



**Computer & Communications
Industry Association**
Open Markets. Open Systems. Open Networks.

April 13, 2026

Ms. April Tabor
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

Dear Secretary Tabor:

The Software & Information Industry Association (“SIIA”) and the Computer & Communications Industry Association (“CCIA”) respectfully submit this comment in response to the Federal Trade Commission’s (“Commission” or “FTC”) Advance Notice of Proposed Rulemaking regarding the Rule Concerning the Use of Prenotification Negative Option Plans (“ANPRM”).¹ SIIA and CCIA are leading trade associations, representing a broad cross-section of large, medium-sized, and small companies in the software, digital information, technology, and communications industries.

SIIA and CCIA support the Commission’s efforts to better understand how negative option offerings operate in practice to inform whether additional regulation is necessary in this important and evolving area of the economy. SIIA and CCIA urge the Commission to decline to propose a new Rule. In short, the Commission already has robust enforcement tools for stopping acts or practices that harm consumers in the subscription industry. The ANPRM already cites numerous actions that demonstrate the effectiveness of these authorities, including Section 5 of the FTC Act, the Restore Online Shoppers’ Confidence Act (“ROSCA”), and the Telemarketing Sales Rule (“TSR”).² A new Rule is unnecessary because it will merely add new costs and complexity to a legal framework that has already been shown to be working.

However, should the Commission determine that a new Rule should be issued, SIIA and CCIA urge the Commission to take a targeted approach to Rulemaking that focuses on clarifying the existing requirements of ROSCA. This statute, which has already proven to be an effective tool for protecting consumers from harm, would benefit from additional clarity.³ The Commission’s enforcement experience shows that consumer harm in the subscription industry

¹ Rule Concerning the Use of Prenotification Negative Option Plans, Advance Notice of Proposed Rulemaking, 91 Fed. Reg. 12318 (Mar. 13, 2026) (hereinafter “ANPRM”).

² 15 U.S.C. § 45; 15 U.S.C. §§ 8401–8405; 16 C.F.R. pt. 310.

³ 15 U.S.C. §§ 8401–8405.

does not arise from reasonable design differences for online cancellation experiences or the absence of a check box during sign-up. Instead, it is driven by egregious practices by bad actors who, for example, hide the existence of the autorenewal feature or force consumers to travel to physical locations to cancel their online subscriptions. These practices can be addressed through a narrow Rule that focuses on clarifying ROSCA's key requirements. To ensure consistency across the subscription industry, the Rule should apply to subscriptions offered to consumers online, offline, and over the phone.

Subscription services play a significant role in many sectors of the economy and provide substantial value to consumers. These offerings deliver convenience, predictability, flexibility, and lower upfront costs to consumers and allow them to access products and services in ways that align with their preferences and needs. In a recent online survey conducted by the Business Software Alliance ("BSA"), for example, nearly 60% of respondents agreed that subscriptions offer ongoing access to content at a lower upfront cost.⁴

Top benefits of subscriptions selected by respondents included "flexibility to cancel subscriptions when services are no longer needed;" "convenience and ease of access;" "flexible price options;" and "flexible duration of subscription term."⁵ Subscription models also foster innovation, by allowing companies to maintain loyal customers while improving their offerings over time and responding to changing consumer demand. Because consumers knowingly choose and value these arrangements (and exit them when they no longer find them valuable⁶), it is critical that any Rulemaking conducted by the Commission preserve the benefits of subscription offerings by narrowly targeting only the practices that harm consumers.

I. Subscription Services in the Modern Economy

Subscription services are an integral part of today's economy, operating across a broad range of industries, companies, and media. For example, consumers can take advantage of subscriptions for physical goods, digital content, and cloud-based software. These programs are offered with varying terms, including monthly or annual plans, free trials, or tiered pricing. Many also offer customization through add-on products or services, as well as promotional discounts. This range of subscription models reflects varied consumer demand and continued innovation by businesses of all sizes.

Because of this immense diversity in the subscription industry, and the existing regulatory framework that spans multiple state and federal laws, any additional regulation

⁴ Bus. Software All., *BSA U.S. Consumer Survey Report* (Mar. 19, 2026), at 6, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

⁵ *Id.* at 8.

⁶ According to a March 2026 report by Deloitte, 41% of consumers have cancelled a streaming video subscription in the last six months. See Deloitte, *Digital Media Trends: Consumption Habits Survey* (Mar. 25, 2026), <https://www.deloitte.com/us/en/insights/industry/technology/digital-media-trends-consumption-habits-survey.html>.

should focus on specific practices that have been shown to harm consumers and are not otherwise already prohibited by law. Overbroad and duplicative regulation that subjects different subscription models to a one-size-fits-all regime will impose significant compliance costs without corresponding consumer protection benefits. Moreover, rapid technological change is reshaping and will continue to affect how subscription services are developed, delivered, and used. These developments underscore the need for regulatory flexibility, as a prescriptive approach may ultimately harm consumers by discouraging pro-consumer innovation in subscription services.

Importantly, consumers are familiar with subscription arrangements, and they engage with them strategically. The 2026 BSA survey shows that 72% of respondents strongly value the ability to cancel subscriptions when services are no longer needed.⁷ The BSA Survey also reports that 69% of respondents have “binged and cancelled,” meaning they used a service and cancelled before a trial period ended.⁸ This pattern reflects strategic consumer judgment and choice—consumers intentionally sign up for subscription programs in order to access certain content or benefits and understand how to cancel when they no longer wish to continue.

Subscription companies are already regulated by several robust federal laws, including the FTC Act, ROSCA, and the TSR. Since 2010, ROSCA has required sellers of online subscriptions to clearly and conspicuously disclose material terms, obtain consumers’ express informed consent, and provide a simple mechanism to stop recurring charges.⁹ The Commission has demonstrated through numerous enforcement actions that ROSCA is an effective tool for addressing subscription-related misconduct.¹⁰ In addition, the TSR provides the Commission ample authority to address subscription-related misconduct arising from telemarketing.¹¹ This regime has allowed subscription businesses to innovate to meet the needs of their customers, while also empowering the Commission to stop bad actors from

⁷ See Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 8, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

⁸ *Id.* at 3.

⁹ 15 U.S.C. §§ 8401–8405.

¹⁰ See, e.g., *FTC v. Age of Learning, Inc.*, No. 2:20-cv-07996 (C.D. Cal. Sept. 1, 2020) (settlement resolving allegations that online subscription service failed to disclose auto-renewal terms and provide a simple cancellation mechanism); *FTC v. Uber Techs., Inc.*, No. 3:25-cv-03477 (N.D. Cal. filed 2025) (alleging violations of ROSCA related to subscription enrollment and cancellation practices); *FTC v. Fitness Int’l, LLC*, No. 8:25-cv-01841 (C.D. Cal. filed Aug. 20, 2025) (alleging violations of ROSCA and Section 5 based on practices that made it difficult for consumers to cancel gym memberships); *FTC v. Amazon.com, Inc.*, No. 2:23-cv-00932 (W.D. Wash. filed June 21, 2023) (alleging that the company enrolled consumers in automatically renewing subscriptions without informed consent and made cancellation difficult); *United States v. Adobe Inc.*, No. 5:24-cv-03630 (N.D. Cal. filed July 3, 2024) (alleging that the company failed to clearly disclose material subscription terms and impeded consumers’ ability to cancel).

¹¹ See, e.g., *United States v. Dish Network, LLC*, 256 F. Supp. 3d 810, 845–846, 991–992 (C.D. Ill. 2017) (finding extensive violations of the TSR arising from unlawful telemarketing practices related to subscription services and imposing significant injunctive relief and civil penalties), *aff’d* in relevant part, 954 F.3d 970 (7th Cir. 2020).

harming consumers. The FTC’s extensive history of enforcement using Section 5 of the FTC Act, ROSCA, and the TSR demonstrates that further regulation is unnecessary. Indeed, the cases cited in the ANPRM illustrate that the Commission’s enforcement is both robust and effective as-is.

However, if the Commission decides to issue a Rule, SIIA and CCIA urge the Commission to focus on adopting a Rule that extends ROSCA’s core principles of clear disclosure of material terms, express informed consent, and simple cancellation to subscriptions that are currently not covered by ROSCA, without imposing new and rigid requirements. When Congress enacted ROSCA, it did so in recognition of the Internet’s emergence as a critical channel of commerce in the United States—a reality that remains true today.¹²

Because ROSCA has already proven to be an effective enforcement tool for online subscriptions, the goal of any new Rule should be to clarify how those principles apply in practice and to extend those requirements to all subscription media, including offline and telephone transactions. An approach that focuses on clarifying existing standards, rather than imposing new prescriptive requirements, will preserve the flexibility necessary for subscription models to continue delivering value to consumers in a dynamic marketplace. In addition, it will extend the FTC’s already considerable power to police misconduct in subscriptions to any small corners where it does not currently reach.

II. Any Amended Rule Should Be Narrow and Guided by ROSCA.

SIIA and CCIA do not believe a Rule is necessary. However, should the Commission issue a Rule, it should be limited to clarifying ROSCA’s current requirements governing disclosure, consent, and cancellation. As discussed above, ROSCA already addresses the principal consumer risks associated with negative option programs, and the Commission’s enforcement history demonstrates that these requirements are effective. Clarifying how those requirements apply in practice will allow the Commission to continue to police harmful subscription practices. In contrast, new requirements are likely to generate complexity, costs, and confusion with minimal consumer benefit and no established record of necessity.

A. Disclosure of Material Terms

SIIA and CCIA agree with the Commission that consumers should receive clear and conspicuous information about key subscription terms when they sign up. This principle is reflected in ROSCA, which requires sellers to disclose all material terms of a transaction.¹³ If the Commission decides to issue a rule, SIIA and CCIA thus support a tailored Rule that clarifies ROSCA’s disclosure requirement by specifying which subscription terms are considered “material.” Those terms should be limited to the auto-renewing nature of the program, the price and billing cadence, the length of any free trial or introductory offer, and information

¹² 15 U.S.C. § 8401(1).

¹³ *Id.* § 8403(1).

about where to cancel (e.g., “cancel online through your account” or “call customer service to cancel”).

The Commission should not, however, require additional information beyond these terms, as excessive disclosures can lead consumers to stop reading or distract them from key terms.¹⁴ The 2026 BSA Survey reports that 66% of respondents prefer “a shorter version of the terms—with a link to the full terms—that covers just the most relevant information like payment terms and how I can cancel, even if it leaves out some details.”¹⁵ This approach would provide clarity about what is required under current law without imposing burdensome new disclosure requirements on businesses that do not reflect what consumers want to know when considering whether to buy a subscription.

B. Separate Consent

As part of the Commission’s consideration of requirements included in the vacated Rule, the ANPRM raises the possibility of requiring a separate, additional act of consent specifically for negative option features, such as a standalone checkbox acknowledging recurring charges.¹⁶ However, if in any new Rule the Commission clarifies which subscription terms are material under ROSCA, separate consent would not be necessary to ensure informed consumer choice. The Commission’s enforcement record suggests that the most serious negative option harm arises not from the absence of separate consent, but from failures to disclose the existence of recurring charges at all, or from disclosures that are buried or misleading.¹⁷ Addressing those practices through clearer guidance on material disclosures would directly target the source of consumer harm.

Separate consent is also inconsistent with how consumers expect to provide their consent to online purchases. Typically, consumers provide express informed consent by taking a clear, affirmative action, such as clicking a clearly labeled button, after being presented with the material terms of the subscription. This approach aligns with longstanding Commission guidance.¹⁸ Requiring an extra consent step elevates form over substance—focusing on *how* consent is collected rather than whether consumers *actually understood* what they were agreeing to. Imposing additional clicks could also lead to consumers facing confusing difficulty in starting their subscriptions because they missed checking an additional required box during

¹⁴ Expert Report of Professor Yoram Jerry Wind (Jan. 23, 2024), at 19, 27, <https://www.regulations.gov/comment/FTC-2024-0001-0010>.

¹⁵ Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 13, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

¹⁶ ANPRM, 91 Fed. Reg. 12318, 12323–24 (Mar. 13, 2026).

¹⁷ *See, e.g., id.* at 12321 n.34 & n.42.

¹⁸ Federal Trade Commission, *Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising* (Mar. 2013) (“Whether a particular ad is deceptive, unfair, or otherwise violative of a Commission rule will depend on the specific facts at hand . . . the ultimate test is whether the information intended to be disclosed is *actually conveyed* to consumers.”) (emphasis added).

sign-up. For example, one industry member reports that in jurisdictions incorporating this requirement, up to 50% of users have needed to resubscribe to their subscriptions, having unintentionally missed the separate required consent. This data shows that this requirement merely interferes with legitimate subscription offers and leads to consumers wasting their time having to resubscribe to programs they already believed they had purchased. Finally, imposing a separate consent mandate would also create tension with existing state automatic renewal laws, nearly all of which require clear disclosure and affirmative consent but do not prescribe a specific number of clicks or separate consent.

SIIA and CCIA would have significant concerns with a proposed Rule incorporating this requirement, as it is a priority issue for many members of industry. Accordingly, any Rule should reaffirm that express informed consent is satisfied when consumers agree to a transaction after receiving clear and conspicuous disclosure of material subscription terms, without imposing a requirement for separate consent to autorenewal. This approach preserves the flexibility necessary for effective design of sign-up experiences while maintaining strong consumer protections consistent with ROSCA and the Commission’s historical approach.

C. Cancellation

The ability to cancel easily is essential to fair and well-functioning subscription markets. Existing law—particularly ROSCA—already requires sellers of online subscriptions to provide a “simple mechanism” to stop recurring charges, a standard that has proven effective at targeting abusive practices.¹⁹ The Commission’s enforcement history confirms that serious harm has been caused by egregious misconduct that frustrates simple cancellation, such as forcing consumers to cancel in person when they signed up online, or imposing excessive delays through lengthy phone calls, or even preventing consumers from accessing promised cancellation methods—not from reasonable differences about how to design simple online cancellation flows.²⁰

Cancellation experiences necessarily vary based on the nature of the subscription, the platform involved, and the information consumers may need to make an informed cancellation decision. For example, when consumers have multiple separate subscriptions with a single provider, they may need to click into the membership management page of a particular subscription before canceling. Thus, if the Commission decides to issue a rule, a flexible approach that allows consumers to cancel through readily accessible digital pathways—without mandating uniform steps, interfaces, or timing—better accommodates these differences and

¹⁹ 15 U.S.C. § 8403(3).

²⁰ See, e.g., *FTC v. Fitness Int’l, LLC*, No. 8:25-cv-01841 (C.D. Cal. filed Aug. 20, 2025) (alleging violations of ROSCA and Section 5 based on practices that made it difficult for consumers to cancel gym memberships); *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-06435 (D.N.J. filed Nov. 3, 2022) (alleging that Vonage subjected consumers to lengthy, multi-step phone calls, excessive hold times, and contradictory instructions that prevented them from cancelling recurring subscriptions); *FTC v. Uber Techs., Inc.*, No. 3:25-cv-03477 (N.D. Cal. filed 2025) (alleging violations of ROSCA related to subscription enrollment and cancellation practices).

helps ensure that cancellation remains simple across platforms and devices. Overly rigid, one-size-fits-all mandates could inadvertently result in the elimination of information and offers that consumers value. Any Rule should therefore build on ROSCA’s flexible simplicity standard and focus on outcomes—whether consumers can cancel simply—rather than prescribing specific design or process requirements.

i. Online Cancellation

If there is a new Rule, SIIA and CCIA support a limited requirement that consumers who enroll in subscriptions online be able to cancel online. An online cancellation requirement would address many of the egregious practices targeted in prior Commission enforcement actions without imposing burdensome and overly prescriptive design choices on sellers. In crafting this requirement, the Commission should make clear that companies have flexibility in satisfying it, so long as they offer cancellation through a readily accessible electronic or digital pathway located where consumers would reasonably expect to find it—such as an account dashboard, settings page, subscription management portal, or comparable digital pathway. Consistent with that approach, the 2026 BSA Survey shows that nearly 60% of respondents strongly support the ability to cancel online on the company’s website, including via account settings.²¹

Industry data, drawn from internal analyses across a range of business lines, indicates that when cancellation is offered through familiar online pathways, consumers are generally able to cancel quickly and effectively. For example, one business reported that from August 1, 2025, to December 31, 2025, the median time to cancel across all user flows was 8.7 seconds, while the average time was 39 seconds. Another business reported that between July 23, 2019, and March 31, 2025, the median time to cancel across mobile and desktop interfaces was between 21 and 41 seconds and the mean time to cancel across mobile and desktop interfaces was between 28 and 49 seconds. Another business reported that online cancellation takes approximately 18 seconds.

This data supports adopting a requirement for online cancellation where sign-up is available online. However, the Commission should not adopt a strict requirement for cancellation that demands exact parity between sign-up and cancellation. Such a requirement would be unnecessarily rigid, nonsensical, and an unjustified burden above the existing baseline requirement that online cancellation be “simple.” Allowing cancellation through any readily accessible digital pathway—without prescribing a specific number of permissible clicks, screens, labels, devices, time limit, or options—better aligns with ROSCA’s simplicity standard and preserves the ability of companies to create cancellation mechanisms that are simple across platforms and devices. Moreover, prescriptive user interface (“UI”) requirements are likely to become outdated as technology evolves, particularly as consumers increasingly interact with services through AI-enabled assistants and conversational interfaces.

²¹ Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 19, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

ii. “Save” Offers

The ANPRM raises questions about whether “save” offers may obstruct cancellation.²² Industry data shows that even while offering save options, consumers are able to complete online cancellation in under one minute, demonstrating that saves do not obstruct cancellation. Furthermore, save offers provide consumers with significant value. For example, in 2025, one business analyzed its online cancellation flows and found that approximately 5% of consumers offered a save option accepted it, generating average per consumer savings of \$22 and total savings of roughly \$11 million. Another business reported that in 2025, customers saved between \$47-52 million in the aggregate by accepting save offers. Another business estimates that in 2025 alone, approximately 310,000 consumers accepted “save” offers, resulting in over \$16 million in total consumer savings. Furthermore, the 2026 BSA Survey reports that nearly 30% of respondents cancel their subscription “to see if the company will offer [them] a discounted rate to keep [their] subscription active,” with another 38% choosing this response as a possible reason for cancellation.²³

In addition, many customers use the cancellation experience to evaluate whether to adjust their subscription to better match their needs, such as by switching to a lower-cost plan, pausing service, or changing billing frequency. Data provided by one industry member estimates that consumers save approximately \$15 million annually by switching plan types. Multiple businesses report that a substantial percentage of customers that begin cancellation, for instance 15.8% for one business and 10.8% for another, take other actions after learning about options during the cancellation experience, such as pausing or setting up email alerts. The Rule should not prohibit these types of actions, which do not obstruct cancellation or prevent it from being completed on average in under a minute, but rather provide consumers with flexibility and choice. Finally, by allowing sellers to offer lower-priced plans or tailored alternatives at cancellation, save experiences can promote price competition and improve the value of subscription offerings for consumers.

Finally, the FTC should not adopt the approach taken in the proposed Click-to-Cancel Rule, which defined “save” offers so broadly that it swept in the disclosure of even basic information about the effects of cancellation.²⁴ Restricting a seller’s ability to inform consumers about their options—especially where online cancellation must, in any event, be “simple”—is neither reasonable nor helpful to consumers. Consumers may not realize, for example, that cancelling a subscription will delete saved work product or terminate access to a related service. It is beneficial for both consumers and sellers to disclose those consequences clearly at the point of cancellation.

²² ANPRM, 91 Fed. Reg. 12318, 12323 (Mar. 13, 2026).

²³ Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 19, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

²⁴ Negative Option Rule, 88 Fed. Reg. 24716, 24734–35 (Apr. 24, 2023) (proposed §§ 425.2(f); 425.6(d)).

Thus, if the Commission decides to issue a Rule, it should start from the premise that reasonable save offers, as well as alternative options and cancellation information, provide real value to consumers, do not add complexity, and should not be restricted simply because they are presented during the cancellation process when they are most relevant. Indeed, the 2026 BSA Survey reports that 83% of respondents expressed support for “being informed of the consequences of cancellation, such as loss of storage or content” and 78% supported “being offered a discount when I begin the process of canceling a subscription.”²⁵ And ROSCA already addresses the core concerns about difficult cancellation by requiring sellers to provide simple mechanisms to stop recurring charges. Accordingly, the Rule should not prohibit reasonable save offers, alternatives to cancellation, or other information presented during a simple cancellation process.

D. Use of Saved Billing Information

The Commission should also use any eventual Rulemaking to clarify that companies can use pre-saved billing information in a manner consistent with ROSCA. The use of saved billing information is a routine and widely expected feature of modern digital commerce that provides clear consumer benefits. Consumers commonly choose to store payment credentials because doing so avoids repeated entry of the same information and supports uninterrupted access to subscription services they have affirmatively chosen. Where consumers can see the payment method associated with their account and have the ability to update it, they have the information necessary to understand how payments will be processed. It also signals that the transaction involves an agreement to pay the seller, even if the initial term is a free trial. From the consumer’s perspective, saved billing information is a convenient and standard aspect of how subscriptions operate – not a source of confusion or harm.

Nothing in ROSCA prohibits this practice; rather, ROSCA requires that disclosures be made before billing information is “obtain[ed].”²⁶ As the Commission has previously recognized, where a seller relies on previously saved account information, the relevant safeguard is ensuring that required disclosures are provided before the consumer consents to the use of that information (i.e. before the billing information is “obtained” for purposes of the subscription).²⁷ Any Rule should therefore clarify that the use of saved billing information is permitted under ROSCA, so long as consumers are presented with the disclosures, affirmatively act to sign up, and can readily view and manage their payment methods.

²⁵ Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 19, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

²⁶ 15 U.S.C. § 8403(1).

²⁷ Negative Option Rule, 89 Fed. Reg. 90476, 90498 (Nov. 15, 2024) (vacated) (“Some sellers expressed concern regarding the timing of disclosures where a consumer previously elected to save billing information with the seller. To address this concern the Commission now clarifies that, where a consumer has previously provided account information to the seller and expressly allowed the seller to store that information, the seller must make the required disclosures prior to obtaining the consumer's consent to use saved account information.”).

E. Business-to-Business (“B2B”) Subscriptions

Any Rule should expressly exempt business-to-business (“B2B”) subscriptions, which differ fundamentally from consumer negative option arrangements. This exemption is particularly important given the ANPRM’s expansive definition of “negative option,” which could otherwise sweep in routinely negotiated commercial contracts that renew for successive terms unless one party provides notice.²⁸ B2B subscriptions typically involve enterprise purchasers, centralized account structures, and internal administrative controls that shape how these subscriptions are managed and terminated. For instance, B2B subscriptions are commonly administered through procurement processes, invoicing, purchase orders, and centralized account management rather than individual consumer payment cards. Such renewal provisions are a standard feature of B2B agreements between sophisticated parties and do not implicate the potential informational asymmetries that underlie consumer negative option concerns. Furthermore, organizations routinely designate administrators to manage subscriptions on behalf of multiple users, including adding or removing user licenses, modifying plans, or canceling service altogether—features that are core to enterprise services and enable businesses to manage cost, security, and access at scale.

Indeed, 76% of respondents in the 2026 BSA Survey agreed that “subscriptions for personal use . . . are different from subscriptions for professional tools . . .”²⁹ Given these structural and operational differences, applying consumer-focused requirements designed for individual sign-ups to these commercial contexts would impose substantial compliance burdens with little corresponding consumer-protection benefit. The Commission should therefore adopt an explicit exclusion for B2B subscriptions, for example by following the approach of the states and limiting the Rule’s application to transactions involving consumers acting primarily for personal, family, or household purposes.³⁰ A clear B2B exemption would avoid unintended disruption to commercial relationships that are already governed by contract law and established industry practice.

F. Prohibition on Misrepresentations of the Underlying Product or Service

The Commission’s ANPRM asks whether the Negative Option Rule should be expanded to cover misrepresentations not only about the negative option feature itself, but also about the underlying product or service. That expansion is unnecessary in light of existing law, and there are serious doubts about the Commission’s authority to incorporate such a requirement. Misrepresentations about products and services are already squarely governed by Section 5 of

²⁸ ANPRM, 91 Fed. Reg. 12318 (Mar. 13, 2026) (“A ‘negative option’ is any type of sales term or condition that allows a seller to interpret a customer’s silence, or failure to take affirmative action, or acceptance of an offer.”).

²⁹ Bus. Software All., BSA U.S. Consumer Survey Report (Mar. 19, 2026), at 9, <https://www.bsa.org/files/reports/03192026bsausconsurv.pdf>.

³⁰ See e.g., Ala. Code § 8-19-3(4) (“CONSUMER. Any natural person who buys goods or services for personal, family, or household use.”).

the FTC Act, which provides ample authority to challenge false or misleading claims about what a subscription offers or how it performs. As Commissioner Holyoak explained in her dissent to the vacated Click-to-Cancel Rule, this approach would improperly convert a negative option rule into a vehicle for regulating general advertising claims—far beyond the distinctive concern that negative option arrangements present.³¹ The negative option context is unique because it involves ongoing charges, and the Rule should therefore remain focused on representations and practices that bear directly on that feature—such as renewal terms, pricing, trial periods, and cancellation mechanics.

III. Conclusion

SIIA and CCIA appreciate the Commission’s consideration of stakeholders’ input on whether a Rule is needed. Existing law—particularly ROSCA—already provides a strong, effective framework for policing subscription practices and protecting consumers from deceptive or unfair negative option conduct. As the Commission’s enforcement history shows, ROSCA’s core requirements of clear disclosure, express consent, and simple cancellation remain effective when applied to today’s subscription models. A new Rule is therefore not necessary.

However, if the Commission determines that a Rule is needed, the Commission should develop a flexible, tailored rule that clarifies the core requirements of ROSCA, which have already been proven effective by the Commission’s strong enforcement history and could benefit from additional clarity. By reinforcing these standards while preserving flexibility critical for evolving technology, the Commission can protect consumers, promote competition, and support a healthy digital economy.

Respectfully submitted,

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Krisztian Katona
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³¹ Dissenting Statement of Commissioner Melissa Holyoak, Negative Option Rule (Oct. 16, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-dissenting-statement-re-negative-option-rule.pdf (“Indeed, the Rule is not limited to misrepresentations relating to *deceptive terms of negative option features* (or some other specific, deceptive conduct), but instead, applies broadly to any material fact. Nor does the Rule require that the consumer actually use the negative option feature; the mere *presence* of a negative option feature would render any misrepresentation of material fact subject to the Rule. Taken together, the Rule is nothing more than a back-door effort at obtaining civil penalties in any industry where negative option is a method to secure payment. The Rule’s application to any misrepresentation therefore fails to meet Section 18’s ‘specificity’ requirement, and will no doubt invite serious legal challenge on this basis.”).