June 23, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC–5610 (Annex N)
Washington, DC 20580
Submitted via https://www.regulations.gov

Re: Negative Option Rule; Project No. P064202

Dear Secretary Tabor:

The Service Contract Industry Council ("SCIC") appreciates the opportunity to provide comments to the Federal Trade Commission ("FTC" or "Commission") regarding the proposed amendments to the Negative Option Rule ("Rule" or "Proposed Rule"). SCIC is a national trade association of manufacturers, service contract providers, administrators, and retailers offering service contracts (hereafter "service contract companies") covering motor vehicles, homes, and consumer goods throughout the country. SCIC has been involved in this rulemaking process from the outset, having submitted a comment to the FTC in response to its earlier Advance Notice of Proposed Rulemaking ("ANPR") in which it outlined why service contracts should be exempted from any proposed rule. SCIC appreciates the FTC's continued consideration of the points raised in its initial comment, and has prepared this comment to provide the Commission with further information on why service contracts should be exempted under the Proposed Rule.

The comment first provides some background on service contracts, their importance to consumers, and the existing significant and strict regulatory schemes applicable to them. As part of this background discussion, the comment urges the FTC to follow the lead of states, such as California and New York, that have exempted service contracts from coverage under auto-renewal laws because of the extensive regulatory schemes that govern them. Second, the comment discusses why regulation of negative option offerings in the context of service

contracts is beyond the scope of the FTC's legal authority. Finally, it explains why inclusion of these contracts in the FTC's rule may in fact be harmful to consumers.

I. BACKGROUND ON SERVICE CONTRACTS

Service contracts provide coverage for consumer goods, motor vehicles, and household systems and appliances. They include contracts for the repair, replacement, or maintenance of property (or indemnity for the same) due to operational or structural failure caused by defects, accidental damage, normal wear and tear, or damages due to service interruption.

Service contracts are available to consumers in a myriad of configurations. Some cover a term of years, while other service contracts are offered on a renewable monthly or annual basis until the consumer elects to cancel coverage. Consumers may elect to enter into service contracts through a wide variety of channels including online; when they are at a car dealership, a cell phone store, or a home appliance store; dealing with a plumber or electrician working at their home; over the phone; or via the mail. These contracts offer consumers the ability to protect important investments by limiting the financial hardship and disruption to their daily lives that can result when household appliances, consumer goods and other products break down. When a consumer signs up for a service contract, they often do so for the peace of mind, knowing their significant purchases are protected from damage.

A. Consumers benefit substantially from auto-renewing service contracts.

For many consumers, having automatic renewal ensures they are covered when the need arises. The thought of a house burning down days after a consumer forgets to renew their homeowner's insurance policy is catastrophic. On a smaller scale, a home's heating system going out in the middle of a snowstorm days after a consumer forgets to renew their home service contract is a very real, and potentially costly, possibility absent automatically renewing contracts. In such situations, the homeowner would be without heat until they are able to locate a reliable repair person themselves at which point they must fully fund the repair or replacement costs. As noted by the Federal Reserves' 2022 Survey of House Economics and Decision Making, some 37% of Americans would struggle to come up with even $400 to pay an unexpected bill.[1] Service contracts allow consumers to plan and budget for such unexpected expenses, and auto renewal is a critical feature to help protect against unintended loss of coverage that could expose consumers to these burdensome costs and potentially other significant harm (e.g., not having a furnace working in winter).

According to a recent survey conducted on behalf of SCIC, nine out of ten Americans report having owned a product that broke after its service contract or extended warranty

[1] Economic Well-Being of U.S. Households in 2022, Federal Reserve 2022, *available at* https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf.

ended, forcing them to pay for replacement or repair out of their own pocket.[2] This may explain why over 6 in 10 consumers say they have regretted not signing up for an automatically renewing or longer term service contract, and 8 in 10 of those who have had service contracts say they would value "auto-renew" options on at least one type of service contract.[3]

B. Service contracts are already heavily regulated in a way that protects consumers and accomplishes the goals of the Proposed Rule.

As noted in the SCIC's comment to the ANPR, most states have substantial regulatory frameworks in place for offering service contracts. The result of this broad state regulation is that the industry has come to operate nationwide in a manner consistent with the intent of the Proposed Rule.

The state regulatory requirements applicable to service contracts are robust and tailored to the industry. Many states require service contract companies to demonstrate financial responsibility prior to offering a service contract. For example, service contract companies may need to share audited financial statements with the state director of insurance demonstrating either that they have sufficient net worth to pay consumer claims or that they have obtained an insurance policy so they can cover their potential obligations.[4]

The state laws also include specific and strict requirements around cancellations and refunds. Many states, for example, require that service contracts be cancellable by the consumer at any time and that the service contract companies must provide the consumer with their refund within a prescribed set of days after the provider receives notice of cancellation.[5] Some of these statutes require service contract companies to pay a monthly penalty if they fail to provide the consumer with the refund within the required time period.[6]

The state service contract laws also often include detailed disclosure requirements. For example, several states require service contracts to state the cancellation terms, total purchase

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[2] Sachs Media survey of 550 American adults, May 10-12, 2023. Results are representative by age, race, gender, region, and household income, with an average margin of error of +/- 4.3% at the 95% confidence level.

[3] *Id.*

[4] Although in some states service contracts are regulated by the department of insurance, the FTC has previously determined that activities constituting "the business of insurance" are extremely limited, even if they are undertaken by insurance companies. *See* Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119, 129 (1982); Fed. Trade Comm'n, Opinion 03-1 (Aug. 19, 2003), *available at* https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-03-1-1#:~:text=The%20McCarran%2DFerguson%20Act%20does,are%20regulated%20by%20state%20law (explaining that activities are only "the business of insurance" and therefore exempt from FTC jurisdiction if they meet the Pireno test and are regulated by state law enacted for the purpose of regulating "the business of insurance"). Given this precedent, we understand that the FTC may not consider service contract companies to be exempt from FTC jurisdiction under the FTC Act; thus, an exemption to this Proposed Rule is necessary to exclude service contracts from its scope.

[5] For example, California requires the refund to be paid out within 30 days after the provider receives notice of cancellation. CAL. BUS. & PROF. CODE § 9855.6 (2019).

[6] *See, e.g.*, N.Y. INS. LAW. § 7903(e) (2021); CAL. BUS. & PROF. CODE § 9855.6 (2019).

price, the existence of any deductible amount and any restrictions on transferability, among other things.[7] Many of these state laws also contain specific requirements on how providers make these disclosures (e.g., through the use of clear, conspicuous, understandable language printed or typed in sufficiently large font so as to make the disclosures easy to read).[8] Some of these laws even prescribe minimum font sizes for certain content.[9]

In addition to these substantive requirements, in many states service contract companies are required to register with the state department of insurance and provide contact information in case of any complaints with the regulator. Although these regulators have been active in their consumer protection efforts generally, they have not approached us to raise concerns about the use of automatic renewal in the service contract industry, indicating that this is not a substantial issue that requires federal regulation. We agree with the Attorneys General who commented on the ANPR that "a nuanced approach designed to address the different harms caused by different types of negative option plans is warranted."[10] When it comes to service contracts that automatically renew, the consumer is protected by disclosure, consent, cancellation, and refund rights, among other things, and unduly onerous or costly additional restrictions on how companies implement those renewals will only serve to harm consumers and small businesses alike, as described in greater detail below.

C. The FTC should follow the lead of states that have exempted service contracts from auto-renewal requirements.

About half of U.S. states have enacted auto-renewal laws requiring companies to, among other things, provide clear disclosures related to automatically-renewing agreements and to facilitate the easy cancellation of such agreements. Many of these laws – including in states widely regarded as having the most stringent auto renewal requirements and strongest consumer protection mandates– include specific exemptions for service contracts. For example, the District of Columbia exempts service contracts altogether.[11] New York and Oregon exempt "sellers" of service contracts, referencing the state law requirements that apply specifically to service contract companies.[12] California exempts entities regulated by its Department of Insurance as well as "[s]ervice contract sellers and service contract administrators regulated by the Bureau of Electronic and Appliance Repair [...]".[13] And Virginia exempts "[a]ny home service contract provider regulated by the Department of Agriculture and

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[7] *See, e.g.*, UTAH CODE ANN. § 31A-6a-104 (2022); 24-A M.R.S. § 7105 (2021); Service Contract Act, 215 ILCS 152/30 (1998).

[8] *See, e.g.*, N.Y. INS. LAW. § 7903(e) (2021); 24-A M.R.S. § 7105 (2021).

[9] *See, e.g.*, UTAH CODE ANN. § 31A-6a-104 (2022) (requiring the disclosure that the consumer is not obligated to purchase a service contract to be in all-caps, bold, and 14-point font).

[10] Letter from State Attorneys General to April J. Tabor, Acting Secretary of the Federal Trade Commission (Dec. 2, 2019), *available at* https://www.regulations.gov/comment/FTC-2019-0082-0012.

[11] D.C. CODE § 28A-204 (2022).

[12] N.Y. GEN. BUS. LAW § 527-a(8) (2021); OR. REV. STAT. §646A.295 (2015).

[13] CAL. BUS. & PROF. CODE §§ 17605(c), (f) (2021).

Consumer Services under Chapter 33.1." and "[a]ny extended service contract provider regulated by the Department of Agriculture and Consumer Services pursuant to Chapter 34 (§ 59.1–435 et seq.) or its affiliates."[14] The fact that states with some of the most consumer-protective laws in the country include exemptions for service contracts shows that these states recognized the pitfalls of applying general laws to cover entities in this highly-regulated industry.

In addition to state laws exempting service contracts, at the federal level, Senator Chris Van Hollen (D-MD) and Representative Yvette Clarke (D-NY) have introduced legislation addressing automatic renewal contracts.[15] Even though the proposed legislation covers an expansive range of auto-renewal contracts, it explicitly exempts service contracts. Even with this exclusion, prominent consumer organizations have publicly endorsed the proposed legislation.[16] As the wealth of deliberation at the state and federal level shows, those who care about consumer protection have come to the conclusion that service contracts should be excluded from negative option laws.[17] We urge the FTC to do the same.

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[14] VA. CODE ANN. §§ 59.1-207.48(6)-(7) (2023).

[15] Consumer Online Payment Transparency and Integrity Act, S. 1091, 118th Cong. (2023) (cosponsored by Senators: Richard Blumenthal (D-CT), Ben Ray Lujan (D-NM), Jack Reed (D-RI), and Ron Wyden (D-OR)); Consumer Online Payment Transparency and Integrity Act, H.R. 2460, 118th Cong. (2023).

[16] *See* Press Release, Office of US Senator Chris Van Hollen, Van Hollen, Clarke Introduce Bill to Safeguard Consumers, Require Companies to Shift from Opt-out Requirements to Opt-in (May 30, 2023), https://www.vanhollen.senate.gov/news/press-releases/van-hollen-clarke-introduce-bill-to-safeguard-consumers-require-companies-to-shift-from-opt-out-requirements-to-opt-in#:~:text=Our%20Consumer%20OPT%2DIN%20Act,%2C%E2%80%9D%20said%20Senator%20Van%20Hollen.

[17] To the extent the FTC chooses to define "service contract" for the purpose of drafting an exemption, we would urge the FTC not to use the definition contained in the Magnuson Moss Warranty Act, which is obsolete and doesn't cover, for example, home systems or maintenance; nor does it cover accidental damage or service interruption. Rather, we urge the FTC to adopt the definition of "service contract" found in the proposed Consumer Online Payment Transparency and Integrity Act, which defines a service contract as "a contract or agreement for a separately stated consideration for any duration – (A) to perform the repair, replacement, or maintenance of property or indemnification for service repair, replacement, or maintenance for the operational or structural failure of any motor vehicle or residential or other property due to a defect in materials, workmanship, accidental damage from handling, or normal wear and tear; or (B) to indemnify for the same, including towing, rental, or emergency road service or road hazard protection, and which may provide for the service repair, replacement, or maintenance of property for damage resulting from power surges or interruption" or alternatively the definition in the NAIC Service Contracts Model Act ("'Service contract' means a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement or maintenance of property or indemnification for repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements"). *See* Consumer Online Payment Transparency and Integrity Act, S. 1091, 118th Cong. (2023) at 7-8; Service Contracts Model Act (NAIC 1997).

II. THE FTC CANNOT MEET THE STATUTORY STANDARD FOR SHOWING THAT SERVICE CONTRACTS ARE UNFAIR OR DECEPTIVE, LET ALONE THAT ANY UNFAIR OR DECEPTIVE PRACTICES IN THIS INDUSTRY ARE PREVALENT.

Section 18 of the Federal Trade Commission Act ("FTC Act") grants the Commission the authority to prescribe "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce."[18] A representation, omission, or practice is "deceptive" if it is likely to mislead a consumer acting reasonably under the circumstances, and is material.[19] A practice is unfair if it (1) causes or is likely to cause substantial injury, (2) the injury is not reasonably avoidable by consumers, and (3) the injury cannot be outweighed by benefits to consumers or competition.[20] The Commission has the authority to issue a Rule where it "has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent."[21] To establish that a practice is "prevalent" the FTC must point to prior FTC cease-and-desist orders or other information indicating a "widespread pattern of unfair or deceptive acts or practices."[22]

The FTC cannot point to evidence that service contract companies are engaged in deceptive auto-renewal practices. As previously discussed, existing state laws and regulations require service contract companies to clearly disclose the material terms of any service contract before the consumer opts into it. Consumers are also periodically reminded of these agreements when they see the service contract charge on their bill. Consumers who purchase service contracts already have highly protective consent, refund, and cancellation rights.

Nor can the FTC point to evidence that service contract companies are engaged in unfair auto-renewal practices. The automatic renewal provisions contained in service contracts do not cause harm to consumers; in fact, they help consumers avoid harm. As discussed above, consumers purchase service contracts so that they can have the peace of mind knowing that their expensive purchases are covered in the event of damage. Forcing consumers to affirmatively re-consent to the auto-renewal provisions in these contracts separately from the overall agreement may lead to an unintended result: consumers being without coverage when they need it most. Further, the FTC cannot meet the "reasonable avoidability" test: given that consumers can and do choose *not* to enter into service contracts, they can reasonably avoid any conceivable harm that flows from them. Nor can the FTC satisfy the cost-benefit analysis: the benefit to those consumers who are saved from significant unexpected bills due to an unintended lapse in coverage outweighs any cost to those consumers who, despite the

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[18] 15 U.S.C. § 57a(a)(1)(B) (1975).

[19] Fed. Trade Comm'n, FTC Policy Statement on Deception (Oct. 14, 1983) (appended to Cliffdale Assocs., Inc., 103 F.T.C. 110, 174 (1984)), *available at* https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

[20] 15 U.S.C. § 45(n) (1980).

[21] 15 U.S.C. § 57a(b)(3) (1975).

[22] 15 U.S.C. § 57a(b)(3) (1975).

prominent disclosure of the auto-renewal terms, no longer want a service contract and forget to cancel it.[23]

When it issued its ANPR back in 2019, the Commission noted that it was engaging in this rulemaking process to address unfair and deceptive practices related to things like "inadequate disclosures for 'free' offers and other products or programs, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures."[24] These issues are not typically present in the heavily-regulated service contract industry, and nothing in the ANPR or the Proposed Rule indicates otherwise. None of the cases cited in the ANPR involved service contract companies. As a result, even if the FTC could establish that there may be isolated unfair or deceptive practices in this industry, it certainly cannot establish that unfair or deceptive practices regarding auto renewal are prevalent, as is required before the FTC can issue a Rule under Section 18. This conclusion is further supported by the lack of auto renewal complaints from state regulators about this industry.

III. INCLUDING SERVICE CONTRACTS IN THE NEGATIVE OPTION RULE MAY IN FACT HARM CONSUMERS.

If the FTC were to include service contracts within the scope of the Proposed Rule, contrary to the intent of the proposal, certain of the proposed provisions would in fact, cause harm to consumers in the service contract context. For example, although the language is unclear, the FTC appears to be proposing to require consent for any negative option feature, separately from any other portion of the transaction. A consumer who wants a service contract but then inadvertently fails to check a box indicating separate consent for the negative option feature could find that they no longer have coverage at the time they most need it. For many consumers who sign up for a service contract that bills monthly to cover items like cell phones or home systems and appliances, they expect to be covered until they cancel coverage. Requiring consent for a feature that is inherent in service contracts – continuous coverage – is therefore unnecessary and detrimental to consumers.

For service contracts, the most important terms tend to be the eligibility requirements, coverage limits, and inclusions and exclusions for coverage rather than the auto-renewal feature. Requiring consumers to check a separate box for information that is obvious to consumers could in fact detract from all the material information that the consumer needs to make an informed decision about whether to enroll in coverage. We have all seen instances of

[23] *See* Sachs Media survey of 550 American adults, May 10-12, 2023 (finding that over 6 in 10 consumers say they have regretted not buying a service contract that automatically renews or one with a longer term); Economic Well-Being of U.S. Households in 2022, Federal Reserve 2022, *available at* https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf (finding that 37% of Americans would struggle to come up with even $400 to pay an unexpected bill).

[24] Rule Concerning the Use of Prenotification Negative Option Plans, 84 Fed. Reg. 52393 (proposed Oct. 2, 2019) (to be codified at 16 C.F.R. 425).

well-meaning regulation that causes habituation and discourages consumers from making active, informed decisions.[25]

As another example of potentially inadvertent harms to consumers in the service contract context, the Proposed Rule would require the consumer's affirmative express consent before presenting them with discounts, other offers, or even reasons to retain the existing offer, in the event they try to cancel their membership (e.g., an opportunity for "saves"). If the rule is enacted as is, a customer looking to cancel might reflexively say that they don't want to hear alternative offers and lose the opportunity to hear a discounted offer that might suit them. By forcing consumers to decide whether they are interested in an offer before they actually know what it is, the Commission is essentially keeping consumers in the dark. Consumers should be trusted to hear about alternative offers and make their own decisions about whether to accept or reject them.

In addition to direct harms, many of the provisions contemplated by the proposed rulemaking will increase costs on service contract companies that would be passed onto consumers, without corresponding benefits. In the NPRM, the Commission stated that "preliminary analysis suggests that the proposed amendments to the Rule would not have a significant impact on small entities" but also noted that it lacks sufficient data to estimate these costs. To aid the Commission in its analysis, we have provided additional information below regarding the costs that would be incurred by all service contract companies, including those that qualify as small businesses.

As of December 2022, over 200 million service contracts were in effect. To comply with the Rule for each of these contracts, the significant costs would include the following:

Costs of revamping disclosures: Companies that have relied on previous FTC guidance to craft their clear and conspicuous disclosures will have to revamp their disclosures for little to no consumer gain. For example, companies may have relied on the FTC's longstanding Dot Com Disclosures guidance to craft descriptive hyperlink text that includes links to additional information. The Proposed Rule instead mandates a one-size-fits-all approach to disclosures that does not necessarily benefit consumers. If hyperlinks are not allowed,[26] fonts may have to be smaller, or consumers may need to scroll to get material information. Other important information, such as information about inclusions and exclusions from service, may get

[25] Danyang Li, Comment, *The FTC and the CPRA's Regulation of Dark Patterns in Cookie Consent Notices*, 1.1 U. CHI. BUS. L. REV. 561, 570 (2022) (examining cookie notices and explaining that "[r]epeated actions [...] become habitual due to decision fatigue. When users repeatedly encounter the same decision, they will rely more on heuristics and put less effort into decision-making since making a decision is mentally taxing.").

[26] *See* Negative Option Rule, 88 Fed. Reg. 24716, 24734 (proposed Apr. 24, 2023) (to be codieifed at 16 C.F.R. pt. 425)(explaining that a "Clear and Conspicuous disclosure," as required by the Proposed Rule, cannot include information placed behind hyperlinks) (hereafter "Proposed Rule").

crowded out. The FTC would essentially be taking the flexibility out of the hands of experts. As the FTC has previously noted:

> *"'Clear and conspicuous' is a performance standard not a font size. A disclosure is clear and conspicuous if consumers notice it, read it, and understand it. Do you really want the FTC staff dictating the specifics of your ad campaign? We didn't think so. Aside from a few rules that mandate detailed disclosure standards, the "clear and conspicuous" ball is in the advertiser's court. As long as consumers looking at the ad come away with an accurate understanding, companies have substantial leeway in how they communicate their marketing message. That's why we think it would be a mistake to impose a one-size-fits-all approach."* [27]

An overly prescriptive approach to clear and conspicuous disclosures will cause companies following the FTC's prior guidance to reevaluate and likely spend considerable time and money to revamp contract disclosures accordingly.

Costs of sending annual notices as prescribed by the Proposed Rule: Requiring every service contract company to implement a tracking and delivery system for every single contract in force would have a massive aggregate cost that will ultimately get passed along to consumers as a matter of business necessity. Despite the significant cost, there would be little consumer benefit where, for example, the charge for a service contract on a cell phone is itemized in each month's phone bill. The Proposed Rule requires the annual reminder notice to be delivered in the same medium in which the enrollment occurred.[28] This may be impossible in the service contract context. For consumers who purchase appliances in a store, would the store have to track the one-year mark after a consumer purchases the appliance and approach the consumer to provide the annual notice? While the Proposed Rule states that the annual notice only has to be provided in-person where practical to do so, it contains no such exception for agreements entered into over the phone. As a result, the Proposed Rule as drafted expressly requires phone sellers to place outbound renewal calls to customers, creating annoyance and unwanted intrusions into those customers' lives – the very harms the FTC's Telemarketing Sales Rule was designed to address. Indeed, other statutory and regulatory obligations governing automated calls will likely force service contract companies to hire additional live agents to make these calls, rather than automating them, significantly increasing the cost of the rules. Similarly, the proposed requirement would remove the ability of consumers to choose to receive notices electronically, whether for environmental or convenience reasons, as is their right under the Federal eSign Act and similar state paperless laws.

Cost of implementing consent recordkeeping systems: The Proposed Rule requires entities to maintain comprehensive records on consumer consents to the contract's automatic

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[27] Full Disclosure, Fed. Trade Comm'n (Sept. 2014) *available at* https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure.

[28] *See* Proposed Rule at 24736 (requiring businesses to provide annual notices to consumers via the same medium the consumer used to consent to the negative option feature).

renewal provision.[29] These recordkeeping requirements would require service contract companies to implement brand new systems, which represent significant costs. For example, it is not uncommon for consumers to enter into service contracts over the phone. To maintain the necessary records required by the Proposed Rule, service contract companies would need to implement and maintain recording systems that would capture the consumer's verbal consent and then annotate the recording with sufficient information for the company to identify the recording contents and how long that recording needs to be retained. The cost of developing and implementing these new systems to address the myriad ways in which consumer consent to service contracts would be significant and may result in higher costs to consumers.

Other costs: Service contract companies would incur additional significant costs, such as the cost of training salespeople in new enrollment flows and investing in IT (e.g., keypads for signing consent forms). Many states require that service contract forms be filed with state regulators for approval, which would impose additional undue costs and add to the time needed for implementation. The Proposed Rule imposes burdens *on top* of those that service contract companies already deal with from their state regulators.[30] Nor would those be the only sources of burdens: in the vehicle service contract industry, lenders require approval of forms before they fund a product. This sometimes entails a third-party service that charges for every single new form submission. The cost of refiling for approval of all automatically renewing contracts and the time involved would be substantial.

In short, the cost of compliance for the service contract industry would be substantially higher than the cost of compliance for unregulated entities about which the FTC has noted a history of problematic negative option practices. These costs would be disproportionately borne by small businesses, especially with respect to in-person and telephone transactions, where additional training, forms, annual notices, and consent recording systems would be required. For example, a local home-appliance store competing with a big-box retailer would likely have to incur disproportionate expenses to revise its processes. To avoid costs on small businesses, which will likely be passed on to consumers, an express exemption of service contract companies is necessary.

IV. CONCLUSION

The SCIC appreciates the opportunity to comment on the Commission's Proposed Rule. For the reasons discussed above, we strongly encourage the Commission to incorporate an exemption for service contract companies into the Negative Option Rule amendments.

[29] *Id.* at 24735 (requiring businesses to keep a record of the consumer's consent for three years or one year after the contract terminates, whichever is longer).
[30] *Id.* at 24736.

Sincerely,

Tom Keepers
Executive Director | Service Contract Industry Council
[redacted]