



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

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April 5, 2017

Molly C. Dwyer, Clerk
U.S. Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

**Re: *FTC v. AT&T Mobility LLC*, No. 15-16585
(decided August 29, 2016; Petition for Rehearing En Banc filed
October 13, 2016)**

Dear Ms. Dwyer:

We write to notify the Court of a recent change in the law relevant to arguments made by AT&T in its opposition to the Federal Trade Commission's pending Petition for Rehearing En Banc.

The FTC's Petition argued that the panel decision in this case creates a regulatory enforcement gap. In arguing to the contrary, AT&T noted that the Federal Communications Commission had "recently adopted new privacy rules governing broadband providers' treatment of consumer data." Opp. 8. Those rules never went into effect, and on April 3, 2017, President Trump signed into law Senate Joint Resolution 34, which disapproves the FCC privacy rules and provides that they "shall have no force or effect." See <https://www.whitehouse.gov/briefing-room/signed-legislation>. A copy of the resolution is attached.

Pursuant to the Congressional Review Act, the resolution of disapproval also limits the FCC's ability to regulate broadband privacy in the future. Specifically, the FCC may not reissue the privacy rules in "substantially the same form" or issue

Molly C. Dwyer

April 5, 2017

Page 2

new rules that are “substantially the same” as the disapproved rule unless such action is authorized by a newly enacted law. 5 U.S.C. § 801(b)(2). Since the FCC privacy rules never became effective and are now null and void, they cannot mitigate the regulatory gap discussed by the FTC in its petition.

Respectfully submitted,

/s/ Matthew M. Hoffman

Matthew M. Hoffman

cc: Counsel of record (via CM/ECF)

Attachment

S. J. Res. 34

One Hundred Fifteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and seventeen*

Joint Resolution

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Federal Communications Commission relating to “Protecting the Privacy of Customers of Broadband and Other Telecommunications Services”.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Federal Communications Commission relating to “Protecting the Privacy of Customers of Broadband and Other Telecommunications Services” (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

9th Circuit Case Number(s)

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)