



REPORT BY THE EMERGING COMPANIES AND VENTURE CAPITAL COMMITTEE

RECOMMENDATIONS RESPECTFULLY SUBMITTED TO THE BIDEN-HARRIS ADMINISTRATION REGARDING ENTREPRENEUR FOCUSED POLICY INITIATIVES

I. INTRODUCTION

The Emerging Companies and Venture Capital Committee (the “Committee”) of the New York City Bar Association (“the City Bar”) respectfully submits the following report to the Biden-Harris Administration. The Committee consists of solo practitioners, law firm associates and partners, in-house counsel, and venture capitalists. The Committee identifies entrepreneurial-based legal and business needs and develops creative and pragmatic solutions to foster a robust technology ecosystem within New York City.

II. RECOMMENDATIONS

The City Bar’s Emerging Companies and Venture Capital Committee respectfully recommends the following measures:

a. Broadband Services

i. Reprioritize cities in the expansion of broadband services across the nation

The Committee urges the new Administration to reprioritize cities in any federal broadband expansion programs. One-third of Americans lack access to broadband internet nationwide.¹ The majority of Americans identify “cost” as the major obstacle in obtaining

¹ Adie Tomer and Lara Fishbane, *Bridging the Digital Divide Through Digital Equity Office*, BROOKINGS, (July 23, 2020), available at <https://www.brookings.edu/research/bridging-the-digital-divide-through-digital-equity-offices/>. (All sites last visited June 3, 2021).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

broadband services. Additional barriers include (i) physical access gaps in local broadband networks; and (ii) a lack of digital skills.

In 2018, the Trump Administration allocated \$50 billion to rural infrastructure advancement, including addressing the digital divide by expanding broadband services. The policy failed to address the growing digital divide in cities, ultimately widening the divide in primarily low-income and minority areas.² Under the policy, cities lacked access to crucial funding that would secure resources in broadband blackout zones.

Nearly 40% of New Yorkers lack access to home or mobile broadband.³ Eighteen percent of New Yorkers lack access to both, accounting for more than 1.5 million people lacking fixed broadband in New York City alone.⁴ Such internet blackout zones within cities are primarily concentrated in low-income and minority communities.⁵ The 2020 COVID-19 crisis has amplified the urgent need to provide each home with fixed broadband. As many Americans transitioned online for work, school, telemedicine, and other necessities, including e-commerce and distant socializing, it has become apparent that individuals without fixed broadband services are unable to participate fully.⁶

Expanding broadband services within cities is imperative in solidifying the nation's commitment to providing fixed broadband services in every American household. Additionally, access to broadband remains crucial to urban revitalization and the full realization of "smart cities."

To this end, the Committee recommends implementing a new broadband framework that prioritizes cities to remedy the growing urban broadband access deficit.

ii. Provide federal funding for digital equity offices that address gaps in broadband services

The Committee urges the Administration to localize all broadband efforts by federally funding local Digital Equity Offices.⁷ Traditionally, it is the responsibility of state and local

² Jason Plautz, *Brownsville, TX and Detroit top list of cities with least broadband access*, SMART CITIES DIVE, (June 11, 2018), available at <https://www.smartcitiesdive.com/news/brownsville-tx-and-detroit-top-list-of-cities-with-least-broadband-access/525359/>.

³ Mayor's Office of the Chief Technology Officer, *New York City Internet Master Plan*, (Jan. 2020), available at https://www1.nyc.gov/assets/cto/downloads/internet-master-plan/NYC_IMP_1.7.20_FINAL-2.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ The City Bar has documented this problem through its #Wifi4Homeless campaign, which seeks to raise awareness about and advocate for change around about the lack of internet access and essential technology resources in New York homeless shelters. For more information, see generally "Close the Digital Divide! Help Ensure Internet Access for New Yorkers Experiencing Homelessness," Updated May 2021, <https://www.nycbar.org/media-listing/media/detail/nyc-digital-divide-lack-of-internet-access-in-shelters>.

⁷ Brookings, *supra* note 1, available at <https://www.brookings.edu/research/bridging-the-digital-divide-through-digital-equity-offices/>.

governments to negotiate with large-scale broadband providers. Overwhelmed by other policy challenges and lacking a centralized agency tasked solely with broadband expansion, states have struggled to address broadband blackout zones adequately.

Federal intervention should provide local governments with the resources for a more strategic approach, specifically focusing on individual districts' needs.⁸ Such efforts to refocus resources would provide households with the tools needed to “physically access and use broadband and related digital services.”

Local Digital Equity Offices are uniquely positioned to identify specific digital network gaps in their districts. Digital Equity Offices' proximity to individuals struggling to access broadband services offers targeted strategic responses. The federal government's funding for such localized action is an economic imperative.

As a result, the Committee recommends that the Biden-Harris Administration allocate federal funding for Digital Equity Offices to localize the digital divide response.

b. Relaunch Startup America Initiative

The Startup America Initiative,⁹ established by the Obama Administration, prioritized entrepreneurship as a core component to the nation's innovation strategy for “achieving sustainable growth and quality jobs.” The Committee supports a full relaunch of the Startup America Initiative, including the following initiative commitments:

- Expanding access to capital for startups with high growth potential;
- Expanding an entrepreneurship network that includes education and mentorship programs; and
- Strengthen commercialization of the nearly \$148 billion in federally funded annual research and development.¹⁰

The Committee acknowledges commitments that the federal government has already undertaken, including: (i) modifications to lending programs at the Small Business Administration (SBA) and Treasury Department, (ii) targeted efforts to provide tax relief to entrepreneurs, and (iii) key investments in research and development.¹¹ Such an entrepreneur-focused policy promises continued successes for high-growth companies that drive job creation. Since many jobs lost during the pandemic are unlikely to return, job creation is vital to the post COVID-19 economic recovery.

⁸ *Id.*

⁹ Factsheet: White House Launches “STARTUP AMERICA” Initiative, (Jan. 2011) <https://obamawhitehouse.archives.gov/startup-america-fact-sheet>.

¹⁰ *Id.*

¹¹ U.S. Business Administration, <https://www.sba.gov/sites/default/files/Startup%20America%20Reducing%20Barriers%20Report.pdf>.

The Committee recommends that the Biden-Harris Administration relaunch the Startup America Initiative. The coordinated public/private effort brought “together an alliance of the country’s most innovative entrepreneurs, corporations, universities, foundations, and other leaders, working in concert with a wide range of federal agencies to dramatically increase the prevalence and success of America’s entrepreneurs.”¹² Such entrepreneur-focused policy initiatives will aid in economic recovery. The right initiatives and partnerships will supercharge a tech ecosystem that is uniquely positioned to help lift America through the post COVID-19 economic recovery.¹³

c. Grant open access for any nationally-funded research

The Committee recommends implementing open access for nationally-funded research. The Fair Access to Science and Technology Research Act (“FASTR”)¹⁴ would require government agencies with a research expenditure of over \$100 million to make open access the publishing default. U.S. taxpayers are the primary underwriters for such research. As a result, federally funded research should be available to the public.

The Committee recommends the federal government revisit and support FASTR.¹⁵

d. Privacy

The Committee recommends implementing a comprehensive federal privacy framework that ensures Americans’ uniform privacy rights without stifling crucial technological advancement. In 2019, California introduced the California Consumer Privacy Act (“CCPA”), the nation’s first comprehensive data privacy regulation. Thus far, eleven other states have introduced unique data privacy regulations.

The Committee agrees with 51 CEOs of the nation’s top companies¹⁶ and strongly discourages a state-by-state approach to privacy legislation. Any patchwork approach to privacy legislation will disadvantage consumers and small businesses alike. Small and medium-sized

¹² Obama Whitehouse Archives, *supra* note 9, available at <https://obamawhitehouse.archives.gov/startup-america-fact-sheet>.

¹³ The Committee is also generally supportive of the Startup Act (S.328), introduced by U.S. Senators Jerry Moran (R-Kan.), Mark Warner (D-Va.), Roy Blunt (R-Mo.) and Amy Klobuchar (D-Minn.) in the 2019-20 legislative session. The Startup Act’s stated aim is to jump-start economic recovery through the formation and growth of new businesses with a combination of initiatives that are consistent with the recommendations made in this report. This report and the Startup Act both endorse policies that attract global talent through specific immigration reforms, drive commercialization of tax-payer-funded research, and generally support entrepreneurs. See Bipartisan Group of Senators Introduces Startup Act, available at <https://www.moran.senate.gov/public/index.cfm/news-releases?ID=31F2F710-4FC5-4BF4-9D8C-9B03261AD488>.

¹⁴ Fair Access to Science and Technology Act, S. 1701, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1701>.

¹⁵ *Id.*

¹⁶ See *Business Roundtable CEOs Call on Congress to Pass Comprehensive, Nationwide Consumer Data Privacy Law*, Business Roundtable (Sept. 10, 2019), available at <https://www.businessroundtable.org/business-roundtable-ceos-call-on-congress-to-pass-comprehensive-nationwide-consumer-data-privacy-law>.

enterprises that service all 50 states will struggle financially to comply with 50 different privacy laws. Some companies have adopted a risk-based approach to this by choosing to comply with the most onerous state privacy laws, but even this imperfect approach requires a burdensome and inefficient investment of time and resources. Moreover, Balkanized privacy laws will promote confusion amongst consumers who prefer clarity in controlling their data.

A national framework will best serve consumers and companies' interests alike and should prioritize individual consent and agency. Any such legislation should, at a minimum, have the following components: (i) require companies to make individuals aware of the information collected, and (ii) provide individuals with the opportunity to accept or decline the sharing of any and all information. Additionally, any federal privacy framework should ensure the protection of all data collected.¹⁷

Congress must balance the need to protect consumers with fostering a legislative and regulatory environment that further promotes innovation and economic growth. Any federal privacy framework should avoid overbroad legislation that would stifle the growth of new businesses or technology services. The Committee recognizes that data collection and analysis are crucial to the advancement of technology. A national framework should provide individuals with choice and protection while ensuring new technologies have the opportunity to be created within a reasonable regulatory framework.

Our economic and privacy interests require that the Biden-Harris Administration and Congress work together to develop a national privacy framework in line with these principles that strike a proper balance between consumer privacy protection, innovation, and economic growth.

Many proposals have been introduced in the House and Senate, including the 2020 Consumer Data Privacy Legislation introduced by Sen. Edward Markey.¹⁸ While the Committee stops short of endorsing any specific federal privacy legislation proposal, we view the following as critical components of any such legislation:

- Prohibition on companies using individuals' personal information in discriminatory ways.
- Establishing a centralized website that informs consumers about their privacy rights and requires companies to provide easy short form notices directly to consumers.

¹⁷ See Technology, Cyber and Privacy Policy Recommendations Respectfully Submitted to the Biden-Harris Administration, New York City Bar Association, at 2-3 (May 3, 2021), *available at* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/technology-cyber-and-privacy-transition-memo>. In that memo, the City Bar sets forth specific recommendations regarding comprehensive federal privacy legislation, including uniform data breach notification requirements and compatibility with data protection laws in major markets.

¹⁸ Privacy Bill of Rights Act, S.1214, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1214>.

- Limiting companies’ ability to collect information beyond that which is necessary to provide the requested services.
- Requiring the protection of any collected data.

The Committee also urges the Biden-Harris Administration to revisit and reform the Obama Consumer Privacy Bill of Rights.¹⁹ We would suggest that any reformation include the establishment of a Consumer Privacy Bill of Rights roundtable to reconsider industry concerns regarding (i) loopholes in consumer protection, and (ii) overbroad regulatory requirements.

e. Reform the immigration process, further solidifying the nation’s commitment to international entrepreneurs

i. Reinstate the International Entrepreneur Rule

In 2017, America’s top 500 companies generated \$12.1 trillion in revenue.²⁰ Companies founded by immigrants or their children generated nearly 45% of that revenue.²¹ Immigrants or their children founded more than half of the top 25 firms on the annual Fortune 500 list.²² These companies are headquartered in 33 of the 50 states, employing more than 12.8 million people worldwide.²³

Implementation of the International Entrepreneur Rule (“IER”) acknowledges that foreign entrepreneurs make significant contributions to the nation’s economy and job growth.²⁴ The IER, with an original effective date of July 2017, would have been an essential tool in recruiting more innovative foreign entrepreneurs to the United States. However, under the previous Administration, the Department of Homeland Security eliminated the IER, thus tightening restrictions on international entrepreneurs seeking to start companies in the United States.²⁵

¹⁹ Electronic Privacy Information Center, White House: Consumer Privacy Bill of Rights, https://epic.org/privacy/white_house_consumer_privacy.html.

²⁰ Ian Hathaway, *Almost half of Fortune 500 Companies were founded by American immigrants or their children*, BROOKINGS, (Dec. 4, 2017), available at <https://www.brookings.edu/blog/the-avenue/2017/12/04/almost-half-of-fortune-500-companies-were-founded-by-american-immigrants-or-their-children/>.

²¹ New American Economy, *New American Fortune 500 in 2019*, (July 22, 2019), available at https://data.newamericaneconomy.org/en/fortune500-2019/?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top.

²² Brookings, *supra* note 20, available at <https://www.brookings.edu/blog/the-avenue/2017/12/04/almost-half-of-fortune-500-companies-were-founded-by-american-immigrants-or-their-children/>.

²³ *Id.*

²⁴ Hayden Field, *The International Entrepreneur Rule Wasn’t Perfect, But the Trump Administration Killing It Sends the Wrong Message*, ENTREPRENEUR, (May 31, 2018), available at <https://www.entrepreneur.com/article/314258>.

²⁵ *Id.*

We are heartened by the Administration's announcement that it will revive the IER, allowing foreign entrepreneurs to continue to build innovative companies in the United States.²⁶ We suggest the Administration consider reforming the IER to a more traditional visa. As proposed, the IER serves as a parole period for international entrepreneurs without the promise of any admission status. A more definite visa would ensure entrepreneurs the incentive and ability to see successful businesses through.

ii. Reinstatement and Reform H-1B Visas

The H-1B visa is the primary vehicle for employment-based immigration. The program allows both international students and highly skilled foreign nationals to work in the United States long term.²⁷ Traditionally, H-1B visas are allocated to specialty occupations that require technical expertise. As a result, companies, including tech companies, depend on the H-1B visa to expand their employment pool and attract international high-skill talent.²⁸ In June 2020, the Trump Administration suspended H-1B visas ostensibly to protect American workers during the COVID-19 pandemic.²⁹

Even prior to the suspension, the Department of Homeland Security (DHS) narrowed the range of jobs open to the H-1B eligible employees.³⁰ Additionally, DHS increased the scrutiny applied to whether a petitioning company has sufficient control over the foreign workers for them to qualify as employees.³¹ Another change included decreasing the maximum time from three years to one year for workers subcontracted to other companies by their employers. These restrictive regulations will hamstring companies by limiting their ability to attract the best talent across the globe and cede an essential advantage in an increasingly competitive global economy. And the loss of access to these foreign workers will have far-reaching effects as companies work to overcome the current economic crisis.

The Committee recommends the Administration roll back the more restrictive provisions such as the narrowed range of jobs available to H-1B visa employees and reverse the shortened time limitations for subcontracted employees. Such restrictions make the employment-immigration process more daunting, unpredictable and discouraging. The nation's economic recovery will be dependent upon companies having full access to resources and a diverse employment pool of highly skilled talent.

The Committee supports the Biden-Harris Administration in its efforts to support economic growth and believes it is essential to grant more H-1B visas for highly skilled

²⁶ J. Claire Razzolini, *Biden Administration Revives International Entrepreneur Immigration Program*, May 17, 2021, available at <https://www.jdsupra.com/legalnews/biden-administration-revives-8502008/>.

²⁷ Michael Shear and Miriam Jordan, *Trump Suspends H-1B and Other Visas That Allow Foreigners to work in the U.S.*, N.Y. TIMES (June 22, 2020), available at <https://www.nytimes.com/2020/06/22/us/politics/trump-h1b-work-visas.html>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

international individuals in the areas of science, technology, and engineering. As other nations grow more competitive and seek international talent, it will be crucial to our economic interests to secure ease and access to the employment immigration process.

The Administration can implement such provisions without jeopardizing access to jobs sought by Americans. Wage-based allocations, including the Labor Department guidelines in 2020, are one way to ensure that companies are not disincentivized from using American workers.

In line with these principles, the Committee urges incremental changes to the employment immigration process.

iii. Further Secure Academic Visas

Academic visas are pivotal to growing the nation's pool of international talent. The Biden-Harris Administration has already supported policy initiatives that foster a welcoming environment for international academic students. The Committee supports recent Biden-Harris Administration goals, including but not limited to:

- granting international US doctoral program graduates a green card upon completion of their degree;
- providing an exemption from any immigration cap for graduates of U.S. Ph.D. programs in science, technology, engineering, and math ("STEM") fields;
- supporting programs that allow municipalities to petition for additional immigration visas to support the region's economic development.

f. Section 230 of the Communications Decency Act

The Committee supports Section 230 of the Communications Decency Act ("Section 230") which provides immunity to online platforms and underpins the development and innovation of the internet and technology enabled companies. In line with the objectives of Section 230, the Committee recommends that the Biden-Harris Administration, along with industry stakeholders, explore ways in which Section 230 revisions might promote innovation in online platforms while acknowledging and addressing the potential for harmful discourse. Any workable solution should address serious industry concerns, including:

- **Accountability:** Platform accountability is crucial to moderating harmful content and misinformation on the internet. However, a full revocation of Section 230 immunity will have detrimental effects for online platforms -- smaller platforms in particular. Thus, an overbroad accountability structure will incentivize online platforms to moderate content in deleterious ways. Section 230 immunity remains vital to the functioning of online communities because it allows online platforms to moderate content in good faith without running the risk of limiting discourse. Regulatory measures that promote transparency throughout the content

moderation process are necessary controls and ensure online platforms are not forced to unduly burden user-generated content.

- **Business Size:** The amount of user-generated content on the internet is enormously expansive. Currently, Section 230 immunity protects smaller online platforms that traditionally lack the resources and tools required to monitor vast daily content and discourse. Any revocation of immunity would leave small, startup, and innovative platforms without necessary protections from expensive, never-ending legal and regulatory action. Such a regulatory environment would ultimately cause these companies and services to cease, as seen in small media companies' response to the European Union's General Data Protection Regulation ("GDPR") compliance.

The Committee recommends the Biden-Harris Administration explore workable solutions with a broad and inclusive group of relevant stakeholders with the aim of engendering greater consumer confidence with technology. Any viable solution must strike an appropriate balance between platform accountability and users' freedoms to generate content and engage in online speech and discourse.

III. CONCLUSION

The technology industry is at a critical juncture. On the one hand, technology companies have created vast amounts of wealth for their founders, employees, stakeholders, and communities. Silicon Valley's success has spawned imitators across the country, from areas as diverse as New York's Silicon Alley to Nebraska's Silicon Prairie. The technologies these companies have built allowed many parts of the economy to weather the pandemic seamlessly. However, these successes and benefits have not been shared equitably across the United States, and legislative shortfalls have exacerbated deep societal schisms. The need to act is undeniable and yet risks stifling innovation. Impediments to innovation harm our nation's long-term economic interests and cede our technology industry's competitive advantages. The Committee and the City Bar present these recommendations to the Administration as a framework for extending the technology industry's economic benefits more broadly and equitably while maintaining our global competitive advantages.

Emerging Companies and Venture Capital Committee
James Murray, Chair

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