

# Senate Committee Votes on Nomination of FTC Commissioner Terrell McSweeney

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Yesterday evening, the Senate Committee on Commerce, Science and Transportation held an executive session to vote on the nomination of Terrell McSweeney to fill the fifth and final open spot on the Federal Trade Commission ("FTC"). Her nomination was approved by voice vote and will now be presented to the full Senate for a vote. It is expected that the Senate will confirm the nomination, but it's unclear when that vote will actually occur, given the Senate's full calendar and Senator Lindsey Graham's (R-SC) threat to block all confirmations until the Obama administration accedes to his demands on Benghazi.

If confirmed, McSweeney would become the third Democrat on the Commission, shifting the balance in favor of the Democrats for the first time since Chairman Leibowitz stepped down earlier this year. Generally, her professional experience and past hearing testimony suggests that she has an interest in antitrust and consumer privacy, with a focus on protecting vulnerable populations (seniors, veterans, children, and the financially distressed).

## Hearing Testimony

Nominated by President Obama in June, McSweeney testified before the Senate Commerce Committee on September 18, 2013. Senator Roy Blount (R-MS) noted during the hearing that the lack of Senators in attendance demonstrated the widespread faith in the qualifications of McSweeney and Michael O'Rielly, a nominee to the Federal Communications Commission. McSweeney's testimony largely commended the FTC's work protecting consumers from unfair competition, deception, and fraud—in particular, stopping predatory practices that, in her opinion, tilt the playing field against consumers and protecting the vulnerable (seniors, veterans, children, and the financially distressed) from scams and deception.

In response to questions from Senator Ed Markey (D-MA), McSweeney spoke about consumer privacy and, in particular, stated that she was interested in working with the Senator on protections for teenagers who fall outside of the protections of the Children's Online Privacy Protection Act ("COPPA"). COPPA requires parental consent prior to the collection of personal information of children under 13 only. Additionally, McSweeney emphasized a need to protect children's privacy, noting that her small children were already both "iPad and app proficient." She stated that mobile technology—and the ways that children use it—is evolving rapidly, both for better and for worse.

McSweeney touched on online data collection and the FTC's important mission to educate the public, stating, "I'm often struck by how little most of us know about how information is collected and used

online." She added that the multi-stakeholder processes attempted in recent years offered important lessons for both the FTC and for Congress.

## Professional Background

Most recently, McSweeney has served as senior counsel of competition policy for the Department of Justice's Antitrust Division and was involved in the DOJ's ex parte filing to the Federal Communications Commission urging the agency to develop rules ensuring that smaller telecommunications networks have the opportunity to acquire low-band spectrum at auction.

McSweeney also has an extensive policy background. From 2009 to 2012, she worked at the White House as deputy assistant to President Obama and domestic policy advisor to the Vice President and, in that role, supported the Healthy Families Act—a 2009 bill that would have required employers with 15 or more employees to guarantee seven paid sick days per year. Prior to the 2008 election, McSweeney worked for Vice President Biden in various capacities—travelling with him and his Issues Director during the general election campaign and serving as his Deputy Chief of Staff and Policy Director in the U.S. Senate. In the Senate, she managed the Vice President's domestic and economic policy development and legislative initiatives, working on issues that included women's rights, domestic violence, intellectual property, judicial nominations, immigration, and civil rights.

McSweeney served as the Deputy Policy Director for the Wes Clark for President Campaign in Little Rock, Arkansas, in 2004, and worked with the Gore for President campaign in Nashville, Tennessee, in 2000. Before her political career, McSweeney, a graduate of Harvard University and Georgetown University Law School, was an attorney at O'Melveny & Myers LLP.

## What to Expect

As a Commissioner, we can expect McSweeney to focus on consumer and, in particular, children's privacy. During her September 18, 2013 testimony, she noted her frustration with industry self-regulatory efforts in the area of privacy. In April, Chairwoman Edith Ramirez echoed similar concerns, signaling the FTC's dissatisfaction with online behavioral advertising ("OBA") self-regulation. Thus, it is likely that OBA and the development of a universal Do Not Track system will become a priority for McSweeney.

McSweeney's antitrust background suggests she also will play a role in shaping the Commission's antitrust policy to protect and promote the middle class through competition enforcement. Her commitment to middle class families was reflected in her testimony. In response to questions from Senator Maria Cantwell (D-WA) about the impact of gas prices, she noted: "I've worked on middle-class economic security policies for most of my career and understand how very real that pressure can be on families. Particularly when they have tight budgets."