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June 5, 2017

Brendan Carr, General Counsel
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: FCC Suppression of Free Speech and Due Process Violations

Dear Mr. Carr:

On behalf of Free Press and Free Press Action Fund, and their members, we write to express grave concerns about recent actions that call into serious question the Federal Communication Commission's commitment to fostering free expression. In particular, the actions of FCC security and other FCC staff have chilled free speech and public participation in FCC decision-making processes that are supposed to be open to the public, and they have violated the due process rights of Free Press and Free Press Action Fund staff and members.

On the morning of March 23, 2017, two Free Press Action Fund members, Joe DeGeorge and David Combs, attempted to attend the FCC's open meeting wearing otherwise plain white t-shirts that read "Protect Net Neutrality" in black letters. FCC security personnel informed them that they would not be allowed to enter the public meeting room unless they removed their t-shirts or flipped the t-shirts inside out to conceal their message. FCC security directed them to the restroom to change.

This was a clear-cut violation of Mr. DeGeorge's and Mr. Combs' constitutional right to free speech. The Supreme Court has repeatedly held that the First Amendment safeguards people's rights to express disagreement with government policies, even in limited public forums like an FCC meeting room, so long as they do not disrupt proceedings. For instance, in *Cohen v. California*, 403 U.S. 15 (1971), the Court held that the First Amendment protected Mr. Cohen's right to enter a courthouse wearing a jacket bearing the words "Fuck the Draft." In *Tinker v. Des Moines Indep. Comm. School Dist.*, 393 U.S. 503 (1969), the Court upheld the right of public school students to wear black armbands to protest the war in Vietnam. And in *Edwards v. South Carolina*, 372 U.S. 229 (1963), the Court held that the First Amendment guaranteed the rights of Black people to peacefully protest in front of the Florida State house.

It is beyond ironic that the Federal Communications Commission — the government agency charged with promoting First Amendment values — seems intent on violating the First Amendment.

Indeed, the abrogation of the First Amendment rights of Mr. DeGeorge and Mr. Combs is not an isolated event. Rather, it appears to be one in a growing series of FCC efforts to stifle free speech and public participation at open meetings, and part of a disturbing trend of mistreating protesters, reporters and members of the public. Notably, many of these attempts to limit free speech and public participation have most directly targeted those who question or disagree with Chairman Pai and the Trump administration over plans to limit free speech on the internet by repealing Net Neutrality rules.

For instance, at the FCC's open meeting on April 20, 2017, FCC security and Homeland Security police officers escorted five peaceful protesters¹ from the meeting for singing a pro-Net Neutrality song to the tune of Rick Astley's "Never Gonna Give You Up," and required other individuals not engaged in the protest to cease recording these events taking place in a public area at the open meeting. This was a brief, non-violent protest, capped off by Chairman Pai dancing and singing along to the song.

Nonetheless, and despite immediately acquiescing to requests for them to leave the open meeting room, the protesters were informed on the spot that they would be "banned for life" from the FCC and could be banned from other federal buildings. No authority was cited for this action, and any such "ban" — without any process at all — would violate the due process rights of these protesters.

The FCC further resorted to tricks to avoid public participation at its open meeting on May 18, 2017. The Commission seemingly removed chairs from the public meeting room and placed "reserved" signs on most, if not all, of the few remaining chairs in the public seating section. The barrier to public entry was extremely high. In fact, former FCC Commissioner Gloria Tristani was not allowed into the open meeting room for fifteen minutes, even after identifying herself as a former FCC Commissioner and even though seats were open at the time. The public was directed to an overflow room to watch the meeting on televisions.

Free Press staff also observed FCC uniformed security telling an open meeting entrant her sign, which read "Net Neutrality is a Racial Justice Issue," would be banned from the meeting room based on the content of the sign. In that instance, supervisors present at the encounter subsequently clarified that the ban was based on the size of any poster or sign, not the content or viewpoint expressed thereon. The episode nevertheless calls into question the instructions and training given to uniformed security guards outside the presence of the public.

That same day, following the end of the open meeting and press conference, FCC security staff manhandled a reporter from *CQ Roll Call* for attempting to ask

¹ The protesters were Free Press and Free Press Action Fund members and staff. Their names are Mary Alice Crim, Brandon Forester, Saurav Sarkar, Zak Rogoff and Dana Floberg. Floberg is a member of the FCC's Consumer Advisory Committee and was subsequently informed that she can enter the building to attend committee meetings and other meetings with FCC staff, but that she is on the "keep out" list for FCC open meetings.

Commissioner Michael O’Rielly a question in a public area outside of the open meeting room.²

The FCC should immediately address this troubling trend of Trump-era crackdowns on First Amendment freedoms. On behalf of Free Press and Free Press Action Fund and their members, we respectfully request the following:

- A written apology to Mr. DeGeorge and Mr. Combs;
- A written statement explaining the legal and factual bases for the “lifetime ban” imposed on five Free Press and Free Press Action fund staff and members;
- A policy document explaining how the FCC manages and maintains its “keep out” list;
- A rescission of the unreasonable “lifetime ban” of the five April 2017 protesters; and
- Clear and transparent articulation of an FCC policy to protect the First Amendment rights of the public and reporters to peacefully participate in future FCC open meetings.

Please respond by Monday, June 12, 2017, so that the public and press have ample time to review and understand the rules of engagement prior to the Commission’s open meeting on June 22, 2017. Should your response be inadequate, we will be forced to pursue other legal options.

Sincerely,

/s/

Jessica J. González
Deputy Director & Senior Counsel
Free Press & Free Press Action Fund

Matthew F. Wood
Policy Director
Free Press & Free Press Action Fund

cc: Chairman Ajit Pai, Commissioner Mignon Clyburn, Commissioner Michael O’Rielly, Managing Director Mark Stephens

² See, e.g., Derek Hawkins, “FCC security guards manhandle reporter, eject him from meeting for asking questions,” *Wash. Post* (May 19, 2017).