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Noah Jackson
Legislative Clerk, Committee on Energy and Commerce
2125 Rayburn House Office Building, Washington, DC 20515

May 13, 2024

Dear Mr. Jackson,

Please see below for my responses to The Honorable Russ Fulcher's two additional questions for the record of the Subcommittee on Communications and Technology hearing on Thursday, April 11, 2024 titled, "Where Are We Now: Section 230 of the Communications Decency Act of 1996."

1. If I want to see this from a risk-based approach, what criteria and reporting requirements would that encompass, such as to the Federal Trade Commission?
 - a. Could this lead to a "rating" system of sites that use certain algorithms, such as to protect children?
 - b. Should there be a warning label, parental permission, etc.?

Answer: Social media platforms certainly could be encouraged to use rating systems, warning labels, parental permissions, and other measures of this nature. Indeed, some already do. Whether and to what extent such measures could be required by law, and what authority would or should oversee these measures, would be contingent on the specifics of any given proposal.

2. Social media companies moderate content that can be biased in certain directions, while not showing consistent policies. And yet, there is more misinformation or AI algorithms that trend users

toward more outlandish content that could lead to violent behavior. Past government approaches have included a “Fairness Doctrine” approach that has the FCC determining contrasting views were adequately provided for in chat conversations, messaging streams, etc., along with limits against gratuitous violence. How can we encourage more competition of alternative views that seek to inform and not misinform without going down the road of something like a revamped Fairness Doctrine approach? I ask partly over concerns in giving the FCC too much authority or leeway, pre-empting the market to work through issues, given current rules in the face of previous court decisions and committee action.

Answer: While concerns about bias and inconsistency in social media platforms’ content moderation policies are understandable, the First Amendment grants non-government actors broad rights to make their own decisions about what speech they would like to promote, ignore, or remove. Just as the *Wall Street Journal* and *Fox News* are allowed to promote news or viewpoints they like and ignore those they do not, so social media companies are allowed to promote content according to their own preferences. In addition, social media companies, like other private businesses, have the right to establish terms and conditions for the use of their services and enforce them largely as they see fit.

This does not mean that the policies of social media platforms are completely beyond regulation. The First Amendment allows for regulation of many types of false or harmful information, and tech companies should be held to the same standards for knowingly promoting or distributing such information as other private entities. In addition, serious content moderation issues such as a lack of transparency or arbitrary enforcement might rise to the level of “unfair or deceptive acts or practices in or affecting commerce,” subject to Section 5 of the Federal Trade Commission Act.

Sincerely,

Dr. Mary Anne Franks