Contact Center Compliance
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Quick Guide to Reassigned Numbers

How to best understand and protect yourself from the risks of recycled numbers

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Overview

"All the human and animal manure which the world wastes, if returned to the land, instead of being thrown into the sea, would suffice to nourish the world."
- Victor Hugo, Les Misérables

Just as nature's ecosystems rely on waste becoming fertilizer, telephonic ecosystems rely on a dead or inactive phone number being recycled into an active one. And as farmers must understand their ecosystems in order to succeed, telemarketers must understand theirs.

Recycled or reassigned numbers are a significant source of potential liability for telemarketers under the Telephone Consumer Protection Act (TCPA). For example, a major investment bank once paid a $3.75 million TCPA settlement stemming from 675,000 phone calls to reassigned numbers. Avoiding these sorts of violations is a complicated but essential element of TCPA compliance.

This guide will answer the following questions:

- What are reassigned numbers?
- Why are they especially dangerous for marketers?
- Do marketers have any resources or recourse—such as a safe harbor—for good-faith mistakes?

A Look Ahead

At the end of the guide, there is a FAQ about and a set of recommendations for marketing to wireless phones.

This content was created for informational purposes only; the information herein is not intended to be legal advice; anyone reading this should not act, or refrain from acting, upon any of the information herein without consulting an attorney.

What Are Reassigned Numbers?

To understand why reassigned numbers are such a source of TCPA liability, we must first understand what they are.

Phone number reassignment refers to the event after a number has been deactivated or disconnected and then later reassigned to another person. The reassignment will typically take 90 days, but it can be faster in high-demand area codes.

Cell phone providers recycle telephone numbers by returning them to their pool of aging numbers for a period of time following disconnection before reassigning them to new subscribers. Approximately 35 million telephone numbers are disconnected and aged each year.

This means approximately 100,000 wireless phone numbers are reassigned every day.

Another key term for understanding the risks of reassigned numbers is "called party". This term appears throughout the text of the TCPA itself but is never explicitly defined in the statute. Initially, courts interpreted it to mean, essentially, "the intended recipient of the call." This definition would mitigate much of the risk associated with reassigned numbers, as a defendant in a reassigned number TCPA case might be able to argue that the plaintiff was not the "called party" due to the "intended recipient" being the previous subscriber.

However, in recent years, different circuit courts have defined "called party" in dramatically different ways, including considering it to be the current subscriber of the phone number. In its 2015 TCPA Omnibus, the Federal Communications Commission (FCC) finally clarified its definition of "called party", opting to classify it as the current subscriber or customary user of the phone number. While this removed the ambiguity over the term, it cemented the issue of reassigned wireless numbers as an ongoing and intractable problem for direct marketers.

Did You Know?

An alarming trend in TCPA litigation is the targeting of corporate officers as individually liable defendants for lawsuits stemming from their companies' alleged violations.

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Now that we understand what reassigned numbers are, we can explore how they function as a significant source of potential TCPA liability.

The TCPA is a strict liability statute, meaning there is generally no forgiveness, even for good faith honest mistakes. Litigators and professional plaintiffs exploit this, often manufacturing lawsuits through duplicitous means. This is compounded by the statute allowing for uncapped statutory damages doled out on violations that can reach as high $500 per violation (and up to $1,500 per willful violation).

In the context of reassigned numbers, this means that callers can be held liable if they contact phone numbers for which they had previously had proper consent but have since been reassigned. And those unwitting violations can be used for a class action with damages potentially costing millions of dollars.

How can a poor caller stand such times and live? Is there any recourse or safe harbor for good faith marketers? The complicated answer to these questions can be found in the next section.

Case Study
A bank instructed its vendors to call a phone number to collect on past due payments. The debtor had given consent to be contacted at that number. However, unbeknownst to either the bank or the vendor, that number had since been reassigned to a woman who was not the debtor. That woman then gave the phone to her 11-year-old son to use for his personal cellphone. Over a three month span, the bank called that child 180 times to try to collect on the debt of the old owner of the number. The woman sued and a jury ruled in her favor.

Fun Fact

One infamous serial plaintiff took advantage of the danger of reassigned numbers by amassing multiple phones with out-of-state phone numbers—she lived in Pennsylvania and purchased phones with Florida area codes—for the express purpose of bringing TCPA lawsuits against callers who contacted these phones, mistakenly thinking that they were contacting the previous subscribers. When she admitted to this scheme, she lost her standing to bring lawsuits.

Reassigned Number Database & Safe Harbor

The Federal Communications Commission's (FCC) 2015 TCPA Omnibus Declaratory Ruling and Order established a one-call safe harbor for reassigned phone numbers. This safe harbor applied to situations in which callers mistakenly called a phone number for which they had previously received consent but had since been reassigned to another person. Because consent is tied to the called party and not the phone number, the phone call in this situation would be considered a violation. In order to provide some protection to good faith telemarketers who encountered these circumstances, the FCC adopted a rule whereby callers were allowed to make one phone call to a phone number that had been reassigned without being held liable for a violation—whether or not the call resulted in the caller being informed of the number's reassignment.

In 2018, the D.C. Circuit court's ruling in *ACA International v. FCC* struck down this safe harbor. Finding it "arbitrary and capricious," the court did away with the rule because the FCC did not offer any argument for why a caller should be held liable if it has no reason for being aware of the number's reassignment. Indeed, the rule worked such that the safe harbor was exhausted after one call even if the call was not answered. Unfortunately, the court did not offer any remedy for how this situation should be handled. So, rather than a flawed TCPA safe harbor for reassigned numbers, there is no safe harbor at all.

Did You Know?

The TRACED Act, passed in December 2019, requires the FCC to issue a report to Congress on its progress in establishing the reassigned number database.

In December 2018, the FCC announced a plan to create a reassigned number database. Callers would be able to scrub their number lists against this database in order to remove any numbers that have been reassigned to new users, thus decreasing the possibility of incurring TCPA violations by calling these new users.

Included in this plan is a new safe harbor rule for dealing with reassigned numbers, replacing the old one-call rule that had been vacated by the *ACA Int'l* ruling. With documentation requirements similar to what is required for the national Do Not Call (DNC) safe harbor, callers are able to claim safe harbor for any reassigned numbers that they have dialed as long as they have scrubbed their numbers lists against the FCC database within 30 days.

This safe harbor rule took effect when the FCC reassigned number database was implemented in November 2021.

Case Study
A plaintiff brought a suit against a debt collection company for TCPA violations. But the court dismissed his suit, determining that he did not have standing to bring the suit as the "called party" because he was forwarding the calls to his brother's phone.

Marketing to Wireless Numbers

Challenges marketers face

TCPA regulations have prompted a shift in marketing strategy to "permission based" marketing practices which makes knowing who you're calling essential. Sometimes marketers may not know that they are calling wireless numbers for a several reasons:

- Wireless number records aren't readily available. There is no national list or directory like the federal and state Do Not Call registries and the onus is on the marketer to know who they are contacting.
- Consumers can now "port" their landline numbers to their wireless devices. Thus, a number that is ok to call today, may be illegal to call tomorrow.
- In densely populated areas, as many as 20% of cell phone owners change their numbers and consumers are not obligated to notify anyone.

Consent Requirements

Marketers can call/text using an Automatic Telephone Dialing System (ATDS) provided that they have proper consent. The other elements required in the process of obtaining consent are as follows:

- **Written Agreement.** Consent must be obtained in writing and the signature of the person providing consent must be included. An e-signature or voice recording is sufficient.
- **Identity of the Company.** The consent must include the seller(s) to whom consent is being provided.
- **Telephone Number.** The cellular telephone number to which the person consents to receive calls on must be included.
- **Positive Action.** The consumer must affirm the action to indicate their consent.

- **Mandatory Disclosures.** The agreement must clearly disclose that:
  - The consumer authorizes the company to make telemarketing calls
  - Calls will be made using an ATDS (or prerecorded message, if applicable)
  - The consumer isn't required to provide consent as a condition of purchasing any goods or services.
  - The seller has documentation of the consumer's written consent to be called. Records should be kept for at least 5 years from the last date the consent was used to make a call/text.

TCPA for Telemarketing Calls/Texts
It is illegal to use any kind of auto-assisted dialing without written permission. This applies to business to business calls as well.

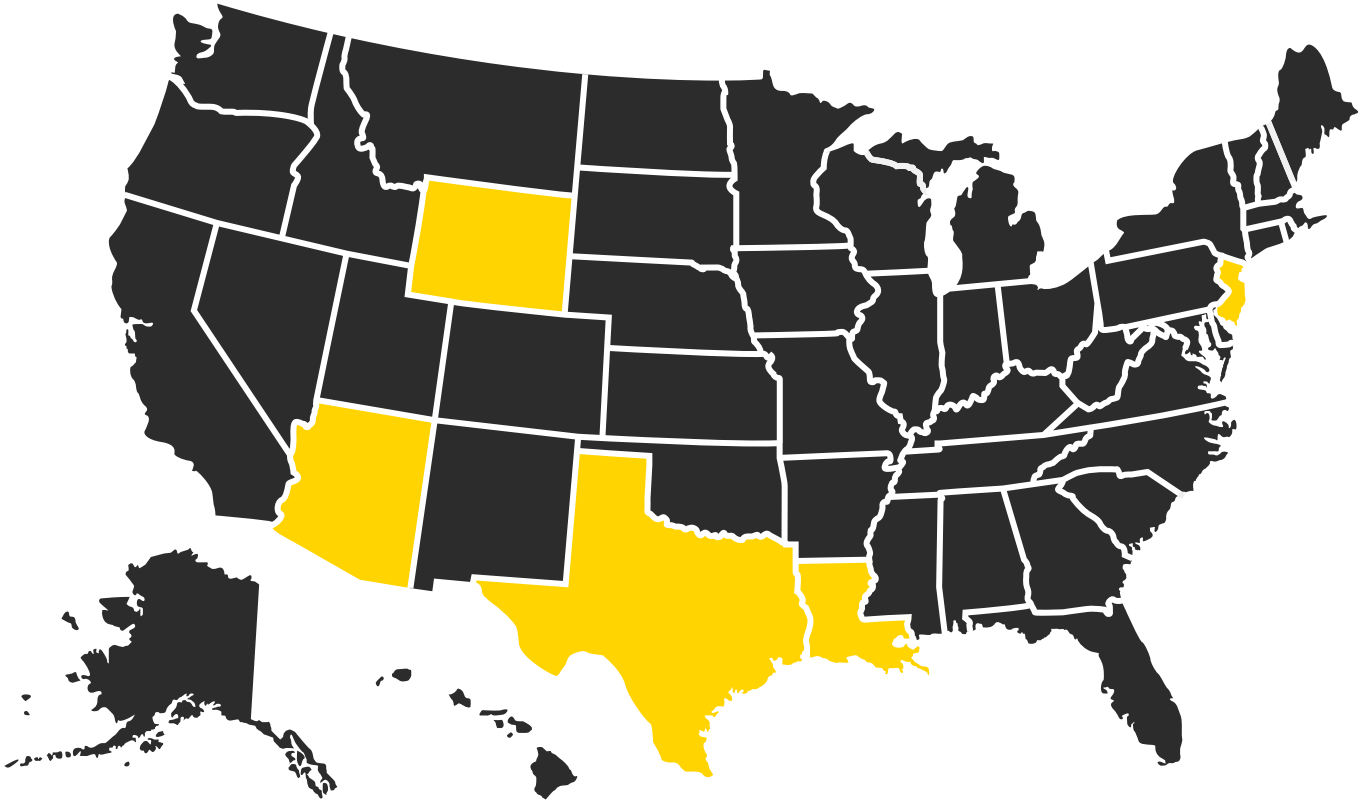
For telemarketing or advertising calls to wireless numbers marketers must either:

- Have the consumer's express written consent or
- Use a manual dialing system to call

Wireless No Call States

While the federal government prohibits marketing calls to cell phones using automatic dialers, in some states, you cannot make telemarketing calls to cell phone numbers at all—even with manual dialing. In the "wireless no call" states Arizona, Louisiana, New Jersey, Texas and Wyoming, you need a consumer's express consent, even when manually calling.

State Calling Restrictions



Wireless No Call state (see restrictions)

Normal TCPA Rules Apply

Wireless No Call State Exemptions

State/Reference	Exemptions
Arizona § 44-1278 Title 44, Chapter 9, Article 6	The Arizona Statute applies to "unsolicited telephone sales call", regardless of how the call is delivered. If you have the "express written consent", would it no longer be an unsolicited call? This depends on how you obtained the consent, and what exactly the call recipient consented to.
Louisiana Louisiana Public Service Commission's Do Not Call Program General Order	Louisiana does not define what prior express consent means, but "express written consent" under the TCPA would certainly qualify.
New Jersey § 56:8-130 Title 56, Chapter 8	There does not appear to be any way around this prohibition, even for manual dialing, unless you're making a call that does not meet the definition of a "telemarketing sales call".
Texas Title 10, Chapter 305, § 305.001	**Marketers may contact consumers:** • With whom they have an established business relationship (EBR) within the last 12 months **If the customer requested to be contacted:** • To collect a debt • On behalf of a non-profit organization or charity, if the call does not meet the definition of a "telephone solicitation" by attempting to make a sale or gather information that will lead to a sale • If the telemarketer is a state licensee (for example insurance or real estate agent, etc.) and: • The call is not made by an automated device
Wyoming Title 40, Chapter 12, Article 3, § 40-12-302	The Do-Not-Call Law does not apply to calls made at the request of the person called, made primarily in connection with an existing debt or contract (payment or performance of which has not been completed at the time of the call), or made to a person with whom the caller has an established business relationship. Most charity and political fundraisers are also exempt.

Wireless Frequently Asked Questions

Are there any exemptions to calling wireless numbers under the TCPA?
Yes, there are exemptions which include calls or texts that are:

- Made for emergency purposes
- Manually dialed and don't contain a pre-recorded message
- Made for a commercial purpose, but does not include or an advertisement or constitute telemarketing (beware: telemarketing is interpreted broadly under the TCPA)
- Made by or on behalf of a tax-exempt nonprofit organization
- Deliver a health care information made by or on behalf of, a covered entity or it's business associate as defined in the HIPAA Privacy Rule.

What is the liability if the seller is placing a call to a wired number which was ported to a wireless number?
The FCC rule allows a conditional 15-day grace period for calls made to numbers which have been ported from wired lines to wireless where the consumer may be charged for the call. A person will not be liable for violating the prohibition when:

- The call is placed to a wireless number that has been ported from wireline service and
- Such call is a voice call; not knowingly made to a wireless number and
- Made within 15-days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's internal do not call list.

What about non-telemarketing calls/texts?
Under the TCPA, for non-telemarketing calls, it is illegal to use an ATDS to call/text a wireless number without the consumer's prior express consent or any number for which the called party is charged without the consumer's prior express consent.

Have questions? Call us at 866-DNC-LIST (866-362-5478) or email info@DNC.com