Comments of

TechFreedom

Berin Szóka[i] & Andy Jung[ii]

In the Matter of

Twitter, Inc., FTC Docket No. C-4316, Petition to

Reopen, Set Aside, or in the Alternative, Modify Order

FTC-2026-0727

July 2, 2026

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[i] Berin Szóka is President of TechFreedom, a nonprofit, nonpartisan technology policy think tank. He can be reached at bszoka@techfreedom.org.

[ii] Andy Jung is AI Policy Counsel at TechFreedom. He can be reached at ajung@techfreedom.org.

TechFreedom has long recognized that the Federal Trade Commission operates as the de facto Federal *Technology* Commission.[1] This is not inherently bad, but the process by which the Commission regulates the industry raises clear concerns, which we explored in a 2016 report jointly issued with the International Center for Law & Economics as part of an ad hoc "FTC: Technology & Reform Project."[2] We convened the project to draw on the expertise of FTC scholars and veterans.

In 1980, Congress attempted to avoid abuse of the FTC's vast consumer protection powers. But these reforms, we noted,

> failed to envision that the Commission would, eventually, find ways of exercising the vast discretion inherent in Unfairness and Deception through what it now proudly calls its "common law of consent decrees" — company-specific, but cookie-cutter consent decrees that have little to do with the facts of each case (and always run for twenty years). These consent decrees are bolstered by the regular issuance of recommended best practices in reports and guides that function as quasi-regulations, imposed on entire industries not by rulemaking but by the administrative equivalent of a leering glare. Together, these new tactics have allowed the FTC to effectively circumvent not only the process reforms of May 1980 but also the substantive constraints volunteered by the FTC later that year in the Unfairness Policy Statement and, three years later, in the Deception Policy Statement.[3]

Many of these concerns would have been addressed by FTC process reform legislation introduced in the House in 2016.[4]

Recently, it has become increasingly clear that the FTC's leverage to coerce companies to settle claims can also be used to exert control over speech in ways that raise grave First Amendment concerns. We commend X for raising these concerns with the Commission.[5]

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[1] Berin Szoka & Geoffrey Manne, *The Second Century Of The Federal Trade Commission*, TECHDIRT (Sept. 26, 2013), https://www.techdirt.com/2013/09/26/second-century-federal-trade-commission/.

[2] Berin Szóka & Geoffrey A. Manne, *The Federal Trade Commission: Restoring Congressional Oversight of the Second National Legislature—An Analysis of Proposed Legislation* (Int'l Ctr. for L. & Econ. & TechFreedom, FTC: Tech. & Reform Project, Rep. 2.0, May 2016), https://laweconcenter.org/wp-content/uploads/2017/09/ftc-restoring-congressional-oversight.pdf.

[3] *Id.* at 3-4.

[4] *Full Committee Advances Bills to Modernize the FTC and Put #InnovationFirst*, ENERGY & COMMERCE (July 14, 2016), https://energycommerce.house.gov/posts/full-committee-advances-bills-modernize-ftc-and-put-innovationfirst.

[5] X Corp., Petition to Reopen and Set Aside or, in the Alternative, Modify Decision and Order, In re Twitter, Inc., No. C-4316 (June 2, 2026) [hereinafter X Petition].

There is merit to many of X's arguments regarding the consent decree to which it has been subject to since 2011, as modified in 2022.[6] In particular, as we noted in 2016, there is simply no good reason for consent decrees to span twenty years by default.[7] Nor should the Commission be able to keep companies operating under consent decrees perpetually by daisy-chaining one new 20-year decree on top of another based on new, unrelated conduct.[8]

Revision of X's consent decree is probably warranted—perhaps even rescission. But the same goes for consent decrees governing other companies. X's gravest concern is that "the Order's sweeping investigative and enforcement powers can be deployed against X in ways untethered from their stated purpose." X correctly notes that "[m]aintaining a sweeping consent decree over such a platform creates a standing mechanism through which a future Commission can pressure the Company over the viewpoints it hosts."[9] This concern applies no less to other social media platforms, all of which operate under consent decrees similar to X's.[10]

The Commission should address these concerns consistently, not company by company. By updating the procedural rules that govern consent decrees and investigations, the Commission can reduce the potential for abuse.

Concerns that the Commission may abuse its investigative powers to retaliate against speech disfavored by the administration are well-founded. Last year, a district court quashed civil investigative demands from the FTC to Media Matters because the non-profit had plausibly

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[6] In 2011, Twitter entered a consent order for "failing to use reasonable security measures to protect nonpublic user data from unauthorized access, by failing to honor users' privacy choices, and by misrepresenting the security measures it had in place." X Petition at 3-4. The consent order was for a period of twenty years. Decision and Order, In re Twitter, Inc., Docket No. C-4316, 151 F.T.C. 162 (Mar. 2, 2011). Eight years later, Twitter "disclosed that, due to certain back-end engineering decisions, some email addresses and phone numbers that users had provided for account security purposes—such as two-factor authentication, password recovery, and reauthentication—may have been used unintentionally for advertising purposes." X Petition at 4. In response, on May 25, 2022, the FTC alleged "that Twitter had violated the 2011 Order and Section 5 of the FTC Act by misrepresenting the extent to which it maintained and protected the privacy of nonpublic consumer information." *Id.* at 5. On March 26, Twitter entered a modified consent order, "extending the 2011 Order for another twenty years and mandating a highly-reticulated compliance architecture, new restrictions on data use, regular third-party exhaustive assessments, and standing subpoena-like powers." *Id.* at 1. X now seeks to set aside the 2022 Order, "or, in the alternative, modify it to terminate before the end of this calendar year." *Id.* at 3.

[7] Szóka & Manne, *supra* note 2, at 75-78.

[8] *Id.* at 76.

[9] X Petition at 20.

[10] See, e.g., Decision and Order, In re Google Inc., C-4336 (Oct. 13, 2011); Decision and Order, In re Facebook, Inc., C-4365 (July 27, 2012).

alleged that those CIDs were retaliation for its speech about—as it happens—X.[11] Such First Amendment concerns should be foremost in any rulemaking about the FTC's processes—and addressed as quickly as possible.

Proceeding first through rulemaking rather than ad hoc revision, or rescission, of consent decrees offers many advantages. A rule would create a consistent framework governing consent decrees that could be stable in the long term, across changes in the leadership of the Commission and changes in control of the White House—rather than a short-term, patchwork fix. A rulemaking would also insulate the FTC from charges of favoritism, avoiding the potential for relief on consent decrees to become a tool by which the Commission rewards favored companies and punishes disfavored ones. Just as consent decrees and the Commission's investigative process can facilitate jawboning, so too can the selective grant of relief from either.

Such a rulemaking should consider the issues raised by X, those that would have been addressed by legislation proposed in 2016, and other issues that should have been addressed then, which we identified at the time.[12] That would include:

- The duration of consumer protection consent decrees;[13]
- When to modify or set aside orders against companies that no longer exist;[14]
- A process for modifying or setting aside orders that "are duplicative of protections already required by domestic and international" laws;[15]
- Provisions to prevent the Commission from abusing the investigative process and consent decrees to interrogate or punish companies for First Amendment activity;[16] and
- Factors to determine when an investigation or order unduly hampers innovation.[17]

Overall, reforming the Commission's process for investigations and consent decrees should be of bipartisan interest—whether addressed by the Commission or in legislation.

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[11] Media Matters for America v. Federal Trade Commission et al, No. 1:25-cv-01959-SLS (D.D.C. Aug. 22, 2025).

[12] Szóka & Manne, *supra* note 2, at 13-104.

[13] *Id.* at 75-78. See also The Technological Innovation through Modernizing Enforcement Act, H.R. 5118, 114th Cong. (2016), https://www.congress.gov/bill/114th-congress/house-bill/5093/text.

[14] X Petition at 2, 7-10.

[15] *Id.* at 2, 14.

[16] *Id.* at 20-23.

[17] *Id.* at 25-28. See also *Winning the Race: America's AI Action Plan* at 3–4.

Respectfully submitted,

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Berin Szóka
President
bszoka@techfreedom.org

Andy Jung
AI Policy Counsel
ajung@techfreedom.org

TechFreedom
1500 K Street NW
Floor 2
Washington, DC 20005

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