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April 13, 2026

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Mail Stop H-144 (Annex N)
Washington, DC 20580

Re: Negative Option Rule ANPRM, Project No. P064202

To the Federal Trade Commission:

The Consumer Technology Association® (“CTA”) submits this comment in response to the Advance Notice of Proposed Rulemaking on the Negative Option Rule (“ANPRM”) issued by the Federal Trade Commission (“FTC” or “Commission”).¹ CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 17 million American jobs. CTA owns and produces CES®, the world’s most powerful tech event.

Many CTA members offer subscription products and services that give consumers convenience and continuity. Members comply with existing laws and guidance that govern recurring payments and support rules that prevent deceptive practices.

CTA urges the FTC to act with caution when amending or expanding the Commission’s “Rule Concerning the Use of Prenotification Negative Option Plans” (“Negative Option Rule” or “Rule”) in a way that will discourage subscription offerings for legitimate products and services. CTA also urges the Commission to continue using existing laws and regulations to address unfair or deceptive practices involving negative option plans; namely, the Restore Online Shoppers’ Confidence Act (“ROSCA”)² and Section 5 of the FTC Act.³ If the FTC determines additional tools are required to address unfair or deceptive practices involving negative option plans, it should consider alternatives to regulation, such as business guidance.

¹ *Rule Concerning the Use of Prenotification Negative Option Plans*, Advance Notice of Proposed Rulemaking, 91 Fed. Reg. 12,318 (Mar. 13, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-03-13/pdf/2026-04952.pdf> (“ANPRM”).

² 15 U.S.C. §§ 8401-8405.

³ 15 U.S.C. § 45.

If the FTC proceeds with the “Vacated Rule,”⁴ the FTC should make key amendments concerning its prescriptive notice and cancellation provisions, as well as its prohibition on misrepresentations unrelated to subscription terms. Any amendments should be practical, and not overly burdensome or costly for companies to implement, or companies may pull back from offering consumer-friendly subscription services. The Commission should avoid creating new requirements on top of a complex landscape of state subscription laws, which will promote compliance and reduce confusion for companies and consumers alike.

I. Subscription Models for Popular Products and Services Yield Significant Consumer Benefits.

Consumer subscription models are rapidly growing in popularity. For instance, the subscription box market, which offers a collection of physical items delivered to consumers on a regular basis, is expected to grow from \$41.47 billion in 2025 to \$101.81 billion in 2030.⁵ The expansion of the e-commerce sector, in which consumers buy products and services online, will contribute to such growth.⁶ In addition, according to a study, 68% of consumers surveyed subscribed to a new service for the first time in 2024, and companies surveyed saw a 25% increase in unique subscribers in 2023 and 2024.⁷ Attracting new consumers through subscription models particularly benefits small and new businesses. Consumer enthusiasm is high for new subscriptions and existing subscriptions alike. According to the same study, 84% of consumers say they have received the same or greater value in their current subscriptions in 2024.⁸

Consumers also understand subscription models with recurring charges and prefer the convenience of automatic billing. In a 2026 study, 93% of consumers identified flexibility, convenience, and ease of access as the top benefits associated with subscription models.⁹ Similarly, a 2021 analysis found that subscription models “provide value to consumers who appreciate the convenience, novelty, and curated experiences.”¹⁰ According to a consumer surveyed in the 2021 analysis, “I like that I know exactly what I’m getting, how much I’m paying, and it’s convenient since it’s all on autopay.”¹¹ Another consumer observed, “[a subscription] saves me time and also encourages me to try new things.”¹² As the subscription economy has

⁴ As the ANPRM notes, in July 2025, the Eighth Circuit vacated the amended Rule (“Vacated Rule”), holding that the Commission failed to conduct the preliminary regulatory analysis required under section 22 of the FTC Act. ANPRM at 12,321.

⁵ *Subscription Box Market Report 2026*, Research and Markets (Feb. 2026), https://www.researchandmarkets.com/report/subscription-boxes?srsId=AfmBOoqzmWs2Am5ZaK2J4fnQg2Xxc8gmH0iyhJykT1qfWMZJj_FhYHY_.

⁶ *Id.*

⁷ *The Subscription Economy Index 2025*, Zuora (Apr. 2025), <https://www.zuora.com/resource/subscription-economy-index/>.

⁸ *Id.*

⁹ *U.S. Consumer Research: Subscription Services*, Business Software Alliance (Mar. 2026), <https://www.bsa.org/reports/bsa-us-consumer-survey-report>.

¹⁰ Choi et al., *Sign up now: Creating consumer–and business–value with subscriptions*, McKinsey & Company (May 26, 2021), https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/sign-up-now-creating-consumer-and-business-value-with-subscriptions#.

¹¹ *Id.*

¹² *Id.*

grown, some scholars suggest that customers are “less interested in owning goods and more inclined to obtain desired outcomes through easy-to-access services.”¹³ This conclusion is consistent with the findings of a 2019 survey.¹⁴

II. Existing Rules and Laws Effectively Address Unfair or Deceptive Practices Involving Negative Option Plans.

As the ANPRM notes, the Negative Option Rule, ROSCA, the Telemarketing Sales Rule,¹⁵ the Postal Reorganization Act,¹⁶ the Electronic Fund Transfer Act,¹⁷ and Section 5 of the FTC Act “each address various aspects of negative option marketing.”¹⁸ More, ROSCA is “primarily designed to regulate negative option marketing... limited to seller transactions effected on the internet.”¹⁹ Online negative option plans remain the most common form of negative option marketing.²⁰ The e-commerce industry continues to grow each year.²¹ Given the predominance of online negative option offerings, the FTC can easily leverage its existing authority under ROSCA, which would apply to most negative option plans, and allow the Commission to rein in those which may have unfair or deceptive practices.

For internet transactions, the ANPRM does not reveal evidence of violations that are not enforceable under the FTC’s existing authority. The ANPRM itself notes that since January 2025 alone, “the Commission has initiated five cases alleging negative option misconduct, and has approved six settlements of alleged negative option misconduct.”²² These settlements reflect record-breaking civil fines and consumer redress. The ANPRM points to an additional nine enforcement actions involving unfair or deceptive negative option practices.²³ The FTC’s record indicates its prioritization of ROSCA and its ability to effectively address unfair or deceptive practices in online negative option offerings under ROSCA, especially since the start of the FTC’s prior rulemaking process. The FTC should therefore continue to focus on using its existing authority to prevent unfair or deceptive subscription service practices.

¹³ Lindstrom et al., *Subscription-based business models in the context of tech firms: theory and applications*, 6 International Journal of Industrial Engineering and Operations Management 256 (2022).

¹⁴ *New International Survey Reports on The End of Ownership and The Rise of Subscriptions*, Zuora (Apr. 29, 2019), <https://www.zuora.com/press-release/new-international-survey-reports-on-the-end-of-ownership-and-the-rise-of-subscriptions/>.

¹⁵ 16 CFR part 310.

¹⁶ 39 U.S.C. § 3009.

¹⁷ 15 U.S.C. § 1693-1693r.

¹⁸ ANPRM at 12,319.

¹⁹ *Id.*

²⁰ See, e.g., Tony Chen et al., *Thinking inside the subscription box: New research on e-commerce consumers*, McKinsey & Company (Feb. 9, 2018), <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/thinking-inside-the-subscription-box-new-research-on-e-commerce-consumers#/>.

²¹ *Subscription Box Market Report 2026*, Research and Markets (Feb. 2026), https://www.researchandmarkets.com/report/subscription-boxes?srsId=AfmBOoqzmWs2Am5ZaK2J4fnQg2Xxc8gmH0iyhJykT1qfWMZJj_FhYHY_.

²² ANRM at 12,321.

²³ *Id.*

III. Alternatives to New Regulation are Appropriate.

The Commission seeks comment on regulatory alternatives to address unfair or deceptive negative option practices, “such as educating consumers and businesses on avoiding unlawful negative option practices.”²⁴ Rather than amending the Rule or adopting provisions of the Vacated Rule, the FTC should provide business guidance on avoiding unlawful negative option practices.

The FTC has effectively shared business guidance in a variety of formats and across a range of existing laws and regulations. For instance, the FTC has provided business guidance in the form of business guides,²⁵ Frequently Asked Questions,²⁶ and blog posts.²⁷ Through these resources, the FTC has shared detailed information on how businesses can meet compliance obligations. Rather than imposing overly prescriptive and burdensome requirements from the Vacated Rule, the FTC should share business guidance on how businesses should comply with the Negative Option Rule and the existing body of autorenewal law. For instance, Section 425.4 of the Vacated Rule requires precise screen placement for material information about a subscription offer.²⁸ However, consumers are increasingly using smartphones to shop online, and a rigid, one-size-fits-all policy would produce impractical results for shoppers using small screens and hamper innovation.²⁹ To account for innovation and changes in technology and consumer preferences, including shopping online on a smartphone, the FTC could instead issue business guidance to communicate best practices for placement.

IV. If the FTC Seeks to Reinstate the Vacated Rule, the FTC Should Make Amendments.

Should the FTC revive the Vacated Rule, it should make key amendments to the prescriptive notice and cancellation provisions and the prohibition on misrepresentations unrelated to subscription terms. The FTC should also recognize the effect of layering federal requirements on top of stricter state negative option laws.

Any Rule Amendments Should Avoid Prescriptive Notice Requirements.

²⁴ *Id.* at 12,322.

²⁵ See, e.g., *Business Guide to the FTC’s Mail, Internet, or Telephone Order Merchandise Rule*, Fed. Trade Comm’n (Sept. 2011), <https://www.ftc.gov/business-guidance/resources/business-guide-ftcs-mail-internet-or-telephone-order-merchandise-rule>.

²⁶ See, e.g., *The Rule on Unfair or Deceptive Fees: Frequently Asked Questions*, Fed. Trade Comm’n (May 2025), <https://www.ftc.gov/business-guidance/resources/rule-unfair-or-deceptive-fees-frequently-asked-questions>.

²⁷ See, e.g., *Does your business offer subscription services? Learn about the FTC’s settlement with Chegg*, Fed. Trade Comm’n (Sept. 15, 2025), <https://www.ftc.gov/business-guidance/blog/2025/09/does-your-business-offer-subscription-services-learn-about-ftcs-settlement-chegg>.

²⁸ *Negative Option Rule*, Final Rule, 89 Fed. Reg. 90,476, 90,538 (Nov. 15, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-11-15/pdf/2024-25534.pdf> (“Final Rule”).

²⁹ Kate Fu, *Top 10 smartphone uses: New consumer report reveals why we’re at the point of no return [EmpowerQ]*, Qualcomm (Apr. 7, 2023), <https://www.qualcomm.com/news/onq/2023/04/top-10-smartphone-uses-new-consumerreport-reveals-why-were-at-the-point-of-no-return>.

CTA supports rules aligned with ROSCA that establish reasonable and clear requirements that companies provide consumers with material information about product and service subscriptions. However, the Vacated Rule's requirements are too prescriptive and would establish one-size-fits-all requirements that increase compliance costs and consumer confusion. Section 425.5(a)(1) of the Vacated Rule requires companies to obtain express informed consent before charging the consumer, and such consent to the Negative Option feature to be obtained "separately from any other portion of the transaction."³⁰ This consent requirement is unnecessary and counterproductive for consumers. Businesses would already be required to clearly and conspicuously disclose the material terms of a consumer's agreement under the Vacated Rule. Obligating companies to include additional information or too many required actions in a transaction can reduce consumer comprehension of disclosures provided, leading consumers to stop reading or abandon a transaction altogether. Requiring businesses to gather, collect, and maintain records of the separate consent would also pose significant development and other costs on companies.

In addition, this requirement is unclear whether it would require companies to obtain consumer consent separate from, for example, making a discounted pricing offer or free trial offer for the product or service which is itself related to the subscription feature. This requirement would be detrimental for companies that provide free trial offers. Free trial periods are voluntary offers from companies that allow consumers to ensure that the service meets their expectations. However, they carry a cost to companies, such as content acquisition costs and payments to third parties. Companies are more likely to offer free trials when there is an easy way for satisfied consumers to automatically continue their subscription after the trial has ended. Without this seamless continuation to a paid subscription, the costs of providing free trials may begin to outweigh the benefits. For smaller businesses, additional requirements and complexity will likely result in fewer trials being offered, and consumers would begin to pay for a service that they could not try first.

Section 425.5(a)(1) should instead, at a minimum, strike the phrase "separately from any other portion of the transaction" and require that companies "[o]btain the consumer's unambiguously affirmative consent to the Negative Option Feature offer." Alternatively, to advance the same goal, and given that the Vacated Rule already would require clear and conspicuous disclosure of material terms, the FTC could instead require subscription service providers to prominently disclose subscription terms in a manner that differentiates them from other disclosures, such as in bolded or underlined font, in the course of obtaining consumer consent to the transaction.

Mandates Prescribing Specific Cancellation Methods Are Overly Prescriptive and Not Justified.

Section 425.6 of the Vacated Rule creates prescriptive cancellation method requirements that are arbitrary, vague, and not justified by the FTC's limited authority under Section 5 of the FTC

³⁰ Final Rule at 90,538.

Act. Section 425.6 of the Vacated Rule requires companies to create a cancellation mechanism that is “at least as easy to use as the method the consumer used to initiate the negative option feature” and requires companies to “provide the simple cancellation mechanism . . . through the same medium (such as internet, telephone, mail, or in-person) the consumer used to consent to the negative option feature.”³¹ These requirements are arbitrary, given that cancellation procedures may be logistically different than sign-up processes, particularly given the ease with which consumers can initiate transactions online, and the need to authenticate consumers making cancellation requests to ensure they are legitimate. For example, even if a customer can sign up for a subscription service during a purchase process, the cancellation page is reasonably likely to be located in an account settings page for practical purposes. At the same time, the “at least as easy to use” standard is vague and does not provide sufficient guidance on permissible cancellation methods.

This provision is also not grounded in the FTC Act or any record evidence that it is an “unfair” practice to have a cancellation process that is distinct from the sign-up process, either in terms of consumer harm or in showing a lack of countervailing benefits. The FTC’s trade regulation rule authority under Section 18 of the FTC Act does not allow the Commission to issue blanket rules—such rules should be limited to “specific[] acts or practices which are **unfair or deceptive acts** or practices in or affecting commerce.”³² The Commission also has not explained how consumers are harmed by cancellation methods that differ from the subscription sign-up process. Additionally, even if an act or practice is unfair or deceptive, the Commission may not issue a trade regulation rule unless it “has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking **are prevalent**.”³³ Should the Commission move forward with the Vacated Rule, CTA encourages consideration of these limitations.

The Rule Should Not Address Marketing Representations Unrelated to Subscription Terms.

Section 425.3 of the Vacated Rule makes it “a violation of this Rule and an unfair or deceptive act or practice . . . for any negative option seller to misrepresent, expressly or by implication, any material fact . . . related to the underlying good or service.”³⁴ This prohibition remains broad and unnecessary, since the FTC can already enforce against material misrepresentations concerning any attributes of consumer goods and services under the FTC Act. By contrast, in enacting ROSCA, Congress was focused on misleading representations about recurring online subscriptions such as through “membership clubs” and did not demonstrate an intent to cover through ROSCA attributes unrelated to subscription terms of products and services sold online through negative options plans. Rather than pursuing a very expansive interpretation of

³¹ *Id.* at 90,539.

³² 15 U.S.C. § 57a(a)(1)(B) (emphasis added). A practice is “unfair” under the FTC only if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” *Id.* § 45(n).

³³ *Id.* § 57a(b)(3) (emphasis added).

³⁴ Final Rule at 90,538.

ROSCA, the FTC should enforce against unlawful misrepresentations unrelated to subscription terms of products and services offered online under Section 5.

Any Rule Should Avoid Layering New Requirements on Existing State Subscription Laws.

Section 425.7 of the Vacated Rule does not preempt stricter state negative option laws, but imposing new requirements from the Vacated Rule threatens to complicate compliance and make consumer-friendly subscription offers more difficult to offer. There are over a dozen state laws governing subscription practices. These laws have inconsistent applicability and require complex compliance efforts. For example, Florida’s law applies to subscriptions in effect more than six months after the date of contract initiation,³⁵ Hawaii’s law applies to subscriptions with a term of more than one month,³⁶ and New Mexico’s law applies to subscription contracts with renewal terms of greater than two months.³⁷ For example, many state negative option laws require renewal reminders on different timelines.³⁸ Should the Commission move forward with the Vacated Rule, CTA encourages the agency to consider the effect of layering new federal requirements on top of a complex state landscape.

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CTA shares the FTC’s commitment to protect consumers from fraudulent negative option practices. That goal does not require burdening legitimate subscription services that consumers value for their convenience, flexibility, and choice.

The FTC already has the authority and enforcement tools it needs to police unfair or deceptive practices, and it is using them effectively. Expanding the Rule risks undermining services that work well for consumers today.

³⁵ Fla. Stat. § 501.165(1)(a).

³⁶ Haw. Rev. Stat. § 481-9.5(a).

³⁷ N.M. Stat. Ann. § 59A-58-2(B).

³⁸ See, e.g., N.C. Gen. Stat. §75-41(a)(3) (“Any person engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract, where the contract automatically renews unless the consumer cancels the contract, shall . . . [f]or any automatic renewal exceeding 60 days, provide written notice to the consumer by personal delivery, email, or first-class mail, at least 15 days but no earlier than 45 days before the date the contract is to be automatically renewed, stating the date on which the contract is scheduled to automatically renew and notifying the consumer that the contract will automatically renew unless it is cancelled by the consumer prior to that date.”); Fla. Stat. § 501.165(2)(b) (“A seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision.”); D.C. Code § 28A-203(b)(1) (requiring a 30-60-day renewal notice for “[a] person who sells a good or service to a consumer pursuant to a contract with an initial term of 12 months or more, that will automatically renew for a term of one month or more unless the consumer cancels the contract”).

If the Commission moves forward, it should preserve flexibility. Companies need the ability to design clear, effective notice and cancellation processes that reflect how their products and services actually operate.

Sincerely,

/s/ Rachel Nemeth

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Consumer Technology Association

/s/ J. David Grossman

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