



responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant Federal Communications Commission (“FCC”) is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 445 12th Street, SW, Washington, DC 20554.

### **STATEMENT OF FACTS**

5. On March 30, 2017, Plaintiff submitted a FOIA request to the FCC seeking the following:

All records or communications discussing or analyzing the desirability of a “two-sided market” for broadband internet services from an economics or public policy standpoint.

The time frame of this request was identified as March 28, 2015 through March 30, 2017.

6. On April 4, 2017, Plaintiff submitted a second FOIA request to the FCC seeking the following:

1. All emails between any FCC Commissioner, manager, or employee and Tom Power.
2. All emails between any FCC Commissioner, manager, or employee and R. David Edelman.

The time frame of this request was identified as April 15, 2014 through January 20, 2017.

7. By April 4, 2017, Plaintiff received both acknowledgements from the FCC assigning the requests FOIA Control Numbers FCC-2017-000500 and FCC-2017-000510, respectively.

8. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from

production; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

10. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

11. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's requests within no later than (30) business days of receipt. Accordingly, Defendants' determinations were due no later than May 16, 2017 at the latest. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

12. Because Defendant failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate

that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 17, 2017

Respectfully submitted,

*s/ Chris Fedeli*

Chris Fedeli

D.C. Bar No. 472919

**JUDICIAL WATCH, INC.**

425 Third Street SW, Suite 800

Washington, DC 20024

cfedeli@judicialwatch.org

(202) 646-5172

*Counsel for Plaintiff*