

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

May 2, 2006

To Our Clients and Friends

Re: Do Not Call Rule Proposals

The Federal Communications Commission (“FCC”) and the Federal Trade Commission (“FTC”) have requested public comment on two proposals concerning the national Do Not Call rule.

DEBT COLLECTION CALLS

The first proposal relates to a request for the FCC to clarify that its Do Not Call rule does not apply when creditors and debt collectors use automatic dialing systems or prerecorded messages to call customers’ cell phone numbers to collect debts. Under the FCC’s Do Not Call rule, a person may not use an automated dialing system or artificial or prerecorded voice to call a cellular telephone, paging service or any service for which the called party is charged for the call. The prohibition does not apply when the call is made for emergency purposes or with the prior express consent of the party.

The FCC has been asked to clarify whether the prohibition applies when creditors use autodialers to collect debts. It is contended that such telephone calls are not for telemarketing purposes. Rather, they are for the purpose of completing a transaction in which the customer has received a product or service. Because consumers increasingly are using cell phones as their primary contact numbers, creditors will incur significant economic harm if they are unable to use autodialers to make such collection calls. Accordingly, the FCC requests public comment on whether creditors and debt collectors may use automatic dialing systems or prerecorded messages to call customers’ cell phone numbers to collect debts. Comments are due by May 11, 2006.

ACCESS FEES

The FTC is proposing to increase the fees applicable to businesses that are required to access the National Do Not Call Registry. Under the FTC’s Do Not Call rule,

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businesses engaged in telemarketing are required to access the registry at least every 31 days to ensure that they do not call consumers whose names are on the registry. Currently, the FTC permits businesses to access the registry for the first five area codes without charge. Additional area codes may be accessed for a fee of \$56 for each area code, up to a maximum fee of \$15,400 for businesses accessing more than 280 area codes.

According to the FTC, although 66,200 entities have accessed the registry, only 6,500 businesses accessed the registry for more than five area codes, and only 1,000 have received information from the registry for all area codes. The FTC also indicated that it estimates that it is necessary to raise \$23 million to offset its expenses for maintaining the registry and enforcing the Do Not Call rule. Based on the assumption that only 6,500 businesses that access the registry will be subject to fees, the FTC proposes to increase access fees to \$62 per area code, to a maximum of \$17,050. This represents a fee increase of 10.7%. The FTC proposes to continue to provide the first five area codes without charge. The FTC requests public comment on the proposed fee increase, including whether all entities should be charged a fee regardless of the number of area codes accessed. Comments on the FTC's proposal are due by June 1, 2006.

A copy of the FCC and FTC proposals 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, Tom Fox or Heidi Wicker at (202) 776-0700.