

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

JASON PRECHTEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION,	)	
	)	
Defendant.	)	

**COMPLAINT**

1. Plaintiff JASON PRECHTEL, brings this suit to overturn Defendant FCC’s refusal to conduct a timely search and produce records related to online comments submitted to the FCC regarding the agency’s proposal to change the regulatory classification of broadband internet, and the potential resulting destruction of the internet’s current “Net Neutrality”-based guiding principle.

**PARTIES**

- 2. PRECHTEL is a freelance journalist and the FOIA requester in this case.
- 3. Defendant FCC is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

- 4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.
- 5. Venue is proper under 5 U.S.C. §552(a)(4)(B) because the defendant is located in this district.

## BACKGROUND

6. On April 27, 2017 the Federal Communications Commission (FCC) announced a proposal (“Restoring Internet Freedom,” Proceeding 17-108) to reclassify broadband Internet Service Providers (ISP) from “common carriers” under Title II of the Communications Act of 1934 to classification under Title I. Many people believe this change would result in the end of “Net Neutrality” – the regulatory principle currently in place that every ISP should provide equal access to all web data for all users, including websites, applications, audio/video streaming, and file downloading.

7. FCC invited the public to comment on this proposal to help shape its final decision, and provided three online options: (1) submitting a single comment on their website, (2) submitting bulk comments by uploading an FCC-provided .CSV file (spreadsheet) template with an e-mail address, or (3) sending bulk comments through the agency’s Public API (Application Programming Interface) by using a uniquely-identifying access code called an “API key” that the submitter needed to register for at Data.gov. Since May, media outlets have reported allegations that possibly millions of fake and fraudulent comments have been filed. Meanwhile, there have been conflicting reports (and calls for federal investigations by members of Congress) over whether a claimed “cyberattack” on the FCC commenting system on May 7th-8th involving automated “bots” using the API to repeatedly post fake comments and clog up space in the system to prevent human comment filings really happened. Thus, the first step in verifying either of these stories - and determining the overall integrity of the FCC Electronic Comment Filing System (ECFS) itself - is to find out who used the FCC's bulk commenting tools and when.

### **JUNE 4 FOIA REQUEST**

8. On June 4, 2017, PRECHTEL requested from FCC (1) all public API keys, including associated registration names and e-mail addresses, used to submit online comments relating to Proceeding 17-108, "Restoring Internet Freedom," and copies of all data files submitted through these API keys for the same, (2) logs of all dates and times that those API keys were used to submit comments, (3) the email addresses associated with .CSV comment uploads, along with all .CSV files uploaded in response to Proceeding, (4) logs of all dates and times the email addresses submitted comments, and (5) all email inquiries to ECFSHelp@fcc.gov regarding .CSV comment submissions to the Proceeding. A true and correct copy of the request is attached as Group Exhibit A.

9. On June 4, 2017, FCC confirmed receipt of the request. Group Exhibit A.

10. On June 14, 2017, FCC Associate Chief Information Officer Kevin P. Baker emailed PRECHTEL informing him that the agency extended its response deadline to July 18, 2017. Group Exhibit A.

11. On July 19, 2017, having received no response, PRECHTEL followed up with Baker and FCC FOIA Public Liaison Stephanie Kost inquiring as to when he could expect to receive a response to his request. Group Exhibit A.

12. As of the date of filing, FCC has not responded to PRECHTEL or produced any responsive records.

### **COUNT I – VIOLATION OF FOIA**

13. The above paragraphs are incorporated herein.

14. Defendant FCC is an agency subject to FOIA.

15. The requested records are not exempt under FOIA.

16. Defendant FCC has refused to conduct a reasonably timely search for the records.

**WHEREFORE**, PRECHTEL asks the Court to:

- i. Order FCC to produce the requested records;
- ii. Award PRECHTEL attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

RESPECTFULLY SUBMITTED,

*/s/ Matthew V. Topic*

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Jason Prechtel <jrprechtel@gmail.com>

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## FOIA Request FCC-2017-000705 Submitted

1 message

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**foia@regulations.gov** <foia@regulations.gov>  
To: "jrprechtel@gmail.com" <jrprechtel@gmail.com>

Sun, Jun 4, 2017 at 6:43 PM

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: FCC-2017-000705
- Requester Name: Jason Prechtel
- Date Submitted: 06/04/2017
- Request Status: Submitted
- Description: Dear Ms. Kost: This is a non-commercial request under the Freedom of Information Act. I request that copies of digital files and/or documents containing the following information be provided to me: 1. All public API keys, including associated registration names and e-mail addresses, that were used to submit online comments via ECFS to Proceeding 17-108, "Restoring Internet Freedom" between Apr 26, 2017 and today, and copies of all data files submitted through these API keys for the same. 2. Logs of all times and dates that said public API keys were used to submit online comments via ECFS to Proceeding 17-108, "Restoring Internet Freedom" between Apr 26, 2017 and today. 3. E-mail addresses associated with all .CSV comment uploads, along with all .CSV files uploaded in response to Proceeding 17-108, "Restoring Internet Freedom" between Apr 26, 2017 and today (including any accepted .CSV submissions that did NOT use the FCC's "Restoring Internet Freedom ECFS Bulk Upload Template" .CSV file template). 4. Logs of all times and dates that said e-mail addresses submitted online comments via the FCC's online .CSV submission box to Proceeding 17-108, "Restoring Internet Freedom" between Apr 26, 2017 and today. 5. All e-mail inquiries to [ECFSHelp@fcc.gov](mailto:ECFSHelp@fcc.gov) regarding .CSV comment submissions in response to Proceeding 17-108, "Restoring Internet Freedom" between Apr 26, 2017 and today. As the records are primarily digital files submitted online through the FCC's own specifically-outlined instructions (<https://www.fcc.gov/restoring-internet-freedom-comments-wc-docket-no-17-108>), I would like the reproduction of these either via e-mail or compact disc. I do not expect to incur significant fees beyond \$25, but please advise if you anticipate otherwise before proceeding with my request.



Jason Prechtel <jrprechtel@gmail.com>

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## Extension of FOIA Request

3 messages

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**Kevin Baker** <Kevin.Baker@fcc.gov>  
To: "jrprechtel@gmail.com" <jrprechtel@gmail.com>

Wed, Jun 14, 2017 at 9:09 AM

Dear Mr. Prechtel,

This is in response to your Freedom of Information Act (FOIA) request filed with the Federal Communications Commission requesting documents related to any information relevant to APIs, emails, logs, and online comments via ECFS to Proceeding 17-108, "Restoring Internet Freedom". The request was assigned FCC FOIA Control No. FCC-2017-000705, with a response due July 3, 2017. Pursuant to 47 C.F.R. § 0.461(g)(1)(ii), we are extending the date for responding to your request to July 18, 2017.

Best Regards,

Kevin

Kevin P. Baker

Associate CIO, Planning and Performance

Federal Communications Commission

445 12th St, SW

Washington, DC 20554

Office: [\(202\) 418-2023](tel:2024182023)

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**Jason Prechtel** <jrprechtel@gmail.com>  
To: Kevin Baker <Kevin.Baker@fcc.gov>

Wed, Jun 14, 2017 at 1:58 PM

Dear Mr. Baker:

Thank you for the update. Please let me know if you need any further clarification or assistance in processing my request.

Best,  
Jason

[Quoted text hidden]

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**Jason Prechtel** <jrprechtel@gmail.com>  
To: Kevin Baker <Kevin.Baker@fcc.gov>

Wed, Jul 19, 2017 at 1:35 PM

Cc: Stephanie.Kost@fcc.gov

Dear Mr. Baker/Ms. Kost:

Further to Mr. Baker's email of June 14th below, we have passed the July 18th extended deadline for your agency to respond to FCC-2017-000705, without me receiving any further contact from a representative of the FCC.

Please advise when I should expect a response to my request.

Thanks,  
Jason

Sent from my iPhone

On Jun 14, 2017, at 9:09 AM, Kevin Baker <[Kevin.Baker@fcc.gov](mailto:Kevin.Baker@fcc.gov)> wrote: