THE GEORGE WASHINGTON UNIVERSITY

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Public Interest Comment[1] on

The National Telecommunications and Information Administration's Proposed Rule

Petition to the Federal Communications Commission for Rulemaking on Section 230 of the Communications Act

Docket ID No. RM-11862

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REGULATORY STUDIES CENTER

The George Washington University Regulatory Studies Center improves regulatory policy through research, education, and outreach. As part of its mission, the Center conducts careful and independent analyses to assess rulemaking proposals from the perspective of the public interest. This comment on the National Telecommunications and Information Administration's (NTIA's) petition for rulemaking[3] does not represent the views of any particular affected party or special interest, but is designed to help the Federal Communications Commission (FCC) evaluate the effect of the proposal on overall consumer welfare.

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1 This comment reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at http://regulatorystudies.columbian.gwu.edu/policy-research-integrity.

2 The author is a research professor at the George Washington University Regulatory Studies Center.

3 "Petition for Rulemaking of the National Telecommunications and Information Administration," In the Matter of Section 230 of the Communications Act of 1934 (July 27, 2020).

The NTIA proposal includes several provisions that would narrow the scope of Internet intermediaries' liability when they remove or restrict access to content provided by others. It would also require the intermediaries to disclose their content moderation policies in a form that is understandable by consumers and small businesses. Those two sentences of course do not capture all of the legal subtleties involved, and this comment takes no position on the legal issues raised by the petition. However, I believe that in deciding whether to propose a regulation in response to the NTIA petition, the FCC should be fully aware of the analysis required to identify the likely economic effects of the NTIA proposal and other alternatives the FCC may consider.

The duties of the FCC's Office of Economics and Analytics include preparing "a rigorous, economically-grounded cost-benefit analysis for every rulemaking deemed to have an annual effect on the economy of $100 million or more."[4] Relevant economic effects could be costs, benefits, transfers, or other positive or negative economic effects. A rulemaking based on the NTIA petition would likely require a full benefit-cost analysis.

The rules requested by the NTIA could create significant economic impacts by altering Internet intermediaries' content moderation practices and/or altering investment in new and improved services or innovative new companies. Given the large value consumers receive from Internet intermediaries and the size of investments in this industry, even a small regulation-induced change in the companies' economic incentives would likely generate an annual economic impact exceeding $100 million.

Consumers clearly derive enormous benefits from Internet intermediaries. For example, a 2019 National Bureau of Economic Research (NBER) study estimated that use of Facebook created $213 billion in consumer surplus between 2003 and 2017.[5] Another NBER study estimated that one month of Facebook use creates a total of $31 billion of consumer surplus in the US.[6] Laboratory experiments found that students place significant value on other Internet intermediaries as well.[7] Indeed, since there are 172 million[8] US users of Facebook alone, a regulatory change that altered the average value of the service by just 59 cents per user would have more than $100

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4 Federal Communications Commission, "In the Matter of Establishment of the Office of Economics and Analytics," MD Docket No. 18-3 (adopted January 30, 2018), Appendix.

5 Eric Byrnjolfsson et. al., "GDP-B: Accounting for the Value of New and Free Goods in the Digital Economy," National Bureau of Economic Research Working Paper 25695 (March 2019), 29.

6 Hunt Allcott et.al, "The Welfare Effects of Social Media," National Bureau of Economic Research Working Paper No. 25514 (November 2019), 32. The authors caution that this calculation, based on experimental subjects' willingness to accept compensation for deactivating their Facebook accounts, may over-state the value to users because the average compensation users required to forego Facebook after they spent a month without using it fell by 14 percent. Even assuming the lower figure represents users' "true" demand, the consumer surplus number is huge.

7 Brynjolfsson et. al., *supra* note 5, at 33-38.

8 Allcott et. al., *supra* note 6, at 5.

million in economic impact. Similarly, a National Economic Research Associates study estimated that adding five seconds of advertising per web search would increase web browsers' ad revenues by about $400 million annually;[9] thus, if a regulatory change led to a two-second increase in advertising per search, the effect would exceed the $100 million threshold.

The rule NTIA requests could have economic impacts beyond its direct effect on consumer surplus generated by incumbent firms offering their current suites of services. A 2019 study by the Copia Institute presents some comparisons which suggest that Section 230 liability protections (or similar policies) help companies attract more venture capital investment and improve their chances of survival.[10] The study compares the experience of companies in the US versus the European Union; US digital music companies versus US social media and cloud computing companies; and intermediaries in several other countries where liability protections identifiably changed. This study does not control for other factors that might affect the results, so its conclusions are only suggestive, but the pattern suggests that more extensive data analysis could be informative.[11]

A 2015 study by Oxera took a different approach, combining literature reviews with interviews of 20 experts to assess how liability protections for intermediaries affect intermediary start-ups. It found that stronger liability protections are associated with higher success rates and greater profitability for start-ups.[12]

Whether a regulation-induced change in venture capital funding for Internet intermediaries, or their success rate or profitability, should count as a benefit or a cost depends on whether the current level of startup activity is above or below the economically optimal level. That is a key question a full benefit-cost analysis should help answer. My point here is a much more limited one: the NTIA's proposal could very well affect investment flows by more than $100 million annually.

Thus, in one way or another, the NTIA proposal is likely to have economic effects that exceed the $100 million annual threshold and hence require a full benefit-cost analysis.

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9 Christian M. Dippon, "Economic Value of Internet Intermediaries and the Role of Liability Protections," National Economic Research Associates report produced for the Internet Association (June 5, 2017), 13.

10 Michael Masnick, "Don't Shoot the Message Board: How Intermediary Liability Harms Investment and Innovation," Copia Institute and NetChoice (June 2019).

11 The results are thus analogous to the comparisons of raw data on broadband investment discussed in the Restoring Internet Freedom order. See FCC, *In the Matter of Restoring Internet Freedom: Declaratory Ruling, Report and Order* (Adopted Dec 14, 2017; Released Jan. 4, 2018), para. 92.

12 "The Economic Impact of Safe Harbours on Internet Intermediary Startups," study prepared for Google (February 2015).