

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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October 28, 2020

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Dear Chairman Pai:

We write seeking details regarding communications between you, individuals in the Chairman's office, or the General Counsel and those working in the Executive Office of the President or the White House, preceding your recent statement on the Federal Communications Commission's (FCC) role in interpreting Section 230 of the Communications Decency Act (CDA 230).¹ Recently, you concluded that the FCC "has the legal authority to interpret Section 230" and intends "to move forward with a rulemaking to clarify its meaning."² The fact that this announcement came just weeks before the election, and that President Trump has pushed for CDA 230 rulemaking raise serious questions about the independence of the agency. The American people deserve to know what conversations, if any, have transpired between you, your office and the White House to ensure the integrity of the FCC.

CDA 230 enables websites to moderate content online by generally providing immunity for online platforms for content posted by users.³ That means platforms are mostly not held liable for third-party content posted on their websites, with some relevant exceptions.⁴ Since Congress' enactment of CDA 230, the FCC has played no role in implementing or interpreting this provision.

It wasn't until online platforms began fact-checking the President's content that he and his Administration began an aggressive campaign to persuade the FCC to dictate how online platforms moderate content. On May 28, 2020, the President signed an Executive Order asking

¹ Federal Communications Commission, Statement of Chairman Pai on Section 230, Press Release (Oct. 15, 2020).

² *Id.*

³ 47 U.S.C. § 230.

⁴ *Id.*

the National Telecommunications and Information Administration (NTIA) to petition the FCC to rethink the scope of CDA 230.⁵ Pursuant to the Executive Order, on July 27, 2020, the NTIA filed a petition with the FCC, asking the FCC to adopt rules interpreting CDA 230 and its liability protections.⁶ And, on September 23, 2020, the Department of Justice (DOJ), on behalf of the Trump Administration, proposed changes to CDA 230 that would limit CDA 230's liability protections.⁷

Not only has the Trump Administration directly pressured the FCC to do its bidding on CDA 230, it appears the Administration is willing to retaliate against those who do not get in line with its agenda. President Trump abruptly pulled his nomination of Commissioner Michael O'Rielly for another FCC term shortly after Commissioner O'Rielly publicly raised concerns over the FCC's role in interpreting CDA 230.⁸ Last month, President Trump nominated Nathan Simington, who reportedly worked on the NTIA CDA 230 petition, to replace Commissioner O'Rielly.⁹ Just this month, President Trump tweeted at Senator Wicker urging Republicans to confirm Mr. Simington, and shortly thereafter, a nomination hearing was scheduled for November 10th.¹⁰

Now it appears the FCC is working in concert with the Trump Administration to attempt to influence the actions of online platforms by advancing a CDA 230 rulemaking. As an independent Federal regulatory agency, the FCC is not a part of the Executive branch and instead, is responsible directly to Congress. As such, the FCC should avoid even the appearance of acting on behalf of the President.

⁵ *Trump Signs Order That Could Punish Social Media Companies for How They Police Content, Drawing Criticism and Doubts of Legality*, Washington Post (May 28, 2020).

⁶ Federal Communications Commission, *National Telecommunications and Information Administration, Clarify Provisions of Section 230 of the Communications Act of 1934, as amended*, Petition for Rulemaking, RM 11862 (July 27, 2020). One week later, the FCC sought public comment on the NTIA Petition. Federal Communications Commission, *Consumer & Governmental Affairs Bureau, Reference Information Center, Petition For Rulemakings Filed*, Public Notice (Aug. 3, 2020).

⁷ Department of Justice, *The Justice Department Unveils Proposed Section 230 Legislation*, Press Release (Sept. 23, 2020).

⁸ *Trump withdraws Commissioner O'Rielly's Renomination to FCC*, Fierce Wireless (Aug. 4, 2020) (www.fiercewireless.com/regulatory/trump-withdraws-commissioner-o-rielly-s-renomination-to-fcc).

⁹ *Trump plans to nominate official for FCC amid social media push*, Reuters (September 15, 2020) (www.reuters.com/article/us-usa-fcc-simington/trump-plans-to-nominate-official-for-fcc-amid-social-media-push-idUSKBN26700Q).

¹⁰ *U.S. Senate panel to hold hearing on FCC nominee after Trump's urging*, Reuters (October 15, 2020) (www.reuters.com/article/us-trumpp-fcc/u-s-senate-panel-to-hold-hearing-on-fcc-nominee-after-trumps-urging-idUSKBN27031R).

As the Committee with jurisdiction over the FCC and CDA 230, we have significant concerns about these developments. Accordingly, we request detailed responses to the following questions below by November 2, 2020:

1. Has anyone from the White House, the Executive Office of the President, NTIA, or DOJ contacted you, staff in the Chairman's office, or the FCC General Counsel about the NTIA Petition and/or CDA 230? If so, please list every instance, the parties involved, and what was discussed.
2. Has anyone from the Trump Campaign contacted you, staff in the Chairman's office, or the FCC General Counsel about the NTIA Petition and/or CDA 230? If so, please list every instance, the parties involved, and what was discussed.
3. Have you, staff in the Chairman's office, or the FCC General Counsel contacted anyone from the White House, the Executive Office of the President, NTIA, or DOJ about the NTIA Petition and/or CDA 230? If so, please list every instance, the parties involved, and what was discussed.
4. Have you, staff in the Chairman's office, or the FCC General Counsel contacted anyone from the Trump Campaign about the NTIA Petition and/or CDA 230? If so, please list every instance, the parties involved, and what was discussed.

For the purposes of the questions above, "contact" includes status inquiries that would not be required to be disclosed under the FCC's *ex parte* rules. Thank you for your prompt attention to this important matter. If you have additional questions, please contact Gerald Leverich of the Majority Committee Staff at (202) 225-2927

Sincerely,



Frank Pallone, Jr.
Chairman



Mike Doyle
Chairman
Subcommittee on Communications
and Technology