September 2, 2020

ATTN: Mr. Ajit Pai, Chairman
Federal Communications Commission
445 12th Street SW, Washington, DC 20554
(Submitted via the FCC ECFS)

RE: NITA Section 230 Petition; Docket RM-11862

My comment submission focuses primarily on Twitter.

There is no shortage of debate on "fake news" and problematic information distributed across big-tech platforms like Twitter, Facebook, and Google (to name a few). These massive communication platforms offer an environment of convenience and opportunity for distributing and consuming information that impacts our lives, decision-making, and overall well-being. Information-sharing occurs through a synthesis of content distributed by influential parties such as journalists, reporters, elected officials, and political parties. In theory, this is a positive development for society, free speech, and public discourse.

Unfortunately, these big-tech platforms are no longer content with merely providing communication platforms. Too often, healthy debate and civil discourse are shut down by the big-tech overlords who might disagree with the content of its users. The content need not be violent or in violation of federal law; still, these platforms still hide behind the luxury of the ambiguous liability protections afforded to them long before the advent of the global communication ecosystem we live in today.

The extent to which selective outrage and "fact-checks" by biased journos drives this censorship content removal is absurd. I think Twitter made their own bed the moment they decided to moderate President Trump's tweets about election security, and it's only gotten worse and more pervasive. At least twice a week I find myself "shadow banned" to some extent, often in the form of a "search suggestion ban" or my replies are hidden – the replies are not riddled with foul language or threats or in any way are in violation of the purported terms and conditions of Twitter. Instead, they usually include links to sources that disprove wild allegations from DC Democrats and left-wing outlets.

I'm not going to review and complain about every instance of censorship I've experienced, but please know that my experience is not unique – this happens to conservatives regularly. The point is that a reply that links to a Congressional document that disproves a leftist narrative is hidden behind "show more replies, including those that may contain sensitive content," while the CCP and Iran freely spew propaganda from their verified accounts and no one bats an eye (looking at you, Jack Dorsey.)

The ugly truth is that right now our society is stuck in a never-ending blame-game fueled by "gotcha" politics. Like many people, I think that it's painfully obvious that these big-tech platforms are effectively acting as publishers. However, there is a great deal of opposition (denial) to the reality that Twitter is selectively targeting conservative speech on its platform. Section 230 should be revisited in its entirety, but for now, I think the focus should be on specific action items that hopefully can be implemented expeditiously.

The following focus areas are outlined in a recent DOJ report on Section 230. I would like to see the FCC prioritize these items in its broader effort to clarify the scope and applicability of Section 230 as requested

in the NITA petition. Note: highlighted text is my effort to emphasize the key aspects of these proposed reforms.

Replace Vague Language to Address Moderation Beyond Section 230 (pg. 21)

> Currently, Section 230(c)(2) immunizes platforms from liability related to restricting access to, or the availability of, material that the platforms consider "obscene, lewd, lascivious, filthy, excessively violent, harassing, or *otherwise objectionable*." 47 U.S.C. § 230(c)(2)(A) (emphasis added). Courts have disagreed over how much discretion platforms have to decide what is "otherwise objectionable." Some construe the phrase to confer virtually unlimited discretion on platforms to remove any content they object to, for whatever reason. *See, e.g.*, *PC Drivers Headquarters, LP v. Malwarebytes Inc.*, 371 F. Supp. 3d 652, 662 (N.D. Cal. 2019); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 631 (D. Del. 2007). Others counter that such unconstrained discretion would be inconsistent with the policy goals Congress set forth in Section 230. *See, e.g.*, *Enigma Software Grp. USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040, 1049-51 (9th Cir. 2019). Those goals include "preserv[ing] the vibrant and competitive free market that presently exists for the Internet," 47 U.S.C. § 230(b)(2), and maintaining the Internet as "a forum for a true diversity of political discourse," *id.* § 230(a)(3).
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> Unconstrained discretion is particularly concerning in the hands of the biggest platforms, which today effectively own and operate digital public squares. This is even more salient today where social distancing requirements have driven more speech and interaction online. The vagueness of the term "otherwise objectionable" risks giving every platform a free pass for removing any and all speech that it dislikes, without any potential for recourse by the user. Therefore, to bring the immunity conferred by (c)(2) more in line with the interests Congress identified in the original CDA, the Department proposes deleting the vague phrase "otherwise objectionable," while adding a new immunity for moderation of material the platform believes, in good faith, violates federal law or promotes violence or terrorism. By both narrowing and expanding 230(c)(2) in these ways, the proposals strike a more appropriate balance between promoting an open, vibrant Internet and preserving platforms' discretion to restrict obscene and unlawful content.
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> To be clear, the Department's proposal would not leave platforms unable to moderate content on their services. Nor does removal of blanket immunity itself impose liability for content moderation decisions. Online platforms are often protected by their terms of service when removing content that violates the platform's rules, whether or not that content falls into the categories of (c)(2). Therefore, removing Section 230 immunity from certain content moderation decisions means that platforms must rely on—and abide by—their terms of service. In our view, incentivizing platforms to be more transparent and clear in their terms of services, including with respect to content removal decisions, will ultimately benefit users.

Provide Definition of Good Faith (pg. 22)

> Under subsection (c)(2), platforms must act in "good faith" to receive immunity related to content-moderation decisions. Several experts have raised the concern, however, that platforms are ignoring this "good faith" requirement and censoring material in deceptive or pretextual ways. To address this problem, the Department suggests providing a definition of what constitutes "good faith." To restrict access to particular content in "good faith," a platform should be required to meet four criteria. First, it must have publicly available terms of service or use that state plainly and with particularity the criteria the platform will employ in its content-moderation practices. Second, any restrictions of access must be consistent with those terms of service or use

and with any official representations regarding the platform's content-moderation policies. Third, any restrictions of access must be based on an objectively reasonable belief that the content falls within one of the categories set forth in subsection (c)(2)(A). And fourth, the platform must supply the provider of the content with a timely notice explaining with particularity the factual basis for the restriction of access, unless the provider reasonably believes that the content relates to criminal activity or notice would risk imminent harm to others. These requirements aim to encourage greater transparency in platforms' content-moderation decisions.

Sunsetting May be Appropriate (pg. 24)

Given how quickly technology changes, some have expressed the view that it may be appropriate to sunset Section 230 immunity so that future legislators must revisit whether technological changes warrant changes to the scope of Section 230 or whether the immunity is no longer necessary.

Transparency Reporting Requirements (pg. 25)

To foster greater transparency in how platforms enforce their content moderation policies, some experts have proposed requiring large platforms to regularly disclose data on the enforcement of their content moderation policies in order to receive or keep Section 230 immunity. Such disclosure would serve multiple important aims.

First, it would enable members of the public to identify best practices related to restricting harmful content. For example, the disclosures could provide data on how aggressively platforms are enforcing their policies, how they are identifying improper material, and how long it takes them to remove such material. Scholars, policymakers, and other platforms could use such information to improve content moderation practices and better protect against the range of unlawful material that appears online.

Second, disclosure of enforcement data would address concerns that large platforms discriminate against particular viewpoints in enforcing their content moderation policies. Currently, platforms have no obligation to disclose data that would enable third-parties to evaluate whether such bias claims are true. As many experts agreed, access to robust enforcement data would enable policymakers and the public to evaluate whether platforms are enforcing content moderation policies even-handedly across different political viewpoints and communities.

Enforcement data may help to alleviate suspicion of platforms if, as some experts claim, complaints of bias simply reflect that, given the scale of large platforms, there are many anecdotal examples that individuals can point to as evidence of bias but that in reality are not representative of overall content moderation decisions. Alternatively, enforcement data may help inform consumer choices or policy solutions if they reveal that claims of bias are well-founded. Either way, public disclosure of robust enforcement data appears useful to ensuring that the internet remains, in the words of the CDA, "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. § 230(a)(3).

The reason I support these proposed reforms is that I think they will provide desperately needed clarity regarding the rationale behind the seemingly baseless censorship and removal of conservative content. Unless you are reported for a specific tweet that Twitter demands you take down to regain access to your account, there is virtually no explanation from Twitter as to why your account is censored.

Moreover, as described in my introduction, the Internet is a rapidly evolving beast that is not designed to play by rules set in stone decades ago. Legislators should learn from the situation we are in now and take steps to review at least annually the existing Section 230 language.

Finally, and most urgent, in my view, is requiring big-tech platforms like Twitter to disclose data on the enforcement of their content moderation. This is a logical proposal that would provide immediate clarification on where these platforms stand in terms of abiding by and fairly applying their stated terms of service.

Twitter claims they are not engaged in politically motivated censorship against conservative accounts.

Facebook claims they apply their takedown policy equally across Republican and Democrat accounts.

Google denies the existence of algorithms that skew search results to show a preferred (leftist) narrative.

I say, prove it.

Respectfully,

Meara M.

Cc Mr. Brendan Carr, Commissioner, FCC