



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Statement of Commissioner Rebecca Kelly Slaughter

*Regarding the Final Trade Regulation Rule Concerning Recurring Subscriptions and Other
Negative Option Programs*
Commission File No. P064202
October 16, 2024

As is common in rulemaking proceedings, this Final Rule that the Commission promulgates is somewhat different from what it originally proposed—clarified, narrowed, and ultimately improved by the process of grappling with the substantial record of comments submitted by the public. I extend my heartfelt thanks to everyone who submitted comments; to the talented staff in our Division of Enforcement and the East Central Regional Office who diligently shepherded this proceeding, thoroughly considered all those comments, and recommended thoughtful revisions; and to my colleagues for their deep engagement with this issue of great importance, including former Chairman Joe Simons, under whose leadership the Commission initiated this rulemaking proceeding.

I write separately to draw attention to the comment record about a provision that the Commission proposed but ultimately does not finalize, proposed § 425.7, which would have required annual reminders of subscriptions that do not involve the delivery of physical goods.¹ Americans understand the importance and value of such a requirement; many have discovered that they or their parents had been paying for years or even decades for a service wholly unused, such as a dial-up internet service from the 1990s.² The reason that the Commission declines to finalize this proposal is not that it lacks policy merit but that the record in total does not support its inclusion in the Final Rule as proposed.³ Of course, we are always mindful that our authority

¹ See Negative Option Rule, 88 Fed. Reg. 24716, 24736 (proposed Apr. 24, 2023) (“Annual reminders for negative option features not involving physical goods.”) (to be codified at 16 C.F.R. § 425.7), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

² See, e.g., Cmt. of the Attorneys General of New York, Pennsylvania, Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, Vermont, Washington, and Wisconsin (June 23, 2023), at 15 (“Subscription management has become an entire industry; consumers can choose from a variety of companies that offer to monitor their recurring subscriptions. We believe that consumers should not have to sign up for yet another service—one that comes with privacy and security risks, as subscription monitoring services require sharing financial account and other sensitive information—in order to effectively manage their subscriptions.”), <https://www.regulations.gov/comment/FTC-2023-0033-0886>; Cmt. of Consumer Action, Consumer Federation of America, Demand Progress Education Fund, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low-income clients), and National Consumer League (June 23, 2023), at 7 (“Consumers deserve to know when they are about to be charged automatically, with a chance to opt out.”), <https://www.regulations.gov/comment/FTC-2023-0033-0880>; Cmt. of Profs. Caruso, Raghavan, Sovern, Vladeck, Pridgen, Janger, Ondersma, and Block-Lieb (June 23, 2023), at 7–8 (encouraging the Commission to adopt the reminder requirement without narrowing it), <https://www.regulations.gov/comment/FTC-2023-0033-0861>.

³ See Fed. Trade Comm’n, Negative Option Rule, Final Rule Statement of Basis and Purpose (Oct. 16, 2024) (draft as submitted to the Office of the Federal Register), at 138–44.

under the FTC Act to issue rules under section 18 has limits; sometimes, as here, those limits prevent us from codifying in a rule practices that we might, as a matter of policy, prefer to require explicitly.

Congress and state legislatures, by contrast, have plenary authority to require such a reminder. This spring, for example, in a show of bipartisanship, Virginia Governor Glenn Youngkin signed into law legislation sponsored by Delegate Michelle Lopes Maldonado, H.B. 744, which requires that subscriptions that renew annually provide to the consumer a notice of the upcoming renewal and the opportunity to cancel via between 30 and 60 days before the consumer is charged for the renewal.⁴ The comment record compiled in this rulemaking proceeding strongly supports the wisdom of federal and state legislators' carefully considering adopting such a law, and the Final Rule's omission of such a provision should be understood only as a reflection of the Commission's cautious approach to its jurisdictional limits and not as related to the merits of a policy that requires annual reminders for subscription services.

⁴ See 2024 Va. Acts, H. 744, Apr. 4, 2024 (to be codified at § 59.1-207.46(E)), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+ful+CHAP0452+pdf>.