



Defining the Lines on Consumer Protection in the Broadband Era: What the Consumer Watchdog Order and the FCC-FTC Sign MOU Mean

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Ten days later, the Commission announced that it had entered into a Memorandum of Understanding (MOU) with the Federal Trade Commission (FTC). The MOU notes that the two agencies have shared jurisdiction regarding consumer protection over decades, and they each have unique expertise that can assist each in performing its mission. The MOU outlines specific ways in which the agencies will work together going forward through increased coordination on initiatives, consultation on actions (and investigations), and greater collaboration between agencies and in outreach to consumers.

Perhaps the most significant portion of the MOU addresses the two agencies' agreement on the contours of the "common carrier exemption" in the FTC Act. While not completely revolutionary, given the long and litigated history defining many of the contours of that exemption, the MOU does set out in straightforward terms how the FCC and FTC view the scope of that exemption. Specifically, the MOU clarifies that the FTC has authority over common carriers when they are engaging in noncommon carrier activities and that the FCC can exercise its authority over noncommon carriers engaged in common carrier services. The agencies also agreed to joint enforcement actions, when appropriate and consistent with their respective jurisdictions. Finally, they agreed to a greater sharing of information, including an explicit grant of access for the FCC to the Consumer Sentinel Network (CSN), a consumer complaint database (along with 40 other complaint databases) and a commitment by the FCC to become a contributor to the CSN.

At the November 17 House Energy and Commerce Oversight hearing, Chairman Wheeler renewed his commitment to initiate a proceeding to adopt consumer protection rules for broadband Internet access service providers consistent with Section 222 of the Communications Act. These two actions should help provide greater clarity concerning the scope of that proceeding.

Categories

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