teleworks. There are many potential explanations for the anomalous activity that would not support a conclusion of misconduct by [redacted]. In the first instance, [redacted] may have been working on a project that didn't require access to the FCC network. It's possible that the FCC [redacted] schedule might not accurately reflect days when [redacted] was teleworking or might not include days when [redacted] was in some type of leave status. It's also possible that remote access to the FCC network might have been malfunctioning or that [redacted] may have been experiencing local internet access problems on a days when [redacted] was teleworking. Finally, the Commission's Telework Policy for Non-Bargaining Unit Employees does not require employees to remotely access the FCC network, let alone require employees to access the network at the start of their normal tour of duty.

Recommendations

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

Case Number:	Case Title:
OIG-I-16-0014	[redacted]

From: [redacted]
To: Jay Keithley (Jay.Keithley@fcc.gov); [redacted] Jay Keithley; [redacted]
Subject: FW [redacted] Inquiry
Date: Monday, August 15, 2016 1:33:00 PM
Attachments: Warren Response [redacted] 06172016.pdf

I spoke to [redacted] today (he left a message this morning). He has not found a lawyer to represent him. He walked me through his issues: problem with his boss, went to ethics, he was moved to another group, and eventually left Verizon. I mentioned that his original complaint was that Verizon had fraudulently answered filings before the FCC. He recanted and said, "I have no information about that. It's pure speculation on my part. I have no facts." He's now changed his story to be one of employment issues.

I don't think there's anything for us to do with this case at this time and can close it.

[redacted]
Federal Communications Commission
Office of Inspector General
Attorney-Investigator
445 12th St., SW
Washington DC, 20554
[redacted]
[redacted]
Fax: 202-418-2811

From: [redacted]
Sent: Friday, June 17, 2016 12:28 PM
To: [redacted] @warren.senate.gov>
Cc: [redacted] Jay Keithley (Jay.Keithley@fcc.gov) <Jay.Keithley@fcc.gov>
Subject: RE [redacted] Inquiry

[redacted] – attached please find our response to your inquiry. If you have any questions, please don't hesitate to contact us.

Thanks,
[redacted]

[redacted]
Federal Communications Commission
Office of Inspector General
Attorney-Investigator
445 12th St., SW
Washington DC, 20554
[redacted]
[redacted]
Fax: 202-418-2811

From: [redacted] (Warren) [mailto [redacted] @warren.senate.gov]
Sent: Thursday, June 16, 2016 10:40 AM
To: [redacted]
Cc: Sa [redacted]
Subject: RE: [redacted] Inquiry

[redacted] thank you for the clarification.

[redacted] have you had time to review/process the inquiry?

Regards,

[redacted]
Office of U.S. Senator Elizabeth Warren
[redacted]

From: [redacted] [mailto:[redacted]@fcc.gov]
Sent: Tuesday, June 07, 2016 11:41 AM
To: [redacted] (Warren) [redacted]@warren.senate.gov>
Cc: [redacted]
Subject: RE: [redacted] Inquiry

Mr. Keithley may be reached at (202) 418-2319. Please understand however, that the case is actually assigned to [redacted] and [redacted] copied here.

[redacted]

From: [redacted] (Warren) [mailto:[redacted]@warren.senate.gov]
Sent: Monday, June 06, 2016 3:16 PM
To: [redacted]
Subject: RE: [redacted] Inquiry

Hi [redacted]

Thank you for processing this inquiry. I received a phone call from Jay Keithley, assistant inspector general for the FCC, but the intern who took the phone call forgot to ask for a number for a call back. Do you know what would be the best way to reach him?

Regards,

[redacted]
Office of U.S. Senator Elizabeth Warren
[redacted]

From: [redacted]@warren.senate.gov [mailto:[redacted]@warren.senate.gov]
Sent: Monday, May 16, 2016 12:15 PM
To [redacted]
Subject: [redacted] Inquiry

Dear Ms. Lewis,

I am writing on behalf of (b) (6), a constituent of mine from Gloucester, MA. (b) (6) has reached out to my office for assistance obtaining a reponse to a letter he submitted to your agency regarding concerns he has with Verizon.

Enclosed is a copy of (b) (6) letter to my office which provides a more detailed account of the case. I am requesting any insight or guidance you can provide to help reach a satisfactory resolution.

As it is my desire to be responsive to all of my constituents, I appreciate your immediate attention to this matter. Please send a response directly to my State office. If you have any questions or require additional information, please contact (b) (7)(C) from my staff at (617) (b) (7)(C).

Thank you in advance for your time, assistance, and consideration of this matter.

Sincerely,

Elizabeth Warren
United States Senator

Washington, DC
317 Hart Senate Office Building
Washington, DC 20510
Phone: 202-224-4543

Boston, MA
2400 JFK Federal Building
15 New Sudbury Street
Boston, MA 02203
Phone: 617-565-3170

Springfield, MA
1550 Main Street
Suite 406
Springfield, MA 01103
Phone: 413-788-2690