



May 27, 2025

## **Comments of the Competitive Enterprise Institute**

RE: Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers

Docket No.: FTC-2025-0028

On behalf of the Competitive Enterprise Institute (CEI), we submit comments to the Federal Trade Commission's Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers. Founded in 1984, CEI is a non-profit research and advocacy organization that focuses on regulatory policy from a free-market perspective.

- 16 C.F.R. Part 432 – Power Output Claims for Amplifiers Utilized in Home Entertainment Products (Amplifier Rule) – Final rule (2024): 89 Fed. Reg. 49,797.

The 2024 changes to the Amplifier Rule eliminated flexible testing requirements in favor of uniform testing.<sup>1</sup> The more stringent testing requirements raise the burden on boutiques and small businesses. The Consumer Technology Association (CTA) petitioned the FTC in August 2024 for clarification that the rule would not apply retroactively, which would force manufacturers to re-evaluate and recertify products on the market.<sup>2</sup> This retroactive application of the 2024 amendments likewise disproportionately harms smaller competitors, particularly domestic manufacturers. The FTC should consider clarifying the rule, returning to the 1974 rule, or total elimination of the rule.

- 16 C.F.R. § 437.4 – Earnings Claims in Business Opportunity Sales

While designed to protect consumers from deceptive earnings claims, the regulation imposes significant compliance burdens on legitimate business opportunity sellers. The detailed disclosure requirements may deter new entrants, particularly small businesses, from entering the market due to the complexity and potential liability involved. This could inadvertently reduce competition by favoring established firms that have the resources to comply with the regulation.<sup>3</sup>

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<sup>1</sup> Glenn G. Lammi and Cory L. Andrews, Comments of the Washington Legal Foundation regarding Petition to Clarify Final Amplifier Rule (R407003), November 6, 2024, [https://www.wlf.org/wp-content/uploads/2024/11/WLF-FTC-Comment-CTA-Amplifier-Rule\\_11.6.24.pdf](https://www.wlf.org/wp-content/uploads/2024/11/WLF-FTC-Comment-CTA-Amplifier-Rule_11.6.24.pdf).

<sup>2</sup> Consumer Technology Association, Petition for Rule Clarification or, in the Alternative, Amendment in the matter of Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products, RIN 3084-AB62, August 20, 2024, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/R407003CTAPetitionAmendAmplifierRule\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/R407003CTAPetitionAmendAmplifierRule_0.pdf).

<sup>3</sup> Tracy Miller, *From Enforcement to Rulemaking: Evaluating the FTC's Approach to Deceptive Earnings Claims* (Mercatus Center at George Mason University, February 2024), <https://www.mercatus.org/research/policy-briefs/evaluating-ftcs-approach-deceptive-earnings-claims>.

- 16 C.F.R. § 464.2 – Trade Regulation Rule on Unfair or Deceptive Fees (“Junk” Fee Rule) – Final Rule (2025): 90 Fed. Reg. 2,066.

The “Junk” Fee rule will limit smaller hotels from offering consumers different options at different price points. This particularly harms smaller hotels, which may not have the advertising budget of established firms. The FTC estimated the rule would save consumers a measly 16 minutes a year in “search time.”

- 16 C.F.R. Part 425 – Negative Option Rule (“Click to Cancel” Rule) – 89 Fed. Reg. 90,476 (November 15, 2024).

The Commission was wise in voting to further delay the compliance deadline for the new Negative Option rule.<sup>4</sup> As Commissioner Melissa Holyoak noted in her dissent on the voting of the final rule, “the Commission has used its limited resources to promulgate a broader regulation that may not survive legal challenge.”<sup>5</sup> The rule changes have already been challenged in federal court.<sup>6</sup> The rule changes poses unique challenges to small businesses that rely on subscriptions and would prevent them from offering discounts or better deals before losing a customer.<sup>7</sup>

- Premerger Notification; Reporting and Waiting Period Requirements (HSR Form rule), 89 Fed. Reg. 89,216 (November 12, 2024).

The new HSR Form increases compliance burdens for smaller mergers. FTC leadership has said that the new form will expedite the granting of early termination of mergers deemed to pose minimal concern. The *HSR Annual Report* should include wait times for early termination in subsequent *HSR Annual Reports* to determine if increased compliance burdens outweigh the purported savings in wait times.

Respectfully submitted,

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<sup>4</sup> Federal Trade Commission, “FTC Votes on Negative Option Rule Deadline,” press release, May 9, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-votes-negative-option-rule-deadline>.

<sup>5</sup> Dissenting Statement of Commissioner Melissa Holyoak on Negative Option Rule, FTC Matter No. P064202, October 16, 2024, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-dissenting-statement-re-negative-option-rule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-dissenting-statement-re-negative-option-rule.pdf).

<sup>6</sup> Jessica Guynn and Baily Schulz, “New FTC Subscription Cancellation Rule Under Fire from Business Groups, *USA Today*, October 23, 2024, <https://www.usatoday.com/story/money/2024/10/23/ftc-click-to-cancel-rule-lawsuit/75812374007/>.

<sup>7</sup> See Alan M. Ruley, Kaylie H. Jessup, and Olivia A. Steinberg, “Navigating the FTC’s New ‘Click to Cancel’ Rule: What Small Businesses Need to Know Now,” *Bell Davis Pitt*, May 21, 2025, <https://www.belldavispitt.com/attorneys-winston-salem-north-carolina/navigating-the-ftcs-new-click-to-cancel-rule-what-small-businesses-need-to-know-now>.