

April 13, 2026

Comments of the Competitive Enterprise Institute

RE: Rule Concerning the Use of Prenotification Negative Option Plans; Advance notice of proposed rulemaking; request for public comments

Docket No.: FTC-2026-0265

The Competitive Enterprise Institute (CEI) appreciates the opportunity to comment on the Federal Trade Commission’s (FTC) advanced notice of proposed rulemaking (ANPRM) on the Rule Concerning the Use of Prenotification Negative Option Plans.¹ CEI is a non-profit research and advocacy organization that focuses on regulatory policy from a free-market perspective.

A New Rule Is Unnecessary

CEI shares the view of other commenters that an expansion of the FTC’s current Negative Option Rule is unnecessary.² The FTC’s existing statutory powers, under Section 5 of the FTC Act, the Restore Online Shoppers’ Confidence Act (ROSCA), and other laws, provide ample authority to address negative option marketing that may be unfair or deceptive.

Additionally, market research suggests that cancellation friction may not be sufficiently prevalent to warrant a new trade regulation rule. In the ANPRM, the FTC indicates that it receives “thousands of complaints each year regarding negative option marketing.”³ The ANPRM notes that consumer complaints increased to “more than 90 per day in 2025.”⁴

Recent reports suggest a rising trend in subscription cancellations.⁵ According to a 2025 survey from Self Financial, the average household has about 2.8 active subscriptions, down from 4.1 in 2024 and 4.4 in 2023.⁶ Further, the 2025 Self Financial survey suggests that consumers have become much more intentional and efficient in managing and canceling subscriptions with

¹ Federal Trade Commission, “Rule Concerning the Use of Prenotification Negative Option Plans,” advance notice of proposed rulemaking, *Federal Register*, Vol. 91, No. 49 (March 13, 2026), <https://www.federalregister.gov/documents/2026/03/13/2026-04952/rule-concerning-the-use-of-prenotification-negative-option-plans>.

² Comments of Electronic Security Association, Advance Notice of Proposed Rulemaking – Negative Option Rule (RIN 3084-AB60), April 9, 2026, <https://www.regulations.gov/comment/FTC-2026-0265-0032>.

³ Federal Trade Commission, “Rule Concerning the Use of Prenotification Negative Option Plans,” p. 12321.

⁴ Federal Trade Commission, “Rule Concerning the Use of Prenotification Negative Option Plans,” p. 12321.

⁵ “Subscription Fatigue Is Real – Here’s What the Data Shows,” Medium, January 23, 2026, <https://medium.com/@subscriptioninsider/subscription-fatigue-is-real-heres-what-the-data-shows-9fa40d32087e>.

⁶ “The Cost of Unused Subscriptions 2025,” Self Financial, accessed April 12, 2026, <https://www.self.inc/info/cost-of-unused-paid-subscriptions/>.

recurring payments. The survey estimates that in 2025 the “monthly average value of unused paid subscriptions is \$10.57 – a decrease from \$32.84 in 2024 and \$25.34 in 2023.”⁷

The Self Financial survey does appear more limited in what it considers a “subscription,” but a more expansive March 2026 report from ReSubs aggregates industry data from sources like C+R Research, West Monroe, and Deloitte.⁸ It measures the number of subscriptions on an individual basis, finding that the average American has 8.2 active subscriptions.⁹ Therefore, there are about 2.83 billion active subscriptions, based on a US population of 345 million.¹⁰

In 2025, the average churn rate for business to consumer subscriptions was 7.8 percent, according to a 2025 Focus Digital report.¹¹ That same report found that the involuntary churn, whereby a subscription is cancelled due to something like credit card expiration, represents 18 to 32 percent of total cancellations.¹² The ReSubs report found that the monthly churn rate was 5.3 percent, with 50 percent of churn being involuntary.¹³

If there are 2.83 billion active subscriptions in the US with a monthly churn rate of 5.3 percent,¹⁴ that means there are around 150 million monthly cancellations or about 5 million cancellations a day.¹⁵ If we assume ReSubs’ higher involuntary churn rate of 50 percent,¹⁶ there are about 2.5 million subscription cancellations a day where the consumer actively initiates the process.¹⁷

Using the household subscription count from the 2025 Self Financial survey, there would be about 366.8 million active subscriptions.¹⁸ Applying the monthly churn rate of 7.8 percent from the Focus Digital report,¹⁹ there are about 28.6 million cancellations per month or about 953,000 cancellations every day.²⁰ Even when applying the more conservative assumption from ReSubs that half of subscription churn is involuntary, there are still about 476,000 successful, consumer-made cancellations occurring every day.²¹

⁷ “The Cost of Unused Subscriptions 2025,” Self Financial.

⁸ “Subscription Spending Statistics (2026): What the Data Shows,” ReSubs, March 3, 2026, <https://resubs.app/resources/subscription-spending-statistics>.

⁹ “Subscription Spending Statistics (2026): What the Data Shows,” ReSubs.

¹⁰ “U.S. and World Population Clock,” United States Census Bureau, accessed April 12, 2026, <https://www.census.gov/popclock/>; “United States Population (LIVE),” worldometer, accessed April 12, 2026, <https://www.worldometers.info/world-population/us-population/>.

¹¹ Chase McGee, “Average Churn Rate for Subscription Services,” Focus Digital, December 22, 2025, <https://focus-digital.co/average-churn-rate-subscription-services/>.

¹² McGee, “Average Churn Rate for Subscription Services.”

¹³ “Subscription Spending Statistics (2026): What the Data Shows,” ReSubs.

¹⁴ “Subscription Spending Statistics (2026): What the Data Shows,” ReSubs.

¹⁵ Calculations based on industry estimates.

¹⁶ “Subscription Spending Statistics (2026): What the Data Shows,” ReSubs.

¹⁷ Calculations based on industry estimates.

¹⁸ There were 131 million households in 2023. Elena Patel, Aastha Rajan, and Natalie Tomeh, “Make It Count: Measuring Our Housing Supply Shortage,” Brookings Institute, November 26, 2024, <https://www.brookings.edu/articles/make-it-count-measuring-our-housing-supply-shortage/>.

¹⁹ McGee, “Average Churn Rate for Subscription Services.”

²⁰ Calculations based on industry estimates.

²¹ Calculations based on industry estimates.

The FTC’s 90 a day complaint rate appears statistically minuscule in comparison. While the data reflects subscription markets generally, it is informative regarding consumer behavior and cancellation dynamics relevant to negative option programs. Even using conservative assumptions, hundreds of thousands (or more) of consumers successfully cancel subscriptions daily, which suggests that cancellation mechanisms are functioning and that the complaint volume is comparatively small.

The Benefits of App Stores

Regarding the marketplace inquiries for negative option programs under section B.5 of the ANPRM, third-party platforms frequently offer consolidated dashboards that empower consumers to manage their subscriptions and facilitate low-effort cancellations. These innovations illustrate how market forces, rather than government mandates, can discipline potentially unfair or deceptive practices in negative option marketing. It also shows how efficient digital intermediaries benefit consumers.

Both the Google Play Store and Apple App Store feature unified subscription dashboards that display active subscriptions, recurring costs, and upcoming billing cycles for all payments managed through their respective payment systems. These companies provide brief and detailed tutorials and guides to help users navigate subscription management and cancellation within their platforms.²² The app stores standardize pop-ups and notifications that clearly list the price, frequency of billing, and trial duration before a consumer authorizes the purchase. Further, the platforms automatically send receipts via email that restate the terms of the negative option, providing a record for consumers. Apple and Google also enforce developer guidelines that require apps to have transparent subscription terms as a condition for being hosted on their stores.²³

The success of these platforms highlights the value of efficient middlemen for consumers.²⁴ These platforms reduce search and transaction costs for users while providing oversight of negative option practices.

Conclusion

Considering the market realities, the FTC’s existing authorities are sufficient to address any purported unfair or deceptive negative option practices. Ultimately, market-driven innovations are effective in disciplining negative option practices. The Commission should not adopt a one-size-fits-all trade regulation that will increase costs and confusion for consumers.

²² Google Help, “How to Find and Cancel a Subscription on Google Play,” November 4, 2025, video, 0:43, <https://www.youtube.com/watch?v=ZkzmM5oZZAk>; Apple Support, “How to Cancel a Subscription on Your iPhone | Apple Support,” December 18, 2024, video, 1:18, <https://www.youtube.com/watch?v=MQkHY4DOdfw>.

²³ Google Play, *Google Play Developer Distribution Agreement*, September 15, 2025, secs. 3.7, 3.8, 4.6, 8.3 https://play.google/intl/en_us/developer-distribution-agreement.html; Apple, *Apple Developer Program License Agreement*, accessed April 12, 2026, secs. 3.2(f), 11.2(g), Attachment 2: secs. 3.2, 3.3.3(C), <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-English.pdf>.

²⁴ Alex R. Reinauer, “Targeting Digital Platforms,” *Regulation* (Winter 2024-2025), <https://www.cato.org/regulation/winter-2024-2025/targeting-digital-platforms>.

The Commission should carefully consider whether a new trade regulation rule in this area is necessary or appropriate given its existing authority under Section 5 of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA). To the extent the proposed rule would extend beyond addressing clearly unfair or deceptive practices and instead impose broad, prescriptive requirements across diverse business models, the Commission should articulate how such an approach fits within its statutory authority and is supported by evidence in the record. Absent such justification, the rule risks being arbitrary and capricious under the Administrative Procedure Act.

Respectfully submitted,

Alex R. Reinauer
Research Fellow
Competitive Enterprise Institute
Alex.Reinauer@cei.org