

Publications

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TCPA Class Actions Challenge Companies for Not Scrubbing Against the FCC's Reassigned Numbers Database

Key Takeaways:

- Companies should scrub calling lists against the Reassigned Numbers Database (RND) at least every 31 days to protect themselves from TCPA liability.
- Plaintiffs' firms are targeting companies for contacting phone numbers where the subscribers had consented to be contacted but the phone numbers subsequently were reassigned to new subscribers who did not provide prior express written consent and with whom no established business relationship exists.
- Businesses that fail to verify reassigned numbers and remove them from their databases may face costly litigation and substantial financial settlements or judgments.

TCPA Lawsuits on the Rise

The Telephone Consumer Protection Act (TCPA) prohibits a range of outbound telephone activity directed towards consumers who do not consent to being contacted. Recently, however, plaintiffs have begun to bring TCPA class action lawsuits against companies that have contacted a phone number that **had previously consented to contact**, but the **number had recently been reassigned to a new subscriber**. Even companies that otherwise exercise caution when contacting people on consent lists or with whom the company has an established business relationship (EBR) can be targeted with costly litigation. When a number is reassigned and the new subscriber does not give consent, any continued outreach to that number can lead to TCPA liability, even if the caller believes it has obtained the requisite permission. In this climate, it is more important than ever that entities engaged in telemarketing are familiar with the Federal Communications Commission's Reassigned Numbers Database and keep their policies and practices up to date to minimize risk.

The TCPA's Safe Harbor Provision

The TCPA generally prohibits companies from contacting persons who appear on the National Do-Not-Call list (DNC), or the companies' internal DNC. But the TCPA and its regulations offer protection from liability for contacts that are the result of mistake under

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Related Capabilities

- Telephone Consumer Protection Act Litigation (TCPA)
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the TCPA's "safe harbor" provision. The Code of Federal Regulations lists the following factors that must be present to excuse an entity from liability for violating TCPA's DNC provision:

- **Written procedures.** The entity has established and implemented written procedures to comply with the national do-not-call rules;
- **Training of personnel.** It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- **Recording.** It has maintained and recorded a list of telephone numbers that the seller may not contact; and
- **Accessing the national do-not-call database.** It uses a process to prevent telephone solicitations to any number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

Until recently, without significant resources, it was challenging for companies to track when numbers are reassigned. But now, there is a resource available to assist. The Federal Communications Commission (FCC) has developed the Reassigned Numbers Database (RND). The Consumer Governmental Affairs Bureau (CGB) has clarified that a caller may be eligible for the safe harbor if its duly authorized agent timely queries the RND on its behalf.

The Reassigned Numbers Database (RND)

Created by the FCC in 2018 and launched in 2021, the RND is part of an effort to reduce the number of unwanted phone calls Americans receive. The RND is a comprehensive database with information provided by phone companies and carriers. Callers can use the database to verify whether a phone number was permanently disconnected or reassigned before calling the number. More specifically, users can query the RND with a phone number and date, and the database will provide a "yes" or "no" response, indicating whether the number has been disconnected since that date. In the instances where the database does not have sufficient information, it will provide a response of "no data."

The creation of an accessible database may be a double-edged sword for callers susceptible to TCPA liability. In the past, the safe harbor "did not demand the impossible of callers, such as knowing that a number has been reassigned." Now, with a database available to track reassigned numbers, companies are expected to take steps to ensure not only that they have valid consent, but also that the numbers which they have consent to contact have not been reassigned to new, non-consenting subscribers.

The RND is currently available through a paid subscription. While an RND subscription is not a federal requirement, companies may find a subscription a wise investment to limit TCPA liability. Since the safe harbor provision clarifies that internal do-not-call lists be updated "no more than 31 days prior to the date any call is made," companies seeking to employ the safe harbor's protections should scrub numbers against the RND at least every 31 days.

The Reassigned Numbers Database can be accessed at <https://www.reassigned.us/>.