THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland......Because Ideas Matter

May 26, 2015

Federal Trade Commission
Office of the Secretary, Room H-113 (Annex X)
600 Pennsylvania Avenue NW, Washington, DC 20580

**RE: Sharing Economy Workshop, Project No. P15-1200**

Dear Commission and Workshop participants:

These comments are submitted by the Free State Foundation in response to the Federal Trade Commission's request for comments concerning competition, consumer protection, and economic issues arising in the "sharing economy." We offer some basic principles and considerations that should guide federal, state, and local government policy respecting sharing economy services, applications, and consumers.[*]

## I. Introduction and Summary

As we use the term, the "sharing economy" encompasses diverse service markets of individual buyers and sellers who collaboratively offer new consumer offerings through

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[*] These comments express the views of Randolph J. May, President of the Free State Foundation, as well as Seth L. Cooper, Senior Fellow, and Michael J. Horney, Research Associate. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

These comments rely heavily on Randolph J. May and Michael J. Horney, "The Sharing Economy: A Positive Shared Vision for the Future," *Perspectives from FSF Scholars*, Vol. 9, No. 26 (July 30, 2014), available at: http://www.freestatefoundation.org/images/The_Sharing_Economy_-. _A_Positive_Shared_Vision_for_the_Future_072914.pdfhttp://freestatefoundation.org/images/The_Sharing_Economy_-_A_Positive_Shared_Vision_for_the_Future_072914.pdf.

innovative online applications. It is characterized by an online app-based exchange of products and services, leveraging flexible peer-to-peer connections in order to pursue, on a timely basis, efficiencies through use of available supplies while simultaneously reducing transaction costs. The sharing economy is also characterized by the novel ways in which its applications facilitate trust relationships that drive the sharing and exchanging processes.

The sharing economy's positive impact is one of fostering innovation, creating value, and enabling cost savings for consumers. Internet-based applications, like Airbnb's and Uber's pathbreaking, innovative lodging and ridesharing services, use digital technology to change and enhance the way consumers live. Such applications create efficiencies and reduce costs to consumers through their technological capabilities to signal to users the supply and demand situation in particular markets at any given time. And survey research indicates that the sharing economy's positive impact on consumer welfare also includes high consumer satisfaction and added convenience.

Notably, recent research indicates the sharing economy is particularly beneficial for low-income consumers. The sharing economy has prompted shifts from outright ownership to rental transactions, thereby overcoming financial barriers to consumption. For example, consumers who would have owned a car or power saw in the past might now rent them instead, saving a significant portion of their income.

The Commission's primary focus should be on enhancement of overall consumer welfare and, concomitantly, consumer satisfaction. In this regard, a recent PWC study entitled "The Sharing Economy,"[1] reported these survey results:

- 86 percent of US adults who are familiar with the sharing economy agree the sharing economy makes life more affordable
- 83 percent agree it make life more convenient and efficient
- 81 percent agree it is less expensive to share goods than to own them individually
- 43 percent agree owning today feels like a burden
- 57 percent agree access is the new ownership
- 64 percent of consumer say that in the sharing economy, peer regulation is more important than government regulation

These results obviously provide support demonstrating the positive impact of the sharing economy with respect to increasing efficiency, affordability, and consumer ease convenience. Indeed, PWC reports that 19% of the U.S. adult population has engaged in sharing economy transactions, and of those, 72% say that they can see themselves participating in a sharing economy transaction in the next two years.

To date, firms and individuals operating within the sharing economy have been able to thrive through investment-backed entrepreneurship. The emergence of promising and

[1] PWC, "The Sharing Economy," available at: http://www.pwc.com/en_US/us/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf

successful sharing economy services is due to creative risk-taking in pursuit of opportunities, free from restrictive barriers to entry and competition. Accordingly, sharing economy services and related applications must remain free to form and operate without the strictures of any new sector-specific regulations or older regulations designed for incumbent providers of legacy services.

Unfortunately, various sharing economy services have been under attack by regulators in several states across the country. Also, some existing businesses feel threatened by the entry of these disruptive new Internet-based sharing applications. But just because businesses and individuals may lose profit or market share from a new technology or innovative idea, such as Airbnb's app enabling the sharing of lodging, does not mean that regulatory roadblocks should be erected. Consumers should be free to pick winners and losers in the market based on value and satisfaction instead of government officials applying lobby-influenced political criterion.

Concerns over regulatory capture phenomena should be brought to bear when considering public policy approaches to the sharing economy. Services like Airbnb and Uber continue to face the prospect of being banned or at least severely restricted. Fearing they will lose their market share to these new Internet applications, established hotel and taxicab enterprises often seek to persuade policymakers to apply unnecessary regulatory restrictions.

Regulatory relief should strongly be considered if the laws or regulations applicable to incumbent businesses no longer make sense. The proper way to respond to "level the playing field" between sharing economy entrants and incumbent service providers is to remove unnecessary regulations wherever they apply, not expand them in a competitive market environment.

As a general matter, the plausibility of any need for regulation of the sharing economy is diminished by its effectively self-regulating characteristics. Online reviews and accessibility of feedback information are uniquely critical to the Internet-centric business models of sharing economy services. Further, in many instances, insurance policies also offer ready means of protecting the interests of service providers, hosts, and consumers.

Of course, health, safety, and consumer protection laws and regulations of general applicability can be enforced against sharing economy service providers and hosts, just like entities that operate under legacy business models, as long as they are not formulated and implemented in a discriminatory fashion.

Sound public policy regarding the sharing economy should take into consideration the fact that services enabled by Internet-based applications have depended on the avoidance of regulatory barriers and burdens. A presumption of marketplace freedom and against regulation should guide public policy concerning the sharing economy. Clear and convincing evidence of an actual or likely harm *to consumers* should be demonstrated by any federal, state, or local regulatory authority or petitioning party advocating regulation before any sharing economy-specific regulatory proscription or intervention is considered. Special or partial laws and regulations designed to protect incumbent competitors from new sources of competition are unjustifiable and will harm consumers.

Further, to the extent that governing authorities determine that any regulatory action is warranted, they should focus tightly on addressing any real-world problems in the least intrusive, least costly way. And any concrete public health or safety concerns, supported by convincing evidence, should be addressed in a properly targeted way that balances the costs of regulation.

Opponents of new sharing economy business models and disruptive new Internet applications should not be allowed to succeed in misusing laws and regulations in order to stifle the services merely because they perceive adverse impact on preexisting businesses. A positive shared vision for emerging technologies in the rising sharing economy requires a free market-oriented perspective. This will foster the greatest amount of consumer welfare and consumer satisfaction among willing buyers and sellers.

## II. The Emerging Sharing Economy

Instantaneous accessibility of all manner of information enabled by the Internet and digital technologies has enabled the creation of novel and efficient services and business models for supplying consumers with valuable new marketplace choices.

Consumers have long been able to sell or borrow goods and services through yard sales and community markets. And for well over a decade, companies like eBay and Craigslist have used the Internet to create sources of value and lower the transaction costs through breakthrough e-commerce platforms. But the Internet and digital technologies have further expanded buying and selling opportunities and expedited search and transactional processes with faster, easy-to-use informational exchange interfaces.[2] An influx of new companies and Internet-based applications has emerged, enabling individuals to more easily "share" their underutilized resources,[3] including, their homes, apartments, and cars.

The "sharing economy" is a term for these diverse service markets of individual buyers and sellers, jointly providing new consumer offerings through innovative online applications. Also referred to as the "peer-to-peer economy," the "collaborative economy," and "mesh," the sharing economy is characterized by online app-based exchange of products and services, leveraging flexible peer-to-peer connections in order to timely pursue efficiencies through use of available supplies while simultaneously reducing transaction costs.

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[2] "The Rise of the Sharing Economy," *The Economist* (March 9, 2013), at http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy.

[3] "All Eyes on the Sharing Economy," *The Economist* (March 9, 2013), at http://www.economist.com/news/technology-quarterly/21572914-collaborative-consumption-technology-makes-it-easier-people-rent-items.

The sharing economy is also characterized by the novel ways in which its applications facilitate trust relationships that drive the sharing and exchanging processes. Of course, trust relationships between strangers established through the incentives of voluntary trade long pre-date the Internet. But the sharing economy uniquely emphasizes trust-building through online applications. Such applications offer a new medium for enabling and establishing trust through review functions that allow individuals sharing their resources and consumers alike to rate services and provide critical feedback and informational resources to platform providers, resource sharers, and consumers alike. Rachel Botsman, author of *What's Mine is Yours: The Rise of Collaborative Consumption* (2010), said in reference to the sharing economy that "technology is enabling trust between strangers."[4] Trust between the users of sharing economy applications allows for mutually beneficial gains from trade. Internet-based applications facilitate sharing and exchanging, thereby infusing new consumer choices and positive gains into the economy.

## III. The Positive Economic Impact of Sharing Economy Applications

The sharing economy's positive impact is one of fostering innovation, creating value, and providing cost savings options for consumers. Internet-based applications like Airbnb and Uber exemplify this emerging use of technology and are changing the way consumers live. Airbnb allows individuals to make their houses, apartments, or rooms available through the company's online application. Launched in 2008, Airbnb has built a community of hosts making rooms, apartments, or houses available around the world. Current listings exceed one million worldwide.[5] It is advantageous for travelers, because it allows for additional and often less expensive lodging options, other than just hotels. Often these host options are located in areas away from central business districts which may be more convenient for guests – and where hotel options are limited. Uber is an online application that connects individuals who need a ride with drivers in the area who offer rides. In many cities, a driver will be at a given location in a matter of minutes with just the touch of a smartphone. Both the Airbnb and Uber application require credit card information before booking a room or ride, which eases the process and reduces the uncertainty for both sides of the transaction. Drivers do not have to worry about payment after transporting someone and Airbnb hosts know that they have been paid up front.

The sharing economy's positive impact on consumer welfare also includes high consumer satisfaction and added convenience. In a survey conducted by Vision Critical and Crowd Companies, 75 percent of respondents mentioned convenience as a reason for sharing and a little more than half mentioned price.[6] While Internet applications may

[4] Rachel Botsman, "The Case for Collaborative Consumption" (presented at the TED, Sydney, Australia, May 2010), http://www.ted.com/talks/rachel_botsman_the_case_for_collaborative_consumption/transcript.

[5] *See* Airbnb, "About Us," at https://www.airbnb.com/about/about-us.

[6] Jeremiah Owyang, Alexandra Samuel, and Andrew Grenville, *Sharing Is the New Buying: How to Win the Collaborative Economy* (Vision Critical and Crowd Companies) (March 3, 2014), at http://www.visioncritical.com/sites/default/files/pdf/sharing-new-buying-collaborative-economy-report.pdf.

provide services at lower prices relative to the taxicabs or hotels, the convenience of having the services at their fingertips is also a major attraction for consumers.

Indeed, sharing economy applications create efficiencies and reduce costs to consumers through their technologically-enabled abilities to signal to users the supply and demand situation of the market at any given time. For example, easily and readily accessible information regarding Airbnb hosts and guests in a specific area pushes prices down through competitive forces and allocates goods and services more efficiently. In other instances, one might choose a hotel above competitive price levels because it is too costly or difficult to check the price of another nearby. But sharing applications virtually eliminate that search cost. This keeps the price of lodging and riding relatively low while providing consumers with different options that may better meet their demands.

Further, the sharing economy is particularly beneficial for low-income consumers. A study published in March, 2015 titled "Peer to Peer Rental Markets in the Sharing Economy" found, with statistical significance, that the "sharing economy" markets have an even greater beneficial impact on low-income persons than high-income persons. According the study's authors, New York University professors Samuel Fraiberger and Arun Sundararajan:

> We highlight this finding because it speaks to what may eventually be the true promise of the sharing economy, as a force that democratizes access to a higher standard of living. Ownership is a more significant barrier to consumption when your income or wealth is lower, and peer-to-peer rental marketplaces can facilitate inclusive and higher quality consumption, empowering ownership enabled by revenues generated from marketplace supply, and facilitating a more even distribution of consumer value.[7]

The explanation of the study's results is simple: Due to the accountability and transparency that many sharing applications provide about their users, the emergence of trust between individuals to share their goods and services has shifted consumer preferences from owning to renting. People who could not afford to own a house, car, or even a power saw can now more easily rent them from others and ultimately enjoy a higher standard of living than they would have otherwise. Additionally, people who would have owned a car or power saw in the past might now rent them instead, saving a significant portion of their income.

Of course, consumers with high-incomes gain from the sharing economy as well. But the savings accumulated from a shift in owning to renting is more valuable to consumers with lower incomes. In economic terms, this is the law of diminishing marginal returns. All else being equal, each dollar earned is valued less than the previous one.

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[7] Samuel P. Frailberger and Arun Sundararajan, "Peer-to-Peer Rental Markets in the Sharing Economy," NYU Stern School of Business Research Paper (March 6, 2015), at SSRN: http://ssrn.com/abstract=2574337.

Similarly, low-income consumers who already own goods that can be rented out stand to gain more from these transactions than high-income consumers. The extra income from sharing a car with someone is much more valuable to a poor college student than it is to a wealthy professional. Airbnb, for example, makes traveling less expensive, not only because it provides competition – and often lower prices – to traditional hotels, but also because travelers can share their living space while away.[8] In other words, as a result of the sharing economy, the same traveler on the same trip may realize economic benefits in his or her capacity as both a lessor and lessee.

In sum, the emergence of the sharing economy has already provided significant welfare gains to the economy as a whole. Consumers have additional, and often less expensive, options in everyday markets. Ordinary people have engaged entrepreneurial opportunities because Internet-enabled applications have vastly lowered capital investment barriers to market entry and competitiveness.

## IV. Sharing Economy Depends Upon Marketplace Freedom to Innovate and Compete

It is critical that the conditions best suited to market innovation and competition be fostered in order to ensure the continuing consumer welfare benefits of the sharing economy and further increase overall economic prosperity. That means sharing economy services and related applications must remain free to form and operate without the strictures of any new sector-specific rules or older regulations designed for incumbent providers of legacy services.

To date, firms and individuals operating within the sharing economy have been able to thrive through investment-backed entrepreneurship. The emergence of promising and successful sharing economy services owes to creative risk-taking in pursuit of opportunities, free from restrictive barriers to entry and competition.

In other words, the early success of the sharing economy is due what Mercatus scholar Adam Thierer calls "permissionless innovation."[9] Investors and companies have a greater incentive to fund start-ups and engage in entrepreneurial activity when little to no barriers to entry into the market exists – whether through professional licensing, regulatory compliance costs, or government fees.

The ability to align investment and resources with first-person knowledge of innovators and new service providers holds promise for financial return and rewards, whereas entry barriers restrict such opportunities according to one-size-fits-all rules established by regulatory institutions lacking such knowledge. The absence of such regulatory entry

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[8] For further background, *see* Michael J. Horney, "Airbnb is Important for European Tourism," *FSF Blog* (September 30, 2014), at http://freestatefoundation.blogspot.com/2014/09/airbnb-is-important-for-european-tourism.html.
[9] *See* Adam Thierer, *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom*, (2014).

barriers – at least ones that are not necessary to protect public health or safety – thereby unlocks incentives for increased innovative ideas and investments.

## V. New York vs. Airbnb: A Case Study in Regulatory Resistance to Sharing Economy

Unfortunately, sharing economy services have been under attack by regulators in several states across the country. New York's treatment of Airbnb is an important example on which to focus. A *Businessweek* article explained the situation well.[10] A 2010 law prohibits New Yorkers from renting out their apartments for less than 30 days, without being present. After complaints from many New York hotels and apartment complexes about Airbnb, Attorney General Eric Schneiderman started investigating these transactions, but Airbnb refused to release information about its hosts.

Meanwhile, Airbnb had to expend resources to conduct its own public-relations, advertising, and lobbying operations in an attempt to change the 2010 law or avoid its application.[11] Both sides of the issue – Airbnb and incumbent hotels – could be using lobbying money to better serve consumers instead. Therefore, consumers, whether Airbnb guests or hotel occupants, are now worse off, while Airbnb hosts are also worse off because this money could have been used, for example, to reduce the price of transactions or increase the insurance policy limits.

In May 2014, Airbnb and Mr. Schneiderman reached an agreement whereby Airbnb would provide anonymized data about hosts in New York, excluding names, apartment numbers, and other personally-identifiable information. The Attorney General's Office was given one year to review the data and then can request further information on specific hosts.[12] While the agreement may be welcome as an alternative to an outright ban or further obstructive measures, it should really be up to the discretion of homeowners and apartment owners to decide if guests are allowed to share their living space through Airbnb or other Internet applications. The 2010 law should not be construed or applied in a way that suppresses competition that could help lower the price of lodging in New York and increase consumer choice and convenience.

It is understandable that local governments would want to sharing economy services to collect and remit tax revenues. But Airbnb transactions are taxed just like hotels and apartment complexes. The sales tax on an Airbnb transaction is the host's responsibility to include in the price and pay to the local government. Of course, local governments can make an agreement with sharing economy services to automatically include the tax for each transaction in a specified location. If local governments adopt such terms with respect to a service like Airbnb, for example, it is be much less costly for governments

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[10] *See* Felix Gillette and Sheelah Kolhatkar, "Airbnb's Battle for New York," *Bloomberg BusinessWeek* (June 19, 2014), at http://www.businessweek.com/articles/2014-06-19/airbnb-in-new-york-sharing-startup-fights-for-largest-market#p2.
[11] *Ibid*.
[12] David Hantman, "Agreement in New York," *The Airbnb Public Policy Blog* (May 21, 2014), http://publicpolicy.airbnb.com/agreement-new-york/

and compliant hosts to ensure these taxes are collected. Incidentally, hosts are also required to pay federal income tax, and Airbnb keeps a file on each host's yearly earnings to assist with tax compliance.

## VI. Fear of Competition Is Not a Valid Basis for Regulating the Shared Economy

Some existing businesses feel threatened by the entry of these disruptive new Internet-based sharing applications. But just because businesses and individuals may lose profit or market share from a new technology or innovative idea does not mean that regulatory roadblocks should be erected. Regulation can often lead to government picking the winners and losers, based not on sound public policy rationales, but rather on lobbying and political prowess. Consumers should be free to pick winners and losers in the market based on value and satisfaction.

"Regulatory capture" is a term that applies to businesses seeking rents, awards or some form of favoritism from government authorities in order to restrict competitors in the market.[13] The act of regulatory capture creates several inefficiencies in the market. Certainly, regulatory capture risks harming consumers and producers in the cause of protecting lobbied incumbent interests. Regulations may restrict competition by imposing costs on new entrants that they cannot afford to bear as well as established business incumbents. These costs may push new entrants out of the market or at least decrease their competitiveness. Because regulatory costs are more easily absorbed by established businesses as opposed to new entrants, incumbents can even gain competitive advantage from seemingly "equal" regulations.

Concerns over regulatory capture phenomena should be brought to bear when considering public policy approaches to the sharing economy. Incumbent hotel industry and apartment building owners, for example, have the incentive to push for regulations that adversely impact Airbnb and its competitors if they perceive a risk of losing customers to individuals making their houses and apartments available online. The services of Internet applications like Airbnb and Uber, which have shown demonstrable positive impacts on the economy, continue to face the prospect of being banned or at least severely restricted. Fearing they will lose their market share to these new Internet applications, hotel companies and taxicab commissions are working to persuade policymakers to apply unnecessary regulatory restrictions.

Incumbent service providers typically argue that if they were required to incur regulatory costs and overcome barriers in order to enter the market, why shouldn't these new sharing economy services have to do the same? But the answer is simple: If the laws or regulations applicable to incumbent businesses no longer make sense, they should be changed. It always harms consumers when public policymakers attempt to "level the playing field" by subjecting entities to regulatory restrictions that are not needed. The

[13] For a brief overview, *see* Adam Thierer, "Regulatory Capture: What the Experts Have Found," *Technology Liberation Front* (December 19, 2010), at http://techliberation.com/2010/12/19/regulatory-capture-what-the-experts-have-found/.

proper way to respond to "level the playing field" claims is to remove unnecessary regulations wherever they apply, not to expand them to new entities.

## VII. The Sharing Economy Has Efficient Self-Regulating Mechanisms

Problems can arise in any situation where two individuals come together in a transaction to exchange goods or services, whether the transaction arises in a sharing economy model or traditional business model. Yet as a general matter, the plausibility of any need for regulation is diminished by the effectively self-regulating aspects of the sharing economy.

Online reviews and accessibility of feedback information are uniquely critical to the Internet-centric business models of sharing economy services. Indeed, most applications within the sharing economy invite feedback ratings. If someone leaves a mess when occupying a room through Airbnb, for instance, the host can give the guest a poor rating to warn future sharers. Similarly, if a guest feels that his or her experience was poor, he or she can assign a poor rating for the host.

Companies within the sharing economy have the incentive to regulate themselves to make sure things do not go wrong, or if they do, that there are appropriate methods for addressing culpable wrongs. Insurance policies also offer ready means of protecting the interests of service providers, hosts, and consumers. For example, for every transaction, Airbnb has an insurance policy covering up to $1 million in damages in case of an accident, so long as there is no liability from the host.[14]

A poor rating or existing insurance policy might not be enough to stop harmful conduct or accidents from occurring. But there should not be fear of these occurrences through a transaction originating on an Internet-based sharing application any more than there should be through a transaction originating in a non-sharing application.

The self-regulating mechanisms that apply to these new sharing Internet applications has led to 91 percent of sharers satisfied with their most recent experience. Inhibiting innovation through laws and regulations based on hypothetical fears does not help the economy or the welfare of consumers. Preemptive regulatory action based on conjectural harms leads to inefficient economic outcomes and often unintended consequences. For example, requiring a standard above the general level of safety regulations for Uber drivers could lead to more reckless driving if the regulation created a false sense of security for the drivers and riders.

If purveyors of sharing applications engage in harmful, unhealthy, or unsafe activities, competition is probably the most important regulatory mechanism to address any real problems. In competitive markets, poor consumer satisfaction generally means that a company will lose market share, or even fall out of the market. If a company is not operating safely or if it is putting its users in unhealthy conditions, the competitive

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[14] *See* Airbnb, "Peace of Mind. Guaranteed.," at https://www.airbnb.com/guarantee.

markets in which sharing economy services operate allow for unsatisfied consumers to choose alternatives.

## VIII. Sharing Economy Policy Should Presumptively Favor Marketplace Freedom, Not Regulation

The widely varying nature of shared economy services defies sharing economy-specific categorization for proscriptive rules. Nonetheless, health, safety, and consumer protection laws and regulations of general applicability can be enforced against sharing economy service providers and hosts, just like entities that operate under legacy business models.

Further, supposing specific, foreseeable harms arise from a particular sharing economy service, any regulatory approach should take into consideration the fact that sharing economy breakthroughs have depended on the avoidance of regulatory barriers and burdens. Government-enforced restrictions pose an existential threat to the continuation and further proliferation of sharing economy services. A presumption for market freedom and against regulation should therefore be an organizing principle of policy toward the sharing economy.

As Professor Alan Stone put it in *Regulation and its Alternatives* (1982), "[t]he general tendency of regulation to preserve the status quo, or at least to retard change."[15] For instance, "specification standards involve considerable loss of flexibility and act as a disincentive to technical change because of their rigidity."[16] Providers that enjoy regulatory privileges or advantages are protected from competitive pressures to institute technological innovations.[17] Even if unintended, regulatory requirements can even function as barriers that preclude providers that might offer products and services of greater value to consumers from entering the market.[18]

Given the consumer welfare-enhancing benefits of the sharing economy, both federal and state policymakers should view these emerging, competitive new services with a presumption of marketplace freedom: providers can deliver products and services according to their best judgment unless demonstrable, compelling reasons exist for restricting that freedom. A presumption of marketplace freedom can also be characterized as a presumption against regulation. Stone summarized such a presumption simply based on administrative costs of regulation:

> This presumption against regulation is easily established if we assume, for the moment, that regulation and the free market unaided by government intervention are equally capable of achieving identical levels of economic and social performance. Under such circumstances, free competition is obviously the preferred choice, since regulation inevitably occasions what

[15] Alan Stone, *Regulation and its Alternatives* (1982), at 216.
[16] *Id*. at 163.
[17] *Id*. at 138.
[18] *Id*.

> economists term ‘dead-weight loss’ – economic costs that are not directed towards the production, distribution, and marketing of goods and services. At the least, salaries must be paid to those government employees who are not involved in these economic activities as well as to the employees of regulated firms who must be employed for compliance or evasion. Starting from our temporary assumption of equal performance levels, the typical citizen would be better off not paying the taxes to support government regulators, and business units would be better off either reducing costs imposed by government or utilizing resources in productive activities.[19]

Of course, additional costs of regulation can result from priorities of legislators in adopting regulatory legislation, political influences on regulators, and other factors unrelated to the efficient production, distribution, and marketing of goods and services. But even based on simple and sensible assumptions about administrative costs quoted above, “it is clear that the burden of proof lies with those who advocate regulation and that regulation should not be implemented without convincing evidence.[20]

Indeed, clear and convincing evidence of an actual or likely harm to consumers should be demonstrated by any government regulatory authority or petitioning party advocating regulation before such authority before any sharing economy-specific regulatory proscription or intervention is considered.

It is also critical that federal, state, and local governing authorities alike remain closely attuned to concerns over consumer welfare, rather than competitor welfare. Special or partial laws and regulations designed to protect incumbent competitors from new sources of competition, even if undertaken under the pretense of protecting competition, are unjustifiable and will harm consumers. Hopefully, market incumbents opposed to the proliferation of innovative and disruptive new Internet services and applications will less frequently succeed in manipulating laws and regulations to stifle sharing economy services merely because they possibly may adversely impact preexisting businesses.

Further, policymakers should focus tightly on addressing any real-world problems in the least intrusive, least costly way. Any credible and concrete public health or safety concerns should be addressed in a properly targeted way that is also balanced against the burdens and costs of the regulatory proscription itself. If the focus of public policymakers is on the worst possible outcomes, entrepreneurs and consumers will be too afraid to continue trying new things in the sharing economy.

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[19] *Id*. at 56.
[20] *Id*.

## IX. Conclusion

It is our hope that the information and views expressed herein will assist the Commission's inquiry and prompt it act in accordance with them.

Respectfully submitted,

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