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MEMORANDUM

November 15, 2004

To Our Clients and Friends

Re: FTC Proposed Amendment to the
Telemarketing Sales Rule on Call Abandonment

The Federal Trade Commission (“FTC”) is requesting comment on a proposed amendment to the provision in its Telemarketing Sales Rule (“TSR”) which addresses call abandonment to permit telemarketers calling consumers with whom they have an established business relationship to use prerecorded messages. The FTC is also asking for comment on a petition requesting a change in the method for calculating call abandonment from a daily to a monthly measurement. Comments are due by January 10, 2005.

CALL ABANDONMENT

The TSR currently prohibits telemarketers from abandoning calls, that is, not connecting the call to a salesperson within two seconds of a person’s answering the call. However, the TSR contains a safe harbor that permits a caller to abandon no more than three percent of all calls answered. Because the TSR requires the caller to connect the person to a salesperson, prerecorded messages are not permitted.

The FTC proposes to amend the current TSR provision on call abandonment to permit telemarketers to deliver prerecorded messages to consumers with whom they have an established business relationship. Telemarketers and sellers must still comply with the TSR’s call abandonment safe harbor provision that requires the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call and to deliver the prerecorded message within two seconds of the person’s completed greeting. Telemarketers and sellers must also provide the consumer with the opportunity to request to be added to the company-specific do not call list.

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ADDITIONAL REQUESTS

The FTC has also been asked to revise the current method used for calculating abandoned calls from a “per day, per calling campaign” measurement to a “per 30-day” method. The petitioner asserts that the current three percent per day call abandonment standard has been an obstacle for many telemarketers who use predictive dialing technology.

A copy of the FTC’s proposed rule can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.