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Canceled Before It Clicked: Eighth Circuit Strikes Down FTC's Click-to-Cancel Rule

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Just days before it was set to take effect, the U.S. Court of Appeals for the Eighth Circuit struck down the Federal Trade Commission's (FTC) much anticipated "Click-to-Cancel Rule" (the "Rule"), delivering regulatory whiplash to companies that had proactively geared up for the Rule's arrival. As previously reported, the Rule sought to impose various requirements for subscription-based services, including clear and conspicuous disclosures, informed consent, and simple cancellation processes.

The Eighth Circuit's decision hinged on its finding of a procedural deficiency: namely, that the FTC failed to conduct a preliminary regulatory analysis, which is required when a proposed rule is expected to have an annual economic impact exceeding $100 million. The agency had estimated the impact would fall below that threshold, but an Administrative Law Judge (ALJ) later disagreed. The Eighth Circuit found that following the ALJ determination, the FTC should have conducted its preliminary regulatory analysis. Without having done so, the Court found that stakeholders were denied a meaningful opportunity to comment on the Rule.

This ruling, while significant, may not have the far-reaching practical impact one might expect. The FTC may seek review by the Supreme Court or restart the rulemaking process with the requisite preliminary analysis. But even if it does not do so, companies offering subscription-based services remain subject to other existing laws that impose many of the same (and sometimes additional) requirements as the now stricken Rule, including expansive state autorenewal laws. Autorenewal practices also continue to be a focus area for FTC enforcement actions under the Restore Online Shoppers' Confidence Act (ROSCA) and Section 5, as well as for State AGs, and in consumer class actions.

Proskauer's interdisciplinary team is at the forefront of navigating complex regulatory developments affecting subscription-based and consumer-facing businesses. We advise clients across industries on compliance with FTC regulations, state autorenewal laws, and evolving consumer protection standards. Whether assessing the impact of new rules, responding to agency enforcement, or defending class action litigation, we bring deep experience and strategic insight to help clients mitigate risk and stay ahead of the curve.

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