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WLF Urges FTC to Clarify Rule on Amplifier Promotion Does Not Apply Retroactively

(In re Final Amplifier Rule Clarification)

“FTC’s decision to impose a rule retroactively—announced via email—is an affront to businesses’ civil liberties and will harm consumers.”

—Glenn Lammi, WLF Executive Director & Vice President of Legal Studies

WASHINGTON, DC—Yesterday, in formal comments, Washington Legal Foundation (WLF) urged the Federal Trade Commission to clarify that a rule setting new requirements for the promotion of amplification equipment does not apply retroactively. WLF’s comment supports the Consumer Technology Association’s (CTA) request that FTC include language in the rule that it applies only to products manufactured after the Rule’s effective date.

FTC published an amendment to its 1974 Amplifier Rule on July 12, 2024. The Rule imposes requirements on home sound amplification equipment manufacturers that make marketing claims about their products’ power output. The amendment eliminates the testing flexibility that manufacturers had sometimes enjoyed under the original Rule in favor of a set of uniform testing criteria. Some speaker systems and other amplification devices manufactured before July 12 and currently available for sale underwent testing under manufacturer-defined criteria no longer allowed under the amended Rule. In correspondence with CTA 4 days after the amended Rule’s publication, an FTC attorney stated that the Rule’s mandates applied retroactively to those products.

WLF’s comment argued that basic notions of fair notice reflected in the Fifth Amendment’s Due Process Clause and Article I’s Ex Post Facto Clauses, as well as Supreme Court jurisprudence on retroactivity, compel FTC to clarify the Rule’s prospective effect. Nothing in the text of Federal Trade Commission Act Section 5, which non-compliance with the Amplifier Rule violates, empowers FTC to issue retroactive rules. FTC’s retroactive interpretation would both impair rights manufacturers possessed when they acted and impose new duties on transactions already completed.

The comment also explained how retroactive enforcement of the Amplifier Rule would harm consumers, the Rule’s intended beneficiaries, by depriving them of purchasing choices and raising prices.

Celebrating its 47th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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