



The FCC's Reassigned Number Database Nears Its Debut

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The Telephone Consumer Protection Act creates a seemingly endless list of compliance challenges and other headaches for companies determined to mitigate the financial cost and resource burden of TCPA litigation. This year brought welcome good news from the U.S. Supreme Court, with its unanimous decision in *Facebook, Inc. v. Duguid* establishing a narrow “autodialer” standard, applicable nationwide. We are on the cusp of another positive development with respect to TCPA compliance. On October 1, 2021, the Federal Communications Commission announced its interim fee structure for the new reassigned number database, which the FCC expects to be available on or about November 1, 2021.

The TCPA compliance problem created by accidental calls to reassigned numbers began in 2015. At that time, the FCC issued formal guidance explaining that the consent required by the TCPA must come from the person actually called, not the person the caller intended to reach. The FCC conceded that this created a compliance complexity in the case of reassigned numbers. Specifically, a caller may have had valid consent to call a particular consumer at a particular phone number but, unbeknownst to the caller, the consumer had surrendered the number, which was subsequently reassigned to an unrelated third party. If the caller used an autodialer or a prerecorded message to reach the intended call recipient using a number that had been reassigned, that call would violate the TCPA: the caller would not have consent from the person actually called.

As a practical matter, callers had no way to avoid these inadvertent TCPA violations. The FCC responded to this difficulty by offering a series of unserious options purportedly available to companies to avoid these calls. These included periodically contacting customers to ask if their numbers had changed and contractually obligating customers to notify the company when their number changes. (Presumably, companies could sue their customers for breach of contract if they failed to provide this notice.) However, the FCC also acknowledged that companies needed a more effective solution on this issue, so it established a limited, one-call safe harbor. Companies who inadvertently called a reassigned number automatically used up this safe harbor in that one call, no matter the result. Every subsequent call to that reassigned number using an autodialer or prerecorded message would violate the TCPA.

In 2018, the U.S. Court of Appeals for the District of Columbia Circuit vacated the FCC's one-call reassigned number safe harbor as arbitrary and also vacated the FCC's interpretation imposing TCPA liability for calls to reassigned numbers generally. In the wake of that decision, the FCC launched a new proceeding to create a reassigned number database, which would enable callers to verify whether a telephone number had been reassigned before calling that number.

Three years later, the FCC is ready to launch this comprehensive database containing reassigned

number information from participating providers. Having completed a beta test, the FCC expects open access to begin in November. The FCC just released an interim fee schedule for users in connection with the announced debut. The FCC explained that the current fee schedule is subject to change because it lacked an adequate record to determine on a more permanent basis how much it would need to collect from users to offset the cost of maintaining the database.

The interim fee schedule creates six categories of users, based on the number of database queries per subscription period, ranging from extra small to jumbo. Extra small companies can submit up to 1,000 queries per month; jumbo companies can submit up to 30,000,000 monthly queries. The fee schedule also includes three available subscription periods: one month, three months, and six months. The greater the volume of queries, the lower the per-query cost. Extra small users would pay \$10 per month; jumbo users would pay \$35,100 per month. The FCC's interim fee structure also presents options for companies who use up their allotted number queries and want additional database access.

Notably, the FCC's approach allows companies to work with a "caller agent," who would access the database on behalf of one or more companies. This would allow smaller companies to work in cooperation with a vendor to qualify for the discounts available to larger-sized subscribers. This is in contrast to how the national do-not-call list's fee structure works. The FTC expressly prohibits sellers from partnering with a vendor who accesses the do-not-call list on behalf of multiple companies. Here, extra small companies would pay one cent per query. Jumbo companies would pay about one-ninth as much. Small companies who want to take advantage of the reassigned number database to avoid inadvertent, and heretofore unavoidable, TCPA violations could see significant cost savings by working with a caller agent.

Look for public launch of the FCC's new reassigned number database in November 2021.

The FCC Interim Fee Announcement can be found [here](#).