“Click-to-cancel” rule would penalize companies that make you cancel by phone

Enlarge / Federal Trade Commission Chair Lina Khan listens during a President Biden speech on the economy on October 26, 2022, in Washington, DC.
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Canceling a subscription should be just as easy as signing up for the service, the Federal Trade Commission said in a proposed “click-to-cancel” rule announced today. If approved, the plan “would put an end to companies requiring you to call customer service to cancel an account that you opened on their website,” FTC commissioners said.

The FTC said the click-to-cancel rule would require sellers “to make it as easy for consumers to cancel their enrollment as it was to sign up,” and “go a long way to rescuing consumers from seemingly never-ending struggles to cancel unwanted subscription payment plans for everything from cosmetics to newspapers to gym memberships.”

The FTC said the proposed rule would be enforced with civil penalties and let the commission return money to harmed consumers.

“The proposal states that if consumers can sign up for subscriptions online, they should be able to cancel online, with the same number of steps. If consumers can open an account over the phone, they should be able to cancel it over the phone, without endless delays,” FTC Chair Lina Khan wrote.

The FTC is seeking public comment on the proposal, which also includes other changes to the commission’s 1973 Negative Option Rule. “Some businesses too often trick consumers into paying for subscriptions they no longer want or didn’t sign up for in the first place,” Khan said.

Requiring simple cancellations

The proposed rule requires a simple cancellation mechanism for any medium in which a consumer signs up for a service, including Internet, telephone, mail, and in-person. It says:

> *On the Internet, this “Click to Cancel” provision requires sellers, at a minimum, to provide an accessible cancellation mechanism on the same website or web-based application used for sign-up. If the seller allows users to sign up using a phone, it must provide, at a minimum, a telephone number and ensure all calls to that number are answered during normal business hours. Further, to meet the requirement that the mechanism be at least as simple as the one used to initiate the recurring charge, any telephone call used for cancellation cannot be more expensive than the call used to enroll (e.g., if the sign-up call is toll-free, the cancellation call must also be toll-free). For a recurring charge initiated through an in-person transaction, the seller must offer the simple cancellation mechanism through the Internet or by telephone in addition to, where practical, the in-person method used to initiate the transaction.*

The proposed rule also targets the practice of trying to dissuade consumers from canceling by offering different

service options. Sellers would be allowed to "pitch additional offers or modifications when a consumer tries to cancel their enrollment," but "must first ask consumers whether they want to hear them," the FTC said. "In other words, a seller must take 'no' for an answer and upon hearing 'no' must immediately implement the cancellation process."

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Khan said the proposal also "would address new business tactics, like digital dark patterns—where firms deploy hard-to-see buttons, hidden pop-ups, or misleading links to manipulate consumers away from canceling their subscription."

The FTC will take comments on the proposal for 60 days after it is published in the Federal Register. Once the comment period begins, people can submit comments online or by mail.

FTC Republican dissents

The Notice of Proposed Rulemaking was approved 3-1 in a party-line vote. A dissenting statement from Republican Christine Wilson said expanding the Negative Option Rule may "discourage companies from using negative option features that consumers prefer and enjoy because of potential liability."

Additionally, Wilson argued that the FTC "does not have authority to seek civil penalties in *de novo* Section 5 cases," referring to Section 5 of the Federal Trade Commission Act that prohibits unfair or deceptive acts. Wilson also pointed to the Supreme Court's *AMG Capital Management* decision in 2021 that said Section 13(b) of the FTC Act does not authorize the commission to seek monetary relief.

"I might have supported a tailored rule to address the negative option marketing abuses prevalent in our law enforcement experience that consolidated various legal requirements," Wilson wrote. "This proposal instead attempts an end-run around the Supreme Court's decision in *AMG* to

confer *de novo* redress and civil penalty authority on the Commission for Section 5 violations unrelated to deceptive or unfair negative option practices."

The FTC majority cited authority from Section 5 of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA), a 2010 US law. In a statement, Kahn and fellow Democrats said the proposal "draws on Section 5's prohibition against unfair or deceptive practices. Specifically, it proposes to amplify ROSCA's simple-cancellation mandate and applies it across the full universe of negative option marketing."

The proposal's text says the FTC Act "provides the Commission with authority to issue a notice of proposed rulemaking where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent."

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