

Telecommunications, Washington, D.C., Policy, Federal Government Relations, FCC, TCPA
FCC Adds a Reassigned Numbers Database Safe Harbor
Dec 18, 2018

Client Alert

Brownstein Client Alert, December 18, 2018

We recently reported that the Federal Communications Commission (“FCC”) had published a draft order establishing a reassigned number database. The database would provide a central source for callers to determine whether the number they were calling was still associated with the person who had previously provided consent to receive the call. Often customers will change their phone numbers, leading to inadvertent calls to persons that had not provided consent and resulting in potential liability under the Telephone Consumer Protection Act (TCPA). The draft order did not include a safe harbor that would shield from TCPA liability callers who queried the database but received faulty information showing the number had not been reassigned. The final order does, however, include a safe harbor.

How the Safe Harbor Would Work

To invoke the safe harbor and avoid liability, a caller must demonstrate that it had the appropriate level of consent from the number’s previous user. The caller must then show that it appropriately checked the most recent version of the database to see if the number had been reassigned and that it received a response of “no.” A caller checks the database by submitting the number and a date that the caller reasonably is certain the number was still associated with who the caller intended to reach. The database would then return a simple “yes,” “no” or “no data.” A “no” indicates the number had not been reassigned since the date submitted. The database is updated every 30 days.

To qualify for the safe harbor, callers must therefore scrub the number against the database every 30 days to ensure they have the most up-to-date information. The order does not specify how a caller would show compliance other than to state that the caller bears the burden of “proof and persuasion to show that they checked the database before making a call.” Presumably, callers will have electronic records of their queries and responses. Coupled with proof of initial consent, those records should be sufficient. Finally, the safe harbor applies only with respect to the FCC-established reassigned number database. It would not apply when using other commercially available databases or compliance solutions.

Next Steps

It will be some time before the database becomes operational. The FCC directs the North American Numbering Council to provide recommendations on operational issues within six months. The FCC must then select a database administrator using a competitive bidding process to implement and oversee the creation of the database.

The database is one of a series of actions the FCC is taking to combat “robocalls” and to revise the TCPA in light of the decision by the D.C. Circuit Court of Appeals overturning key aspects of the FCC’s 2015 omnibus TCPA order. The FCC is expected to release a TCPA reform order early next year. It is urging telephone carriers to finalize and implement a number authentication framework. Members of Congress are also engaged and have introduced several “robocalling” bills. It looks to be a busy 2019 for TCPA actions.

Meet The Team

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