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M E M O R A N D U M

June 16, 2005

To Our Clients and Friends

Re: FCC Preemption of California Telemarketing Law

The Federal Communications Commission (“FCC”) is requesting comment on whether the federal Telephone Consumer Protection Act (“TCPA”) preempts the California Consumer Legal Remedies Act as applied to interstate telemarketing calls. This notice is one of a series of requests for FCC determinations concerning the preemptive effect of the TCPA on state telemarketing laws. Comments on this request are due by July 15, 2005.

In July 2003, the FCC established a national do-not-call registry for consumers who wish to avoid receiving unwanted telephone solicitations. The FCC determined that the TCPA permits states to adopt restrictions on intrastate telemarketing that are more restrictive than the federal do-not-call rule. The FCC also stated that state laws affecting interstate telemarketing that are more restrictive than the federal rule may be preempted by the TCPA. The FCC indicated that it would consider requests alleging conflicts between state and federal law on a case-by-case basis to determine whether the state requirements are preempted as applied to interstate telemarketing.

The FCC has received numerous requests for determinations that the TCPA preempts certain state laws. The request for which the FCC is now asking comment seeks an FCC determination that provisions of California law prohibiting certain unsolicited prerecorded messages are not preempted by the TCPA. The request contends that California law controls only the dissemination of the prerecorded message and not the telephone call containing the message. Because the TCPA controls only the telephone call and not the message, the request concludes that California law does not conflict with the TCPA.

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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.