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M E M O R A N D U M

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To Our Clients and Friends

Re: FCC Preemption of State Telemarketing Laws

The Federal Communications Commission (“FCC”) is requesting public comment on petitions asking the FCC to determine that its Do Not Call Rule preempts state telemarketing laws when the caller is engaged in interstate telemarketing. Comments are due by July 29, 2005.

PREEMPTION OF STATE TELEMARKETING LAWS

In July 2003, the FCC adopted its Do Not Call Rule, which established a national do not call registry for consumers who wish to avoid receiving unwanted telephone solicitations. The Do Not Call Rule permits states to adopt restrictions on intrastate telemarketing calls that are more restrictive than the FCC’s rule. At the time it adopted its rule, the FCC stated that state laws affecting interstate telemarketing calls that are more restrictive than the FCC’s rule may be preempted if the state provisions conflict with the FCC’s rule. The FCC indicated that it would consider requests for preemption determinations as applied to interstate telemarketing calls on a case-by-case basis.

The FCC has received numerous requests for determinations that its Do Not Call Rule preempts certain state telemarketing laws. The FCC is now seeking comment on six petitions which ask the FCC to determine that certain provisions of New Jersey, North Dakota, Indiana, Wisconsin and Florida telemarketing laws are preempted by the FCC’s rule when the caller is engaged in interstate telemarketing. The FCC is also seeking comment on a petition filed by 33 organizations asking the FCC to bar all state regulation of interstate telemarketing calls. This petition contends that the Telephone Consumer Protection Act preempts the ability of states to regulate interstate telemarketing.

A copy of the FCC’s request for comment 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.