

*Before the*  
**Federal Trade Commission**  
Washington, D.C.

*In re* )  
 )  
Sharing Economy Workshop ) Project No. P15-1200  
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**COMMENTS OF THE  
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to the request for comments issued by the Federal Trade Commission (“FTC” or “Commission”) prior to the public workshop entitled, “Sharing Economy Workshop” (“the workshop”), the Computer & Communications Industry Association (“CCIA”) submits the following comments regarding the Commission’s workshop on issues related to economic activity on Internet peer-to-peer platforms – often called the “sharing economy.”

**I. Introduction.**

CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ more than 600,000 people and generate annual revenues in excess of \$465 billion. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries.<sup>1</sup>

CCIA commends the Commission for hosting the public workshop on this emerging area of the economy. Technological innovation has driven business model innovation, including facilitating the rise of the “sharing economy.” The rapid spread of Internet connectivity and the explosion of mobile devices has fueled the growth of this industry, which generated \$26 billion worldwide in 2013 and could reach “\$110 billion annually in the near future.”<sup>2</sup> The statistic is

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<sup>1</sup> A list of CCIA’s members is available online at <https://www.ccianet.org/members>.

<sup>2</sup> *The “Sharing Economy”: Issues Facing Platforms, Participants, and Regulators – A Federal Trade Commission Workshop*, FED. TRADE COMM’N (last visited May 26, 2015), [https://www.ftc.gov/system/files/documents/public\\_events/636241/sharing\\_economy\\_workshop\\_announcement.pdf](https://www.ftc.gov/system/files/documents/public_events/636241/sharing_economy_workshop_announcement.pdf) [hereinafter *The “Sharing Economy”*].

notable given that the vast majority the resources that enable this economy – spare human capital, excess short-term residential capacity, unused vehicle capacity, etc. – have always been present. The sharing economy represents significant gains in efficiency and productivity where certain shareable resources were previously too difficult to trade effectively and at scale.

The Commission has observed that some economic actors, like suppliers renting or utilizing their cars or apartments, have benefitted from “improving utilization of those assets,”<sup>3</sup> which has been made possible by platforms that drastically reduce the transaction costs of sharing those resources. Where prospective carpoolers and subletters once relied on inefficient processes like posting availability of services on lampposts and message boards, they are now enabled by modern technology to match supply and demand for such services relatively seamlessly.

The Commission has also recognized that the unique rating or commenting features on platforms can “promote confidence” in buyers and sellers who may otherwise have “little information about each other.”<sup>4</sup> Ratings and comments are vital to the sharing economy and one of the major reasons consumers have flocked to these new platforms as they enhance consumer access to reliable market information. Indeed, the asymmetry of information between producers and consumers has long been one of the driving motivations for consumer protection regulation. Now, instead of solely relying on previous imprimaturs like taxicab licenses or endorsements from quasi-governmental boards, consumers can receive information in real-time from other consumers who may have transacted with a business. Going forward regulators should consider the enhanced information available to consumers when calculating the costs and benefits of certification or licensing regimes, which often restrict or impede market entry.

This workshop provides a timely opportunity for the Commission to learn more about how these new technologies and services compete with existing businesses and how they are affected by various regulatory regimes. With that purpose in mind, these comments offer several recommendations for regulators when approaching the sharing economy.

First, regulators should ensure that they are pursuing the least competition-restrictive means in serving a legitimate public policy goal. Second, regulators should pay particular attention to the underlying goal of legacy regulation. Third, any regulations should be adaptive and flexible, thus enabling innovators to evolve business models and techniques without needing regulatory permission up front. Finally, because Internet-driven platforms are essential to the sharing economy, the Commission should reinforce traditional “Internet platform” protections, like intermediary liability safe harbors.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## **II. Regulators Should Ensure that They are Pursuing the Least Competition-Restrictive Means in Serving a Legitimate Public Policy Goal.**

As the Commission has long recognized, promoting competition and protecting consumers go hand in hand. When coupled with transparency, the more competitive the market, the more responsive market participants are to the demands of consumers. Regulations that raise significant barriers to entry and prevent new business models from serving consumers, harm consumers – even when those regulations are targeted at consumer protection. With this in mind, CCIA agrees wholeheartedly with the Commission’s view that “any restriction to competition designed to address such potential harm should be narrowly crafted to minimize its anticompetitive impact.”<sup>5</sup>

In its request for comment, the Commission has identified various arguments put forth in the past that call for greater regulation of sharing economy companies. For example, participants could be a risk to customers if they have not undergone background checks, do not have insurance, or have not met emissions standards.<sup>6</sup> A lack of regulation could lead to price gouging or deceptive pricing, and participants could run afoul of nondiscrimination obligations.<sup>7</sup> However, these issues are not unique to sharing economy companies. Indeed, many sharing economy companies require suppliers of services to submit to background checks, offer proof of insurance and other necessary certifications before being able to utilize their platform. Furthermore, these platforms usually offer clear pricing up front, as that is one of the appeals of using sharing economy tools. When reviewing the applicability of legacy regulations to sharing economy companies, regulators should take into account whether new regulations are necessary for consumer protection, especially given the advances in technology that put more control in the hands of consumers. Indeed, allowing competition to include different pricing models – that often provide consumers with less expensive services – should be encouraged. Regulating rates could undermine this very competition and short-circuit downward pricing pressure.

Common legacy approaches to consumer protection regulation have their own problems. State or local licensing boards often fall victim to regulatory capture. As a result, the regulation of market entry can morph to serve the interests of incumbent providers rather than

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<sup>5</sup> Letter of the Fed. Trade Comm’n Office of Policy Planning, Bureau of Competition, Bureau of Consumer Prot., and Bureau of Econs. to Colo. Pub. Utils. Comm’n, Mar. 6, 2013, [https://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-colorado-public-utilities-commission-concerning-proposed-rulemaking-passenger/130703coloradopublicutilities.pdf](https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-colorado-public-utilities-commission-concerning-proposed-rulemaking-passenger/130703coloradopublicutilities.pdf).

<sup>6</sup> *The “Sharing Economy,” supra* note 2.

<sup>7</sup> *Id.*

focusing on the interests of consumers. Moreover, a startup in the sharing economy might not have the wherewithal to fight back when incumbent businesses seek to use local ties to pursue regulations that harm new entrants.<sup>8</sup> The Commission should be cognizant of efforts in states and localities that are presented as consumer protection regulations but are actually aimed at protectionist ends.<sup>9</sup>

The Commission has valid reasons to be concerned that participants in the sharing economy, who are often individuals, might not have the sophistication or resources to understand or comply with various state and local laws.<sup>10</sup> Furthermore, the Commission correctly noted that many regulations apply to large corporations and are ill-suited to individuals or part-time participants, and the rating systems often provide adequate assurances for consumer protection.<sup>11</sup> Therefore CCIA recommends the commission adopt a two-pronged approach. By encouraging streamlining regulations through an active advocacy campaign and providing public guidance on the applicability of regulations to new sectors of the economy, the Commission can both make it easier for new competitors to enter the market by reducing regulatory clutter and red tape and by ensuring that new providers of services are educated on their consumer protection responsibilities.

### **III. Regulators Should Pay Particular Attention to the Underlying Goals of Legacy Regulation.**

In its request for comments, the Commission noted that some regulated industry representatives complain that they are put at a competitive disadvantage because new sharing economy entrants are not bound by the same regulations as traditional industry.<sup>12</sup> However, this argument is not a valid ground for regulating new competitors if the means by which they are competing with incumbent industries are not substantially similar.

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<sup>8</sup> See, e.g., Scott Beyer, *How to Solve the Uber vs Taxi Conflict? Medallion Reform*, FORBES (MAY 8, 2015, 9:00 PM), <http://www.forbes.com/sites/scottbeyer/2015/05/08/how-to-solve-the-uber-vs-taxi-conflict-medallion-reform/> (discussing how the taxi industry has sought regulations for new entrants like Uber, whose drivers have competed with the taxi drivers who previously had monopolies).

<sup>9</sup> See, e.g., Press Release, Consumer Fed'n of Am., *Anti-Competitive State Laws Cost New Car Buyers More than \$20 Billion per Year* (Feb. 8, 2001) <http://www.consumerfed.org/pdfs/fincarpr.pdf> (explaining how anti-competitive state laws regarding car sales, like those restricting Internet sales, cost car buyers at least \$20 billion per year).

<sup>10</sup> *The "Sharing Economy," supra note 2.*

<sup>11</sup> *Id.*

<sup>12</sup> *The "Sharing Economy," supra note 2.*

With this in mind, CCIA agrees with the approach taken by the Commission its letter to Alaska Assembly Member Debbie Ossiander, in which the Commission recommended opening up the taxicab market in Anchorage because it would likely be beneficial to consumers (and potential providers of taxi services who were considering entering the market), even though some incumbent providers had paid handsomely for permits under the impression that they would be able to “amortize the purchase cost by charging higher prices to consumers, versus what they would be able to charge if entry were unrestricted.”<sup>13</sup> CCIA also feels that this logic should be applied to the concept of extending legacy regulations for the purposes of competitive fairness. From a public policy perspective, burdening new business models with legacy regulations should only be recommended when they are both necessary for and the least restrictive means towards accomplishing a legitimate public policy end. To the extent that competitive “fairness” is a concern, regulators should focus on updating regulation across the board with an eye on encouraging a vibrant, competitive marketplace for all players. The fact that incumbent providers made investments or purchased licenses anticipating that current unnecessary market barriers would remain in place is irrelevant.

Old regulations were written to address consumer protection issues that arose from old business models. The same technology that has enabled new sharing economy business models has also enabled more sophisticated, dynamic ways of ensuring consumer protection (i.e. dynamic ratings systems and providing real-time pricing information before a transaction). Regulations should only be extended when they still serve a legitimate public policy interest. Extending regulations for physical hotels or taxicab owners to platforms that facilitate transactions over the Internet would incorrectly lose sight of fundamental differences between business methods and positions in the market. Furthermore, unique Internet-based features like reputation feedback mechanisms incentivize “pro-consumer” business practices and advance consumer protection goals.

A main goal of regulation is to correct inefficiencies caused by a lack of access to information between buyers and sellers. Before the rapid growth of the peer-to-peer sharing economy, licenses provided to taxi drivers or certifications from boards backed by state or local governments were deemed necessary to protect consumers who lacked adequate information about merchants. Now, ratings systems on Internet-based platforms actually help correct these

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<sup>13</sup> Letter of the Fed. Trade Comm’n Office of Policy Planning, Bureau of Competition, Bureau of Consumer Prot., and Bureau of Econs. to Assembly Member Debbie Ossiander, Apr. 19, 2013, [https://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-anchorage-assembly-member-debbie-ossiander-concerning-ao-no.2013-36-proposing-changes-regulatory-framework-licensing-and-permitting-taxicabs-limousines-and/130426anchoragecomment.pdf](https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-anchorage-assembly-member-debbie-ossiander-concerning-ao-no.2013-36-proposing-changes-regulatory-framework-licensing-and-permitting-taxicabs-limousines-and/130426anchoragecomment.pdf).

inadequacies and reduce the previously harmful effects of distance between buyer and seller by reducing “information frictions.”<sup>14</sup> Ratings systems provide customers with real-time reviews about the level of service at a restaurant through Yelp, the types of accommodations provided by a bed and breakfast through Airbnb, and the services provided by a driver using Uber or Lyft.

#### **IV. Any Regulations Should be Adaptive and Flexible, Thus Enabling Innovators to Evolve Business Models and Techniques Without Needing Regulatory Permission Up Front.**

Innovation in the “sharing economy” is moving quickly. Regulatory approaches, therefore, should be flexible and adaptive. It is tempting for regulators to require changes to the status quo – whether those be improvements of current algorithms or the invention of entirely new business models – to be approved ex-ante. For example, the District of Columbia Taxicab Commission (DCTC) proposed preventing “digital dispatch services” from making a “substantial change” to their dispatch or payment technology without prior written approval by the Commission. Given the rapid and decentralized nature of innovation, this approach risks stalling innovation and creating bottlenecks. CCIA agrees with the Commission’s response to the DCTC, which noted:<sup>15</sup>

A regulatory framework should enable these various new kinds of competition and not directly or indirectly restrict the introduction or use of new types of applications, or novel features they may provide, absent some significant evidence of public harm....

If substantial software updates warrant regulatory review, DCTC should adopt a flexible, streamlined framework to avoid unnecessarily inhibiting the prompt deployment of innovative features that consumers might benefit from or demand . . . . A framework for introducing and updating digital dispatch services should be clear and understandable to avoid inhibiting and raising the cost of innovation.

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<sup>14</sup> See generally Andreas Lendle et al., *There Goes Gravity: How eBay Reduces Trade Costs*, THE WORLD BANK (June 2013).

<sup>15</sup> Letter of the Fed. Trade Comm’n Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics to D.C. Taxicab Comm’n, June 7, 2013, [https://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comments-district-columbia-taxicab-commission-concerning-proposed-rulemakings-passenger/130612dctaxicab.pdf](https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comments-district-columbia-taxicab-commission-concerning-proposed-rulemakings-passenger/130612dctaxicab.pdf).

Regulators should monitor market developments and address problems as they arise. It is not possible for regulators to keep up with the pace of technology if they have to proactively approve product improvements or innovative new business models. Furthermore, competition drives sharing economy platform providers to innovate with consumers in mind, as their business models are built around empowering consumers and their competitive advantages are usually contingent on them being more appealing to consumers than older business models.

**V. Because Internet-Driven Platforms are Essential to the Sharing Economy, the Commission Should Reinforce Traditional “Internet Platform” Protections, like Intermediary Liability Safe Harbors.**

Internet sharing economy platforms are similar to many of the successful Internet companies that came before them. Like eBay and Craigslist, sharing economy companies serve to connect users and facilitate their transactions. As a result, the same legal principles that have allowed the commercial Internet to thrive over the course of the last two decades are equally applicable to sharing economy companies. One of the core legal principles that paved the way for the growth of the Internet was the intermediary liability safe harbors that are an important part of both U.S. and international law. CCIA has discussed this at length in the past.

Since the early days of the Internet, U.S. policymakers have recognized that holding Internet businesses liable for the conduct of their users would jeopardize the growth of this vital industry and place unreasonable burdens on companies. Many Internet businesses thrive by serving as a platform for users to connect with each other. For some, facilitating this form of networking is the company’s sole purpose.... Because these businesses connect users to each other, they grow quickly but lack the control that brick-and-mortar businesses have over individual content, due to the extraordinary volume of communications that they make possible. These businesses are, therefore, unusually vulnerable to laws that impose upon them strict liability for the misdeeds of any users. Where legal regimes may impose liability upon companies that make good faith efforts to prevent unlawful conduct but are not always 100% successful, services will be deterred from undertaking any prevention efforts at all. Congress responded to this problem with two statutes designed to limit Internet businesses’ liability for the wrongdoing of others. First, § 230 of the Communications Decency Act of 1996 provided categorical immunity from non-IP-related liability for user wrongdoing, thus allowing Internet companies to combat undesirable or potentially illegal activity without fear of additional liability....

Section 230 has provided a foundation for today's highly successful Internet services and applications by establishing a robust limitation on potential liability.<sup>16</sup>

In thinking about how to approach the sharing economy, regulators and lawmakers should not forget the lessons of the past. Sharing economy companies, like many established Internet companies, are online platforms. They usually do not provide the services themselves, nor do they directly employ those providing the services. Also, like prior-Internet companies, they usually make good faith efforts to look after their customers and remove bad actors from their platforms because public trust in the platform itself is necessary for their success and growth. However, increasing the liability burden on providers of sharing economy platforms for the misdeeds of their users would have negative effects on growth and innovation. As research has illustrated, uncertainty around intermediary safe harbors negatively effects venture capital investment in online businesses.<sup>17</sup> Furthermore, if implemented clumsily, enhanced liability burdens could actually *discourage* proactive attempts by online platforms to police activity on their network, as they might be held liable because they were not 100% effective in their efforts (which has happened under certain legal regimes in the past).<sup>18</sup> Although each market and platform is unique, and public policy imperatives might necessitate tailoring of the responsibilities borne by the providers of sharing economy platforms, lessons from Internet policy debates of the past should not be forgotten. When conducting a public policy balancing test around new laws or regulations, it is important to note the differences between platforms that facilitate transactions between private parties and companies whose employees are the actual providers of the services. It is also important to consider that consumers have legal recourse against the individuals who directly provide the services themselves. Onerous liability regimes for platforms would make sharing economy platforms economically nonviable. Furthermore, it is imperative that companies are not punished with enhanced liability for making good faith efforts to police those providing services over their platforms.

Similarly, the importance of intermediary liability safe harbors extends to the comments and reviews that are a component of many sharing economy platforms. Many sharing platforms

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<sup>16</sup> See Ali Sternburg & Matthew Schruers, *Modernizing Liability Rules to Promote International Trade* (2013). Available at: <http://www.ccianet.org/wp-content/uploads/2013/09/CCIA-Liability-Rules-Paper.pdf>

<sup>17</sup> See Joshua Lerner, *The Impact of Copyright Policy Changes in France and Germany on Venture Capital Investment in Cloud Computing Companies* (2012). Available at: [http://www.analysisgroup.com/uploadedfiles/news\\_and\\_events/news/2012\\_eu\\_cloudcomputing\\_lerner.pdf](http://www.analysisgroup.com/uploadedfiles/news_and_events/news/2012_eu_cloudcomputing_lerner.pdf)

<sup>18</sup> See Matthew Schruers, *The History and Economics of ISP Liability for Third Party Content*, 88 VIRGINIA LAW REVIEW. 206 (2002)



incorporate rating systems where participants on both sides of the transaction can comment on or “rate” each other – usually one star signifies poor service and five stars signify excellent service. Prospective customers can use these ratings to decide whether they want to use the merchant’s services and vice versa. The Commission notes that because most of these transactions are conducted between individuals, rating systems can help “provide participants with sufficient confidence” allowing them to make informed decisions when they would otherwise only have “little information about each other.”<sup>19</sup>

Because many platforms have mechanisms or policies for verifying reviews and ratings, the Commission should be reticent to impose gatekeeping obligations or intermediary liability, holding a platform liable when users post unlawful or harmful content. Section 230 of the Communications Decency Act<sup>20</sup> has provided immunities and safe harbors for platforms, which has, in turn, promoted innovation. More importantly, these provisions give consumers access to vital information about businesses from which they seek to buy goods or services. Section 230(c) is called “Protection for ‘Good Samaritan’ blocking and screening of offensive material” for a reason. It provides broad protections for intermediaries from liability for a wide range of third party behavior that could be illegal.<sup>21</sup>

These platforms have so far generated significant goodwill by allowing customers to be honest about the services they have received through their connection to a platform. Without these protections from intermediary liability, a startup seeking to improve consumers’ lives by connecting them with lower cost alternative services would have to expend substantial financial and human capital to police every single comment posted by users.

An intermediate liability regime would significantly deter the innovation and the free exchange of ideas that have been hallmarks of the Internet because platforms would be more circumspect about hosting any user-generated content. Regulating online expression could cause unintended consequences of being applied to any website that allows user comments, like newspapers and non-profits. An intermediate liability regime in the sharing economy would chill both free expression and innovation while striking at a core aspect of the sharing economy that has made its various purveyors so successful.

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<sup>19</sup> *Id.*

<sup>20</sup> 47 U.S.C. § 230 (2012).

<sup>21</sup> See Jonathan Band & Matthew Schruers, *Safe Harbors Against the Liability Hurricane: The Communications Decency Act and the Digital Millennium Copyright Act*, 20 CARDOZO ARTS & ENT. L.J. 295, 297 (2002) (“Section 230 has been held to immunize ISPs from a variety of state law claims, including negligence, business disparagement, waste of public funds, and infliction of emotional distress.”).

Enhanced intermediary liability risks unintended consequences that run counter to the Commission’s bedrock goal of promoting consumer protection. By constraining online expression, consumers would no longer have access to peer reviews of services that are facilitated by sharing economy platforms. The Commission notes that most of these transactions are conducted between individuals, who have “little information about each other.”<sup>22</sup> Ratings systems are beneficial because they can help “provide participants with sufficient confidence” allowing them to make informed decisions.<sup>23</sup> Indeed, some consumers may prefer reviewing the comments of other consumers as opposed to institutional critics. Imposing liability on platforms for user ratings and comments would actually hurt consumers and stifle commerce. Furthermore, although the bounds of Section 230 are frequently tested, imposing liability on platform providers for user reviews and comments would very likely run afoul of established Section 230 legal precedent.

The Commission should also be aware of other actors that are seeking other means of limiting free expression on the Internet. Consumers are facing threats to their rights to free speech and even copyrights as some businesses are seeking new ways of using contracts to stifle speech.<sup>24</sup> In addition, some platforms have been inundated with bogus Strategic Lawsuits Against Public Participation (SLAPPs). Yelp recently noted the proliferation of SLAPPs and non-disparagement clauses can hurt platforms as only about half of the states have adequate protections against SLAPPs.<sup>25</sup> Congress is considering the SPEAK FREE Act, which would create a special motion to dismiss claims arising from oral or written statements or other conduct in connection with matters of public concern.<sup>26</sup>

## **VI. The Commission Should Focus on How Sharing Economy Platforms Contribute to Competition and Enhance Consumers Lives.**

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<sup>22</sup> *The “Sharing Economy,” supra* note 2.

<sup>23</sup> *Id.*

<sup>24</sup> See Chris Morran, *Apartment Complex Claims Copyright on All Tenants’ Reviews & Photos of Property*, CONSUMERIST (Mar. 10, 2015), <http://consumerist.com/2015/03/10/apartment-complex-claims-copyright-on-all-tenants-reviews-photos-of-property/> (highlighting how some apartment building owners have introduced clauses into rental agreements seeking to transfer any copyrights tenants may have for any photos they take of a building or anything they write about it online).

<sup>25</sup> Laurent C., *Freedom of Speech Deserves Better Federal Protection*, YELP OFFICIAL BLOG (May 15, 2015, 10:48:03 AM), <http://officialblog.yelp.com/2015/05/freedom-of-speech-deserves-better-federal-protection.html>.

<sup>26</sup> SPEAK FREE Act of 2015, H.R. 2304, 114<sup>th</sup> Cong. (2015).

As the Commission embarks on this study of the sharing economy, it should focus on the benefits that sharing platforms have brought to our national economy. The FTC has a unique role as both a consumer watchdog and a promoter of competition; this expertise will help the Commission adroitly weigh the costs and benefits of prescriptive regulation in this space. The Commission should encourage narrowly crafted regulations that are necessary to achieve legitimate public policy goals, and ensure that those regulations are the least competition restrictive means of accomplishing the desired ends. Overemphasizing any supposed negatives of a new technology can lead to suboptimal public policy outcomes as the benefits foregone surpass the harms prevented.

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