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**MEMORANDUM**

October 19, 2004

To Our Clients and Friends

Re: Petition for Ruling Relating to Pre-emption of New Jersey Telemarketing Rules

The American Teleservices Association, Inc. (“ATA”) has petitioned the Federal Communications Commission (“FCC”) for a ruling that the FCC’s do not call rule pre-empts certain provisions of the New Jersey do not call rule as applied to interstate telemarketing calls.<sup>1</sup> The ATA contends that the New Jersey provisions are inconsistent with and more restrictive than the FCC’s rules adopted under the Telephone Consumer Protection Act of 1991. The FCC is requesting public comment on the ATA’s petition by November 17, 2004.

The ATA contends that the New Jersey do not call provisions impose significantly more stringent regulations on interstate telemarketers than federal regulations and create a compliance burden for telemarketing entities. The ATA claims the New Jersey provisions:

- do not exempt calls to consumers who
  - have completed transactions with the seller within 18 months of the telemarketing call, or
  - have inquired into or applied for the seller’s products or services within three months of the telemarketing call
- do not extend the “established business relationship” exemption to the seller’s affiliates and do not exempt solicitations made to consumers who have a personal relationship with the telemarketer

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<sup>1</sup> A description of the FCC’s do not call rule can be found on our website at <http://www.schwartzandballen.com/privacy.html>.

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- require a telemarketer to make disclosures within the first 30 seconds of the telephone call and disclose the name of the telemarketing entity

A copy of the FCC's notice can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](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.