

# ODDLY-TIMED STORY: WHITE HOUSE COUNSEL MCGAHN'S CALL TO FCC'S AJIT PAI

*[NB: Check the byline – it's Rayne and some of this post is speculative.]*

Maybe it's something; maybe it's nothing. But with White House Counsel Don McGahn under so much scrutiny this week, the timing of the story about McGahn's call to the Federal Communications Commission seems odd.

You may recall I wrote recently (item 2) about the proposed merger of Sinclair Broadcast Group and Tribune Media, a deal which would have created a behemoth reaching at least 72% of U.S. households via local broadcast TV stations. FCC chair Ajit Pai revealed in testimony before the Senate Commerce Committee on Thursday this past week that McGahn had called him about the Sinclair Broadcast Group-Tribune Media merger.

Let's look at the timeline of events related to this deal:

**22-JAN-2017** – Ajit Pai named FCC chair on Trump's second full day in office.

**7-MAR-2017** – Trump nominates Ajit Pai to a second five-year term with the FCC as its chair.

Trump and Pai met at the White House on Monday for a meeting that was **closed to the press**, although an FCC official said that **no pending business** before the agency was discussed.

**17-MAR-2017** – Rumors surfaced about a Sinclair-Tribune merger.

**8-MAY-2017** – Sinclair announced it would buy Tribune; assets would include WGN (Chicago) and WMIL (Milwaukee) radio stations. Tribune

newspapers were not included in the deal.

**2-OCT-2017** – Senate confirms Pai as FCC chair.

**24-OCT-2017** – FCC killed a rule requiring broadcasters to have physical offices in their primary local coverage area. The move was seen as beneficial to Sinclair's merger as they would not have to change office locations.

**16-JUL-2018** – Pai expressed concerns about the merger deal, drafting a Hearing Designated Order (HDO) to place the merger before an administrative judge.

**17-JUL-2018** – McGahn called Pai for an update on the Sinclair-Tribune merger.

**18-JUL-2018** – FCC signs and issues the HDO.

**18-JUL-2018** – House Subcommittee on Communications and Technology announced an FCC oversight hearing for 25-JUL-2018.

**24-JUL-2018** – Trump tweets about his disappointment with FCC about the Sinclair-Tribune deal:

So sad and unfair that the FCC wouldn't approve the Sinclair Broadcast merger with Tribune. This would have been a great and much needed Conservative voice for and of the People. Liberal Fake News NBC and Comcast gets approved, much bigger, but not Sinclair. Disgraceful!

**25-JUL-2018** – During House Energy and Commerce Committee FCC oversight hearing, Chairman Frank Pallone asked Pai, "If the President or anyone in the White House discusses or has discussed the Sinclair-Tribune merger with you or anyone at the FCC, will you commit to disclosing that in the public docket? Yes or no?" Pai responded, "Yes, except, Congressman, we have ex parte rules, because this is now a restricted proceeding. We are limited in what information we can receive and what we can put on the record. But consistent with

our restricted ex parte rules, we would be happy to accommodate to the extent we can.”  
(video excerpt)

**02-AUG-2018** – Pai did not mention the call from McGahn during an FCC press conference.

**09-AUG-2018** – Tribune, not Sinclair, terminated the deal.

**16-AUG-2018** – Pai appears before the Senate Commerce, Science and Transportation Committee, disclosing McGahn’s call.

**18-AUG-2018** – NYT publishes the first of two pieces on McGahn.

**19-AUG-2018** – NYT publishes the second of two pieces on McGahn.

**20-AUG-2018** – House Energy and Commerce Committee Chairman Pallone Jr. said McGahn’s call to Pai should have been disclosed the previous week during a hearing before the Senate Commerce, Science and Transportation Committee hearing the previous week. Pallone wants answers about that call.

A couple things stand out immediately. First, Pai parsed responses to the House Energy and Commerce Committee and the Senate Commerce Committee. He was already on thin ice because of his claim a DDoS swamped public comments related to net neutrality but the FCC’s inspector general found Pai to be less than honest about the DDoS.

Second, the story about McGahn calling Pai was published on Thursday afternoon, approaching an advanced news dump zone during August. Why did NYT run not one but two stories about McGahn over the weekend? Why didn’t they wait until Monday? It’s as if somebody realized they *needed* to get a story out in spite of late summer weekend doldrums.

In this past weekend’s hullabaloo about McGahn’s “cooperation” with Special Counsel’s Office, there was a concerted effort to portray McGahn as serving and protecting the presidency, not Trump. As White House Counsel this is McGahn’s job but the obvious effort to distance McGahn from Trump should be noted.

Which makes me wonder: why did McGahn as White House Counsel, responsible for protecting the presidency, need an update from the chair of the independent FCC on a media merger? Why wouldn't Commerce Department address this if Trump was curious? Or why wouldn't Trump act like an ass and bumble a demand for information directly over Twitter as he has before with companies like Boeing?

As Marcy has pointed out, McGahn has extensive background in campaign finance; he was the Trump campaign's counsel during the 2016 election season. Coincidentally he was counsel when David Smith, CEO of Sinclair Broadcasting Group, told Trump, "We are here to deliver your message."

Sounds like an offer of an unreported in-kind campaign donation to me since there are no reports that Smith or anyone at Sinclair made a similar offer to any other GOP primary candidate or to Hillary Clinton. Sinclair vigorously denied they hadn't offered equal time when Sinclair's offer to Trump was reported:

. . .there was a flap when Trump advisor Jared Kushner told a private business luncheon in December that Sinclair executives worked with the campaign to spread pro-Trump messages in Sinclair newscasts, which reach 81 markets in key heartland regions that supported Trump. Sinclair vehemently denied the claim, asserting that it offered equal amounts of air time for in-depth interviews to Trump and his Democratic rival, Hillary Clinton, and that Clinton declined the invitation.

Did McGahn know about and approve this offer?

Pai's squirrely behavior about Sinclair-Tribune as well as McGahn's sudden distancing from Trump cast a different light on David Smith's so-helpful offer and Sinclair's mandatory group-wide airing of former White House communications aide Boris Epshteyn's program – the same

Epshteyn who has a history of pro-Russian sentiment. Add these couple line items to the timeline:

**25-MAR-2017** – Epshteyn left his role as Special Assistant to The President and Assistant Communications Director for Surrogate Operations, having previously served in Trump campaign communications and as director of communications for Trump inauguration committee.

**17-APR-2017** – Sinclair announced Epshteyn joined them as a political analyst.

Conveniently after the rumors emerged about the Sinclair-Tribune merger but before it was formally announced – what a coincidence.

It doesn't appear Epshteyn was replaced in the White House. Was Epshteyn placed with Sinclair at Trump's request – not because of Epshteyn's rumored confrontational approach to Fox News – after having been parked with the White House for two months post-inauguration for the purposes of resume padding?

Is Epshteyn really an independent political analyst or is he still shilling for Trump as an under-cover communications aide on Sinclair's dime – gaslighting America for Trump's benefit – given David Smith's eagerness to deliver Trump's message? Is Epshteyn really doing advance work for Trump 2020 campaign?

Is this the reason why Sinclair issued a diktat to all its 173 stations that they must read on air a statement about other media outlets' "fake news," in order to elevate their content, including Epshteyn's by contrast, engaging in what NPR's David Folkenflik called "negative campaigning"?

Is this the reason why Ajit Pai didn't disclose the call from McGahn and attempted to obstruct access to information about the call behind an HDO that McGahn called not on behalf of the president but *on behalf of the Trump 2020 campaign*?

Did McGahn help push the two back-to-back NYT articles this weekend to wallpaper over what may have been a Hatch Act violation – using his role as White House Counsel to reach Ajit Pai and press for approval of the Sinclair-Tribune merger to benefit Trump 2020?

Reaching at least 72% of American households from now until Election Day 2020, to push anti-Democratic Party content while collecting data on viewers and shaping voter turnout, might have been adequate motivation to do so if one were working for the Trump campaign – not to mention McGahn's legal exposure.

It'd be nice if one of the Congressional committees conducting oversight of the FCC asked Pai more pointed questions about that phone call.

It'd be nice, too, if somebody asked any of the 2016 GOP primary candidates or Hillary Clinton's campaign team if they received the same offer from Sinclair's Smith extended to Trump or his proxies (hello, Jared).

And there's more than one David helming a media empire who needs to answer some questions about their friend Trump.