

Eighth Circuit Cancels Click-to-Cancel

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On July 8, 2025, the Eighth Circuit vacated the Federal Trade Commission's ("FTC") Negative Option Rule, also known as the Click-to-Cancel Rule, on procedural grounds. The Click-to-Cancel Rule, which provided a streamlined path for consumers to cancel subscription services in a few clicks of a mouse, was scheduled to take effect on July 14, 2025, but the Court found that the FTC had failed to follow mandatory procedural requirements.

Petitioners argued that the FTC had, in implementing the rule, exceeded its statutory authority, skipped a requisite preliminary regulatory analysis during the rulemaking process pursuant to Section 22 of the Federal Trade Commission Act ("FTC Act"), and acted in an arbitrary and capricious manner under the Administrative Procedure Act ("APA") by enacting the Click-to-Cancel Rule. The Court agreed, finding that the FTC violated Section 22 of the FTC Act.

Background

The Click-to-Cancel Rule was intended to regulate negative option plans—recurring monthly charges where a consumer signs up once for a service, but the subscription or membership (and its attendant charges) renews automatically monthly. While the FTC has had rules governing negative option plans and features for decades, with the proliferation of online memberships, the FTC in 2024 finalized the Negative Option Rule: a new, expansive rule designed to apply to all negative option features—including automatic renewals, free-to-pay conversions, and continuity plans—across all industries and media.

The final rule imposed four core obligations:

1. Prohibited misrepresentations of any material facts to the consumer;
2. Mandated clear and conspicuous disclosures adjacent to the point of consent;
3. Required unambiguous, separate affirmative consent for the negative option feature;
4. Imposed a cancellation process that is as easy as the method of enrollment.

This last component is where the Rule got its name; a consumer should be able to cancel service with just a few clicks.

The Court's Ruling

In vacating the Rule, the Eighth Circuit found that the FTC violated Section 22 of the FTC Act by failing to issue a preliminary regulatory analysis, a prerequisite where a rule is expected to have a significant economic impact upon businesses (defined as \$100 million or more annually).

Key findings include:

- **Mandatory Analysis Was Not Optional:** Because the Rule’s economic impact would exceed \$100 million, the Court found that the FTC was required to issue a preliminary regulatory analysis and did not.
- **Public Engagement Was Short-Circuited:** As a result of the FTC’s failure to issue a preliminary regulatory analysis, the public was deprived of public comment and regulated parties were not afforded a meaningful opportunity to analyze and comment on potential alternatives.
- **Harmless Error Defense Rejected:** The Court concluded that the foregoing procedural missteps were not harmless and that “losing the opportunity to dissuade an agency from adopting a particular rule is prejudicial.”
- **Entire Rule Vacated:** Although the Rule included a severability clause, the Court vacated the entire Rule due to procedural deficiency and the impact on petitioners.

Implications for Businesses or Conclusion

For now, the FTC’s Click-to-Cancel rule is itself “cancelled.” The Rule did not go into effect on July 14, 2025 and business will continue to get a reprieve from its strict and stringent mandates. That said, Click-to-Cancel was a relatively bipartisan issue and we can likely expect to see the FTC try to repromulgate the rule in the future. In the meantime, many states passed state-analogues, so businesses would be wise to take into account state laws, some of which may be in effect now, that may have mirrored the FTC rule.

Key Takeaways

The FTC’s Click-to-Cancel Rule was intended to regulate negative option plans--recurring monthly charges where a consumer signs up once for a service, but the subscription renews automatically monthly. The FTC Rule required, among other obligations, companies to provide clear and conspicuous disclosures to the consumer next to the point of consent and a streamlined cancellation process that is as easy as the enrollment process. The Eighth Circuit’s decision striking the Rule allows businesses a reprieve from the strict mandates. Cautious businesses, however, need to stay abreast of local state laws that impose similar requirements. Companies must also beware that the FTC may attempt to repromulgate the bipartisan rule in the future.

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