

Before the
Federal Trade Commission
Washington, D.C.

In re

Petition for Rulemaking of Consumer Federation of America and the American Economic Liberties Project

FTC-2025-0792

COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

The Computer & Communications Industry Association (“CCIA”)¹ provides this response to the Petition for Rulemaking published December 3, 2025.² For the reasons stated herein and in the Comments filed June 23, 2023,³ the Commission should reject the Petition.

I. INTRODUCTION

The Petition asks the FTC “to renew its trade regulation rulemaking concerning the use of negative option plans,” and more specifically to “**adopt the language in the Click to Cancel NPRM issued on April 24, 2023.**”⁴ This request instructs the Commission to trod the same path as the prior, failed rulemaking. It is not well founded, for several reasons.

The 2023 NPRM was marred by grave procedural errors. As CCIA noted in its 2023 Comments, the NPRM did not comport with the requirement of Section 18 of the FTC Act, 15 U.S.C. § 57a(b)(3), to find that the alleged “unfair or deceptive acts” are “prevalent”, nor did it acknowledge any “countervailing benefits” of negative option plans as required by Section 5, *id.*

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications, technology, and digital services firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² FTC, *Petition for Rulemaking of Consumer Federation of America and the American Economic Liberties Project*, 90 Fed. Reg. 55701 (Dec. 3, 2025). The full Petition is available at <https://www.regulations.gov/document/FTC-2025-0792-0001> (visited Jan. 2, 2026); citations to the Petition refer to that document.

³ FTC, Project No. P064202, *Negative Option Rule*, Comments of CCIA (June 23, 2023), <https://www.regulations.gov/comment/FTC-2023-0033-0985> (visited Jan. 2, 2026) (the “2023 Comments”).

⁴ Petition at 1 (emphasis in original) (citing FTC, *Negative Option Rule*, 88 Fed. Reg. 24716 (Apr. 24, 2023)) (the “NPRM”).

§ 45(n). Petitioners themselves acknowledge that the U.S. Court of Appeals for the Eighth Circuit vacated the Final Rules due to “procedural deficiencies in the FTC rulemaking process.” Petition at 1 (citing *Customs Commc ’ns v. FTC*, 142 F.4th 1060 (8th Cir. 2025)). When several commenters raised these issues, the rulemaking pivoted to an adjudication before ALJ Foelak.⁵ But the fatal omissions in the 2023 NPRM were not – indeed, could not have been – cured by that limited review. The Petition’s request that the FTC simply adopt the proposed rules from 2023 would simply repeat these errors.

In addition, much of the draft language contained in the 2023 NPRM was not adopted in the Final Rules.⁶ After considering the comments and presentations in the record, the Commission jettisoned several proposed rules, including the overly stringent rule for “Saves” and the onerous annual reminder requirements. *Compare* NPRM, 88 Fed. Reg. at 24735-36 (Rule § 425.6) *with* Final Rule, 89 Fed. Reg. at 90538-39 (Rule § 425.6). Those rejected draft rules are no more reasonable or supported by the record today than they were in 2024. For this independent reason, the Petition should not be granted.

Petitioners’ failure to appreciate the procedural and substantive infirmities of the last Administration’s efforts surrounding the Negative Option rule leaves this Commission without any sound basis to take up, let alone grant, the instant proposal. The Commission therefore can and should deny the Petition based on the extant record from Project P064202 and the subsequent appeal.

II. ANY COMMISSION ACTION WITH REGARD TO SUBSCRIPTION PLANS SHOULD REST ON ESTABLISHED AGENCY AUTHORITY AND COGENT ANALYSIS OF THE PRO-CONSUMER VALUE OF THESE PLANS.

CCIA agrees that consumers should not be tricked or locked into unending subscription plans. *See, e.g.*, 2023 Comments at 1, 4. We have noted that the Commission was given broad authority to proscribe such conduct in the Restore Online Shoppers’ Confidence Act, 15 U.S.C. §§ 8401-8405, the Electronic Fund Transfer Act, 15 U.S.C. § 1693, and the Unordered Merchandise Statute (39 U.S.C. § 3009). *Id.* at 5-7. Based on that authority, the Commission promulgated and enforced 16 C.F.R. Part 425 with great effect. *Id.* at 7-8. To the extent that the

⁵ FTC, Project No. P064202, Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants, [88 Fed. Reg. 85525](#) (Dec. 8, 2023).

⁶ FTC, *Negative Option Rule*, Final Rule, [89 Fed. Reg. 90476](#) (Nov. 15, 2024).

Commission believes it nonetheless must again attempt to amend the Negative Option rule, CCIA suggests that it begin from a fully informed position.

One of the first considerations of any rulemaking should include a finding of prevalent unfair or deceptive practices that have harmed consumers. *See Custom Commc 'ns*, 142 F.4th at 1065 (citing 15 U.S.C. § 57a(b)(3)). The 2023 NPRM lacked such a factual basis, and the Petition fails to supply one.⁷ The Commission should, for example, be leery of arguments that cite only the size of the subscription market, because such statistics are not evidence of any inappropriate or unlawful conduct. *See* Petition at 2. Indeed, consumers' reliance on subscription plans is powerful evidence of their convenience and utility, which leads to the next key consideration for any new proceeding.

The Commission should also ensure that it fully appreciates the value that subscription plans bring to consumers. That is, the "countervailing benefits" part of the pre-rulemaking analysis should not be glossed over. 15 U.S.C. § 45(n). In the previous proceeding, CCIA explained the manifold benefits that subscription plans hold for consumers: convenience; price stability and discounts; and efficiency. 2023 Comments at 10. CCIA also noted that a drastic or flash-cut change to the Commission's existing rules would upend the costing analysis on which subscription plans rely, imposing on businesses a significant risk of unrecouped investment. *Id.* at 11. The result could be a widespread increase in the price of goods and shipping costs.

These suggestions would help ensure that the errors that marred the prior proceeding are not revisited should the Commission revisit these rules.

III. CONCLUSION

The Commission should deny the Petition without seeking further comment.

Dated: January 2, 2026

Respectfully submitted,

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⁷ The Petition states that "[t]he subscription economy reached a size of \$593 billion in 2024," and that "nearly half of consumers" have enrolled in one or more subscriptions. Petition at 2. But the source for that latter figure is from 2018, which says little if anything about the state of the U.S. economy today. *Id.* at 2 n.5. The paper could not be found at the URL supplied in the Petition. Further, the Petition's assertion that many consumers do not "realize" how much they depend on subscriptions is not evidence of any—let alone "prevalent"—deceptive or unfair conduct. *Id.* at 2. Indeed, the cited source for that assertion does not opine on any deceptive or unfair activity.

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