

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Section 230 of the Communications Act of) RM-11862
1934)

REPLY COMMENTS OF CONSUMER TECHNOLOGY ASSOCIATION

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Consumer Technology Association® (“CTA”),¹ through its counsel, submits reply comments on the Federal Communications Commission’s (“FCC” or “Commission”) *Public Notice* on the Petition for Rulemaking (“Petition”) filed by the National Telecommunications and Information Administration (“NTIA”) seeking regulation of online platforms that host third party content.² At a time when the American government is drawing a sharp contrast between U.S. technology leadership and Chinese online censorship, moving forward with this Petition would send the wrong message: that America, too, is willing to regulate speech when it offends the politically powerful.

The record in this proceeding confirms that Section 230 of the Communications Act of 1934, as amended,³ has been the engine of American technology leadership. There is overwhelming opposition to the Petition,⁴ which seeks to fundamentally rewrite Section 230 and

¹ As North America’s largest technology trade association, CTA® is the tech sector. Our members are the world’s largest innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES®– the most influential tech event in the world. Find us at CTA.tech. Follow us at @CTAtech.

² Petition for Rulemaking of the National Telecommunications and Information Administration, RM-11862 (filed July 27, 2020) (“Petition”); *Consumer & Governmental Affairs Bureau, Reference Information Center, Petition for Rulemakings Filed*, Public Notice, No. 3157 (Aug. 3, 2020).

³ 47 U.S.C. § 230.

⁴ See, e.g., Comments of Center for Democracy and Technology, RM-11862 (filed Aug. 31, 2020) (“Comments of CDT”); Comments of Computer & Communications Industry Association, RM-11862 (filed Sept. 2, 2020);

dismantle its key protections. Indeed, even many of those who support revising Section 230 do not support the specific requests in the Petition.⁵ The record comprehensively demonstrates that moving forward with the Petition would hurt U.S. competitiveness, violate the Constitution, and far exceed FCC authority.

For the purposes of this Reply, two points bear emphasizing. First, the “hands-off,” deregulatory approach on the internet that has been a bipartisan consensus for the past 25 years is precisely what distinguishes the United States from other countries, particularly those that do not hesitate to repress and retaliate against disfavored speech. And, second, gutting Section 230 – which represents one of the purest expressions of that “hands-off” approach – will hurt American innovation and embolden China and other countries looking to seize the technology lead from the United States, using a repressive model of centralized State control.

I. A “HANDS OFF” APPROACH TO THE INTERNET IS PRECISELY WHAT DISTINGUISHES THE UNITED STATES FROM OTHER COUNTRIES

This Administration – and this Commission – have correctly focused on the threat posed by Chinese state control of technologies and applications, its censorship, and its lack of free speech. As National Security Adviser Robert O’Brien noted, “The Chinese Communist Party seeks total control over the people’s lives. This means economic control, it means political control, it means

Comments of INCOMPAS, RM-11862 (filed Sept. 2, 2020); Comments of R Street Institute, RM-11862 (filed Sept. 2, 2020) (“Comments of R Street Institute”); Comments of NetChoice, RM-11862 (filed Sept. 2, 2020) (“Comments of NetChoice”); Comments of Vimeo, Inc. et al., RM-11862 (filed Sept. 2, 2020) (“Comments of Vimeo”); Comments of Consumer Reports, RM-11862 (filed Sept. 3, 2020); Comments of TechFreedom, RM-11862 (filed Sept. 3, 2020) (“Comments of TechFreedom”).

⁵ See, e.g., Comments of Carrie Goldberg, RM-11862 at 1 (filed Sept. 2, 2020); Comments of The Free State Foundation, RM-11862 at 2,6 (filed Sept. 2, 2020); Comments of DigitalFrontiers Advocacy, RM-11862 at i-ii (filed Sept. 2, 2020).

physical control, and, perhaps most importantly, it means thought control.”⁶ To establish that control, “[o]utside sources of information are banned – from foreign newspapers to Twitter, Facebook, and WhatsApp. All content generated within China is censored. It means jailing everyone from citizen bloggers, reporters, and lawyers to activists and religious believers for expressing any views contrary to the Party line.”⁷ That censorship has deadly consequences, for China and the world; for example, “between January 1 and April 4 of this year, nearly 500 individuals were charged with crimes just for speaking out about the Wuhan coronavirus, its effects upon the Party, and the Party’s cover-up of the disease.”⁸

Chairman Pai has said that China does not hesitate to flex its economic muscle to try to censor speech of those that live beyond its borders, and he has used online platforms to share a series of examples of China’s thought control and censorship.⁹ Others at the Commission have raised similar concerns. Commissioner Carr, for example, has focused on the Chinese Communist Party’s repression of individuals who brought the COVID-19 crisis to light, noting in a series of tweets that many of them of them have been “disappeared.”¹⁰ It is no coincidence that the very platforms that are restricted in other countries are encouraging and enabling the free discourse we enjoy in the United States.

⁶ Robert C. O’Brien, National Security Adviser, Remarks at the Arizona Commerce Authority: The Chinese Communist Party’s Ideology and Global Ambitions (June 24, 2020), <https://www.whitehouse.gov/briefings-statements/chinese-communist-partys-ideology-global-ambitions/>.

⁷ *Id.*

⁸ *Id.* (citing Bradford Betz, *China has arrested hundreds for speaking out about coronavirus, reports show*, Fox News (May 13, 2020), <https://www.foxnews.com/world/china-arrested-hundreds-speaking-out-coronavirus>).

⁹ @AjitPaiFCC, Twitter, <https://twitter.com/AjitPaiFCC/status/1229462971178455041> (last visited Sept. 14, 2020).

¹⁰ Chris White, *FCC’s Commissioner Brendan Carr Shames China’s Information Tsar*, Daily Caller (Apr. 10, 2020), <https://dailycaller.com/2020/04/10/china-censorship-coronavirus-fcc-brendan-carr/>.

CTA, too, has acknowledged these threats to democracy and their potential impact on U.S. tech competitiveness and innovation. As CTA President and CEO Gary Shapiro said, “We face a long-term economic battle with China. We can’t win it unless we adapt our strategy to the reality that a lot more than economics is at stake: Our children’s and grandchildren’s liberty, individuality and way of life are on the table.”¹¹ That battle is evident in the global race to 5G, but is not limited to that context. The role the Chinese Communist Party wants to play in the deployment of 5G reflects a deeper dichotomy about the state’s role in technology more generally. “Western democracies including the United States and Europe are battling China, a country with far different views about the role of tech. The stakes are high – we want the regulatory regime that prevails to be one that values privacy and personal freedoms. Not one that seeks to use tech to control its citizens.”¹² The consequences are existential: “[i]f China wins everything, then their way of life is the way of life that gets pushed on the world.”¹³

The United States has a uniquely powerful weapon in that battle: its commitment to free speech and its corresponding rejection of government intervention in the marketplace of ideas. This commitment is rooted in the First Amendment, which protects Americans from the kind of “digital authoritarianism” championed by China and similar regimes.¹⁴ The First Amendment

¹¹ Gary Shapiro, *Consumer Technology Assn. CEO Gary Shapiro: Why American innovation matters and how we stay on top*, Fox Business (Oct. 7, 2019), <https://www.foxbusiness.com/business-leaders/consumer-technology-assn-ceo-gary-shapiro-why-american-innovation-matters-and-how-we-stay-on-top>

¹² Gary Shapiro, *Why 5G Security Demands Public-Private Collaboration*, Morning Consult (July 27, 2020), <https://morningconsult.com/opinions/why-5g-security-demands-public-private-collaboration/>.

¹³ John Eggerton, *Shapiro: Winning 5G Race Is About Preserving Values*, MultiChannel News (Nov. 5, 2019), <https://www.nexttv.com/news/shapiro-winning-5g-race-is-about-preserving-values> quoting Gary Shapiro, President and CEO, CTA, Keynote Address at the DC5G conference: The Power of 5G (Nov. 5, 2019).

¹⁴ Alina Polyakova and Chris Miserole, *Exporting digital authoritarianism: The Russian and Chinese Models* (The Brookings Institution Policy Brief, Aug. 2019), <https://www.brookings.edu/research/exporting-digital-authoritarianism/>; see also Megan Brown and Andrea Little Limbago, *Techlash and National Security: The Need for U.S. Leadership on Privacy and Security* (Nat’l Sec. Inst. Law and Policy Paper, July 2020), <https://nationalsecurity.gmu.edu/techlash-and-national-security-the-need-for-u-s-leadership-on-privacy-and-security/>

teaches that the proper response to disfavored speech is more speech, not censorship or regulation. The government should not try to level playing fields or encourage or discourage private entities from speaking in certain ways; this invites abuse. As Commissioner Carr has said: “We always want more speech, not less. Censorship, the shutting down of ideas whether they’re false or not, those decisions aren’t made from some higher objective authority. Those decisions are made by politicians in power.”¹⁵

The United States should be championing online freedom as the antidote to digital authoritarianism, not succumbing to or attempting to emulate that authoritarianism. The Petition fails to respect this bedrock principle, because it asks the Commission to create a regime in which the government can pick winners and losers in the marketplace of ideas. As CTA and others explained in the opening round of comments, doing so would violate the First Amendment.¹⁶

While the Petition and the Executive Order that led to it pay lip service to the idea of promoting free speech, the vision of “free speech” offered by NTIA is an inversion of the real thing. The Petition on its face seeks government control of private entities to enforce an elusive “neutral” viewpoint that promotes all content equally, regardless of the preferences of the users accessing the content. In reality, this would lead to the government picking winners and losers, sifting through algorithms and search results to determine whether a particular search term produced “too many” liberal results or “not enough” conservative views. Of course, if an administration of a different political party takes over, it would likely use its new regulatory power in the opposite direction, promoting speech more in line with its partisan views.

¹⁵ Julio Rosas, *FCC Commissioner Brendan Carr's Fight Against CCP Coronavirus Propaganda Goes Beyond Twitter*, Townhall (Apr. 14, 2020), <https://townhall.com/tipsheet/juliorosas/2020/04/14/fcc-commissioner-brendan-carr-fight-against-ccp-propaganda-n2566840>.

¹⁶ See, e.g., Comments of Consumer Technology Association, RM-1182 at 25-27 (filed Sept. 2, 2020) (“Comments of CTA”); Comments of CDT at 4; Comments of TechFreedom at 24-47.

Few things could be more anathema to the First Amendment than a searching government review of the neutrality of private user content posted on a platform. As the Supreme Court said, “The State may not burden the speech of others in order to tilt public debate in a preferred direction [because] . . . ‘the general rule is that the speaker and the audience, not the government, assess the value of the information presented.’”¹⁷

This is not the first time the government has been tempted to level the playing field and ensure private entities publish some sense of a “fair” mix of speech. As others noted in the record, the U.S. government dabbled with “fairness” in broadcast speech in the 50s, 60s, and 70s; it was a profound failure that ended up only hurting the diversity of voices.¹⁸ The Reagan Administration rightly eliminated the fairness doctrine in the 1980s. The result was a proliferation of views across the political spectrum.

Even if it were good policy, a renewed “Fairness Doctrine” imposed on interactive computer services would violate the First Amendment.¹⁹ But the Fairness Doctrine was not good policy for broadcasting and is not good policy for the internet. Adopting such rules would not lead to more diverse speech online; to the contrary, it would allow only that speech deemed acceptable (i.e., “neutral”) by government arbiters. More, the rules requested by NTIA would obscure the difference between the U.S. and those countries that engage in state control of the internet, calling into question decades of light-touch policies that have enabled online free speech and innovation to thrive. Establishing a de facto “U.S. Bureau of Internet Fairness” would allow other countries, particularly China, to claim their far more severe censorship is nothing more than an equivalent attempt to promote “fairness.” While there are many reasons that the FCC must reject NTIA’s

¹⁷ *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 578-79 (2011) (quoting *Edenfield v. Fane*, 507 U.S. 761, 767 (1993)).

¹⁸ See, e.g., Comments of TechFreedom at 25.

¹⁹ *Id.* at 31.

invitation to engage in censorship and tilt the internet playing field, the agency should resist the request to undermine America’s commitment to free expression online, which would forfeit moral high ground over authoritarian governments.

II. GUTTING SECTION 230 WILL HURT U.S. INNOVATION AND ALLOW OTHER NATIONS TO SURPASS THE U.S. IN GLOBAL TECH LEADERSHIP

As many commenters say, U.S. technology leadership is neither an accident nor an inevitability – it is the result of decades of smart, careful policy choices, including Section 230.²⁰ That leadership can still be lost. Gutting Section 230 will make it harder for U.S. innovation to produce the next big thing in tech, reduce American competitiveness, and jeopardize the success story of the U.S. tech economy. A study cited by NetChoice shows that “weakening Section 230 could cost the U.S. economy approximately 4.25 million jobs and \$440 billion in GDP over a period of 10 years.”²¹

Furthermore, the suggestion by some commenters that Section 230 was intended only to benefit the tech economy in its early years, before its constituent companies achieved success and scale, is exactly wrong. In fact, the drafters of Section 230 were specifically concerned that, absent a new statutory protection, the large industry leaders like AOL, CompuServe, Microsoft, and Prodigy could not feasibly review all content on their widely used platforms.²²

The country that stands to benefit the most from undermining Section 230 is China. While the U.S. leads the world in “unicorn” companies (i.e., those companies valued at more than \$1

²⁰ See, e.g., Comments of R Street Institute at 10; Comments of NetChoice at 26-27; Comments of Vimeo at 23-24; Comments of CTA at 12-15.

²¹ Comments of NetChoice at 27 (citing Christian M. Dippon, Ph.D., *Economic Value of Internet Intermediaries and the Role of Liability Protections*, (NERA Econ. Consulting, June 5, 2017), <https://internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>).

²² 141 Cong. Rec. H8460, H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox); *id.* at H8471 (statement of Rep. Goodlatte).

billion), China ranks number two,²³ with companies including ByteDance, the owner of TikTok and at one point the highest valued unicorn on the planet.²⁴ Policy moves from this Administration have greatly promoted U.S. leadership in 5G, but it would be a mistake to assume the race is won.²⁵ Policy choices matter. Smart, deregulatory actions can speed deployment, investment, and innovation. But making the wrong choices, and saddling the tech industry with burdensome, old-fashioned regulation based on the Fairness Doctrine, will have the opposite effect.

The changes to Section 230 requested by the NTIA will burden American innovators and open the door to costly nuisance lawsuits. Like an anchor, these policies will drag the American tech industry down while other countries are moving full steam ahead. As CTA has said, “[it] is shocking that our own government would seek to undermine a law that has led to unprecedented American innovation, with massive benefits for our consumers and economy. If we were to weaken Section 230 the biggest winner would be China, which is spending billions in an all-out campaign to catch and surpass U.S. tech leaders.”²⁶ Because undermining Section 230 would be a spectacular “own goal” in U.S. tech policy, the Commission should dismiss the Petition and take no further action on its misguided proposals.

²³ Comments of CTA at 4, n.6 (citing Gary Shapiro, *The U.S. risks being outpaced on innovation within the next 10 years*, VentureBeat (Feb. 7, 2019), <https://venturebeat.com/2019/02/07/the-u-s-risks-being-outpaced-on-innovation-within-the-next-10-years/>); Sintia Radu, *Which Countries Have the Most Unicorn Companies?*, U.S. News & World Report (Oct. 22, 2019), <https://www.usnews.com/news/best-countries/slideshows/these-countries-have-the-most-unicorn-companies>.

²⁴ Rita Liao, *ByteDance Valuation Under Huge Pressure as TikTok Sale Nears*, TechCrunch (August 10, 2020), <https://techcrunch.com/2020/08/10/bytedance-valuation-under-huge-pressure-as-tiktok-sale-nears/>

²⁵ CTIA, *The Global Race to 5G Update* (Apr. 2, 2019), <https://www.ctia.org/news/the-global-race-to-5g-spring-2019-update>.

²⁶ Press Release, CTA, *CTA Urges FCC to Protect Online Innovation and Free Speech* (Sept. 2, 2020), <https://cta.tech/Resources/Newsroom/Media-Releases/2020/September/CTA-Urges-FCC-to-Protect-Online-Innovation-and-Fre>.

III. CONCLUSION

Consumer Technology Association urges the Commission to deny NTIA's Petition for Rulemaking seeking the adoption of regulations related to Section 230 of the Communications Act and the operations of interactive computer service providers.

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2020, I caused a true copy of the Reply Comments of Consumer Technology Association, filed in Federal Communications Commission Docket No. RM-11862, to be served via U.S. mail upon the following:

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