Judge Foelak, my name is Sarah Davies and I am honored to testify on behalf of the International Franchise Association, the world's oldest and largest organization representing franchising. Our membership is comprised of franchisors, franchisees and suppliers to franchise companies.

Today in the U.S., there are more than 3,000 franchise brands and nearly 800,000 franchised locations that support over 8 million jobs and generate over $825 billion for our economy. However, contrary to common mischaracterization of franchising, it is not big business.

Franchising is small business. More than 80% of franchise owners operate just one location. Further, *most franchisors are small too* – over 50% of franchise brands in operation today have less than twenty franchised units in their system; nearly a third of all franchisors make less than $5 million per year. As is always the case, small businesses are disproportionately affected by regulations, rather than larger firms that have the legal and executive firepower to navigate difficult administrative and operational changes.

The use of franchising is varied throughout the economy, including many industries that would be subject to the FTC's proposed Negative Option Rule, like fitness, preventative healthcare and personal wellness services, and children's extracurricular activities. Many of these small businesses are still recovering from the effects of closures during the COVID-19 pandemic while also struggling with economic headwinds and a challenging labor market.

These small business owners provide critical health, wellness and childcare

services and regularly engage in person with their customers in providing those services. They are distinct from digital subscriptions and mobile applications at the core of FTC's proposed Rule. Integral to so many of these small businesses is the community created with their members. Many of these franchisees invested in their franchise systems based on a business model that includes as a core component a membership program, and the proposed Rule interferes in their private contracts with their franchisors.

Negative option marketing provides an enormous benefit to both consumers and small businesses, including convenience and time savings, a streamlined transaction experience, and lower costs. Countless companies offer recurring billing to consumers, without incident. Recurring billing is not inherently deceptive or unfair. Moreover, recurring billing already is regulated by a host of federal and state regimes.

IFA and its members believe in honest business practices, with clear and conspicuous disclosures, informed consent, and cancellation that is not difficult or impossible.

The FTC's proposed Rule however is unnecessary and improper substantively and procedurally. Not only has the FTC not identified specific acts or practices that are unfair or deceptive, but the proposed rule is also not based on substantial evidence, lacks a meaningful cost-benefit analysis, fails the balancing test required by the FTC Act, and is devoid of the procedural guarantees afforded by the Magnuson-Moss Act.

Further, the proposed Rule will negatively impact consumers and hurt small businesses both from a service offering and financial perspective.

First, it will chill potentially beneficial products, services, and discounts available to consumers. Many of our small business franchisees operate almost entirely on a month-to-month membership model that allow for cancellation each month prior to the next renewal cycle and also provides for suspension (or "freezing") of memberships as an alternative to cancellation. These small businesses should be able to explain alternative options to members without the administrative burden of "single-use" prior consent, so that the consumer understands—before they simply "click to cancel" a long-term relationship based on a short-term need—that they need not terminate their membership entirely.

For example, a massage franchise system reports that approximately 10% of memberships are frozen at any given time, with 75% of those members electing to reactivate their memberships. Our fitness center brands similarly experience members electing to freeze memberships rather than cancel at rates as high as 40%. Customers electing to freeze memberships rather than cancel avoid paying a second initiation fee when returning and retain benefits and incentives offered to long-term members. The FTC, however, failed to consider how immediate cancellations will increase—rather than decrease—consumer costs.

A chiropractic services franchise offers monthly memberships curated to the patient's health and wellness goals, developed in coordination with a

practitioner. The FTC failed to consider how immediate cancellations could lead to adverse health outcomes as consent requirements restrict the facility's ability to properly advise patients of the adverse effects of discontinuing care.

The FTC also failed to consider how immediate cancellations could undermine discounting, as many of our members providing children's extracurricular activities offer incentives like complimentary birthday parties and other benefits to customers electing to freeze rather than cancel.

The proposed Rule disrupts a process that is working for the benefit of both consumers and small business owners.

Second, our members are deeply concerned about the economic impact to their small businesses. We reiterate our written request that the FTC conduct a Small Business Regulatory Impact Analysis to determine how the proposed Rule will impact small businesses. This analysis raises important questions of fact warranting an evidentiary hearing which the Commission has refused to allow. Without a cost-benefit analysis, agency rules have been vacated.

The cost-benefit analysis conducted by the FTC was simply inadequate, and failed to consider numerous costs. The proposed Rule would require all sellers across all industries to reconfigure their contracts and disclosures -- whether written, telephonic, or in-person. Not only will sellers, including small businesses, need to revise their specific negative option terms, they also will need to closely analyze their contracts, saves and cancellations procedures, telemarketing process, online check-out flows, and in-person

displays. The FTC's perfunctory cost-benefit analysis assumes all sellers are already complying with these obligations, therefore estimates low costs of compliance -- but that cannot be true given the FTC must show based on substantial evidence that there are ongoing widespread deceptive or unfair practices, to justify this rule in the first place.

The FTC's estimate that it will take just 3 hours a year for businesses to comply with the proposed rule, at an estimated wage rate of $22.15 per hour, is grossly understated and omits key costs. For example, our members estimate it will take hundreds of hours to review and modify their contracts, websites, telemarketing, and in-person sales practices. Employee training will also take considerable time at considerable costs. Further, many in franchising do not currently have the technology to immediately cancel memberships upon notice as required under the proposed Rule as most are structured to allow members to continue accessing and using facilities and services through the end of the termination notice period. The proposed Rule's requirements demand these small businesses expend significant financial resources and time to comply. The FTC did not consider these costs in its analysis. These issues raise questions of fact that must be analyzed at an evidentiary hearing.

Finally, I will note that this rulemaking is being considered at a time when the FTC has taken an interest in various practices common in franchising with little regard to the impact on small business franchisors and franchisees.

2023 saw several FTC rulemakings that threaten the franchise model as well as a Request for Information regarding common franchise agreement provisions

and franchisor business practices, all at a time when the FTC's Franchise Rule governing presale disclosures is in desperate need of updating. Despite urging from IFA to improve disclosures to drive healthy franchise relationships, the Franchise Rule review has remained dormant since 2020.

IFA was notably troubled that the leading nature of the questions posed in the RFI will yield incomplete and anecdotal accounts of franchise relationships rather than a holistic picture of franchising as it currently exists, similar to the anecdotal accounts that form the basis of the proposed Rule we are discussing today. This flawed rulemaking approach thus appears pervasive throughout the FTC's recent rulemaking efforts. We believe the Commission must engage with all of the facts available to it and avoid making rules for the exception.

Thank you again for the opportunity to appear.