

DRAFT
RESTORING INTERNET FREEDOM
FCC-FTC MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by the Federal Communications Commission (“FCC”) and the Federal Trade Commission (“FTC”) (collectively, the “Agencies”) for the purpose of facilitating their joint and common goals, obligations, and responsibilities to protect consumers and the public interest. The Agencies recognize and acknowledge that each agency has legal, technical, and investigative expertise and experience that is valuable for rendering advice and guidance to the other relating to the acts or practices of Internet service providers.¹

The Agencies further recognize, and this MOU reflects, that:

- (1) Pursuant to the FCC’s authority under the Communications Act of 1934, as amended, on December 14, 2017, the FCC adopted a Declaratory Ruling, Report and Order, and Order in the proceeding *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, Order, FCC 17-xxx (Dec. 14, 2017) (*Internet Freedom Order*), which, in principal part, restores broadband Internet access service to its Title I information service classification, reinstates the private mobile service classification of mobile broadband Internet access service, and returns to the Transparency Rule the FCC adopted in 2010 with certain limited modifications to promote additional transparency. As authority for the Transparency Rule, the FCC relies on Section 257 of the Communications Act, among other provisions, which requires the FCC to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services and to report to Congress on how such marketplace barriers have been addressed by regulation or could be addressed by recommended statutory changes; and
- (2) Congress has directed the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and has charged the FTC with enforcing a number of other specific rules and statutes.

Therefore, it is agreed that:

1. Consistent with its jurisdiction and to fulfill its duties under Section 257 of the Communications Act, among other provisions, the FCC will monitor the broadband market and identify market entry barriers by, among other activities, reviewing informal complaints filed by consumers, and will investigate and take enforcement action as appropriate with respect to

¹ The 2003 Memorandum of Understanding regarding Telemarketing Enforcement and the 2015 FCC-FTC Consumer Protection Memorandum of Understanding remain in effect, and nothing in this Memorandum should be construed as altering, amending, or invalidating those Memoranda.

failures by an Internet service provider to comply, in whole or in part, with the *Internet Freedom Order*'s requirements to file with the FCC or display on a publicly available, easily accessible website the specified subjects of disclosure.

2. Consistent with its jurisdiction, the FTC will investigate and take enforcement action as appropriate against Internet service providers for unfair, deceptive, or otherwise unlawful acts or practices, including but not limited to, actions pertaining to the accuracy of the disclosures such providers make pursuant to the *Internet Freedom Order*'s requirements, as well as their marketing, advertising, and promotional activities.

3. Consistent with each agency's jurisdiction and to maximize the resources of each agency, at the regular coordination meeting established by the Agencies' 2015 Memorandum of Understanding, the Agencies will discuss potential investigations against Internet service providers that could arise under each agency's jurisdiction, and coordinate such activities to promote consistency in law enforcement and to prevent duplicative or conflicting actions, to the extent appropriate and consistent with law.

4. To further support coordination and cooperation on these matters, the Agencies will continue to work together to protect consumers, including through:

- Consultation on investigations or enforcement actions that implicate the jurisdiction of the other agency;
- Sharing of relevant investigative techniques and tools, intelligence, technical and legal expertise, and best practices in response to reasonable requests for such assistance from either Agency; and
- Collaboration on consumer and industry outreach and education efforts, as appropriate.

5. The FCC and FTC will securely share consumer complaints pertaining to the subject matter of the *Internet Freedom Order*'s requirements to the extent feasible and subject to the Agencies' requirements and policies governing, among other things, the protection of confidential, personally identifiable, or nonpublic information.

6. The Agencies may coordinate and cooperate to develop guidance to assist consumers' understanding of Internet service provider practices.

7. In seeking to encourage and facilitate the enforcement of applicable law, the Agencies recognize that decisions by one agency to take or withhold action are not, except by operation of law, binding on or intended to restrict action by the other agency.

8. To ensure the effective exchange of information between the Agencies, the persons signing below and their successors shall be deemed Designated Liaison Officers to serve as the primary sources of contact for each agency. Formal meetings between appropriate senior officials of both Agencies to exchange views on matters of common interest and responsibility shall be held from time to time, as determined to be necessary by such liaison officers.

9. The Agencies may from time to time amend this MOU in writing, and such amendment shall become effective when executed by both parties. This MOU may be terminated by either party upon thirty (30) days' advance written notice.

10. This MOU shall take effect upon the effective date of the *Internet Freedom Order*. Nothing in this MOU shall be construed to impair or otherwise affect the authority granted by law to either party. This MOU shall be implemented consistent with applicable law and subject to the availability of appropriations. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against either the FCC or the FTC; their officers, employees, or agents; or any other person.

For the Federal Trade Commission, Bureau of Consumer Protection

Thomas B. Pahl
Acting Bureau Director

Date: _____

For the Federal Communications Commission, Enforcement Bureau

Rosemary C. Harold
Bureau Chief

Date: _____

For the Federal Communications Commission, Consumer and Governmental Affairs Bureau

G. Patrick Webre
Acting Bureau Chief

Date: _____