

FCC Adopts Order Creating a Centralized Reassigned Number Database

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The FCC [approved the creation of a reassigned number database](#) that will be a resource for callers to discover whether U.S. telephone numbers have recently been reassigned. Because there is currently no comprehensive database identifying disconnections, callers may not know that a number has been disconnected from one phone subscriber and reassigned to another. As noted below, to encourage the use of this new database, the FCC adopted a safe harbor from TCPA liability for callers using the database in the event of a database error.

Considerations Favoring a Centralized Database

The FCC's action at its monthly meeting on December 12 was the culmination of proceedings in 2017 and 2018 soliciting comment on the desirability of creating a centralized database of reassigned numbers as a tool to lower the number of calls placed to consumers and customers by mistake. Each year, over 35 million numbers in the U.S. are disconnected and become available for reassignment to new subscribers. There is broad consensus that failure to promptly identify these reassignments poses significant issues, not only to consumers who receive mistaken calls, but also to callers that mistakenly fail to reach the intended recipient of a call. While commercial databases can provide some level of authentication of numbers as being currently assigned to a particular person, the FCC observed that these databases do not contain information on every phone number because voice service providers that assign numbers to their subscribers are not required to report

this information.

Carrier Reporting of Number Disconnection to be Mandatory, Caller Use of Database to be Voluntary

This year the FCC sought comment on the policies and practices that might be associated with a reassigned number database. Citing bipartisan congressional support for such a database, the FCC determined that it would move forward with creating a comprehensive database that would include information on permanent disconnection of numbers as reported by all providers of allocated and ported-in numbers. Thus, all providers will be required by FCC rule to report this information. Usage of the database however, will be voluntary. Callers can choose to query the database once it is established, to determine whether a number has been permanently disconnected and is therefore no longer assigned to a party the caller seeks to reach. Because there are a number of technical issues with reporting conventions and process, the FCC referred these to its North American Numbering Council (NANC) and stated an expectation that the agency would solicit competitive bids for a database administrator within the next year.

Safe Harbor from TCPA Liability

The FCC reversed course on a key policy issue since it released its [draft Order](#)—one that many commenters had deemed critical to use of a database. Whereas the proposed Order circulated several weeks ago deferred ruling on whether there would be a safe harbor from potential liability for mistaken calls to reassigned numbers when the database is used, comments from the Commissioners at the meeting, and the FCC's press release on this item, make clear that there will be a safe harbor from TCPA liability for calls to reassigned numbers occasioned by database error. This change is no doubt welcomed by the business community, which in recent years has been plagued by TCPA claims that arise from inadvertent calls to reassigned numbers.

No Real-time Reporting of Number Reassignments

As part of the new framework, the FCC established a minimum “aging” period of 45 days after permanent disconnection before a telephone number will be eligible to be reassigned by a service provider to a new subscriber. The FCC stated that a minimum aging period longer than a month would permit permanent disconnections to be reflected in the new database as providers report this information to the database administrator on a monthly basis. Further, the FCC observed that this minimum aging timing balances the need for timely data with allowing data be updated on a periodic, but not real-time basis. The FCC noted that callers should also benefit from the minimum aging convention because it would allow them to check any calling lists against the database periodically as opposed to querying the database more frequently.

Database Access and Data Use

Citing concerns about data security and minimization, the FCC found that the

database need only hold the date of the most recent permanent disconnection of a given number. This would enable a caller to determine that a number has been permanently disconnected by comparing that date to a date provided by the caller. The FCC observed that limiting the information being reported and publicly available strikes a balance between not overly burdening reporting providers, while still offering callers the necessary functionality to determine whether a number has been disconnected such that it is no longer associated with a prior subscriber. The new database will not contain a subscriber's personal information, but only a number's most recent date of permanent disconnection of a number. In response to a date specific query by a caller on a particular number the database would provide only three possible responses: "yes" "no" or "no data."

The FCC concluded that its new data reporting obligation will be imposed on all carriers and voice providers, including wireless, wireline, and interconnected VoIP providers that obtain numbering resources from the North American Numbering Plan Administrator (NANPA). The FCC found convincing comments that this data must be comprehensive because any exclusions from reporting will leave callers and consumers more vulnerable to misdirected calls. The FCC also will include disconnected toll-free numbers within the new database.

The FCC agreed with comments that callers should be required to certify their purpose in accessing the database, which the agency determined should address any concerns about potential misuse of information. Recognizing that callers of all sizes and levels of sophistication may choose to use the database, the database will be required to offer callers both low-volume access through a website interface as well as high volume access such as batch processing through standardized interfaces. The Order also recognized that callers may want to use third-party contractors as their agents, and the FCC will allow third-party contractors access to the database on request.

Database Administration

Once determining that a single centralized database is the best way to ensure accuracy and integrity of number reassignment data, the FCC also determined that its direct oversight of its administration would enable the agency to monitor its operations and better enable the FCC to address any emerging issues. The FCC stated that another benefit of a single database is that it offers a single point of contact for providers to report reassigned number information and for callers to query, which the FCC believes will lower the overall costs of database use.

In rejecting the use of commercial data aggregators in favor of a single centralized database, the FCC noted that no commenter had explained how decentralized databases would outperform a single comprehensive database to achieve the FCC's stated goals. Nevertheless, the FCC's draft Order stressed that the database would not directly compete with commercial data aggregators simply because aggregator services typically include a broader range of information to authenticate identities and other information. This additional information goes well beyond the ability of the new reassigned number database to determine whether a number has been permanently disconnected since the date provided by a caller.

The FCC concluded that it was in the public interest for an independent third-party administrator to be chosen for the role of reassigned number database administrator by a competitive bidding process. The FCC noted, however, that it might try to consolidate the database administrator's functions with the present NANPA and number pooling administrator functions.

To ensure that data is accurate and comprehensive, FCC rules will require providers to report the date of the most recent permanent disconnection for each number that is allocated to or ported to each provider. The FCC expressed concern that requiring the reporting of additional information could increase the burden of reporting. Additionally, the FCC observed that the collection of more data potentially creates unnecessary security and privacy risks given the limited purpose of the database itself. The FCC will define "permanent disconnection" as occurring when a subscriber permanently has relinquished a number or the provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated for active service within the service provider's records. Reporting of disconnection data to the administrator will occur on the 15th day of each month. Reporting providers will be tasked to keep accurate records on permanent disconnection of their subscribers on a going forward basis regardless of when the database actually is launched. However, recognizing that this recordkeeping requirement is new, the FCC allowed an additional six months for smaller providers to begin maintaining data that will be reported to the database administrator.

The Costs and Benefits of a Database

Once the database is established, the FCC envisions that callers would pay for its use so as to offset the cost of its operation and maintenance. The FCC rejected arguments by some commenters that there should be no cost to use the database. Because the database represents a new resource currently furnished by providers, the FCC reasoned that this resource is not already part of the cost of providing existing phone service that phone users more broadly assume. Providers will be able to recover the costs they pay for creating the database and query functionality and the FCC will require the administrator to set usage charges at a level designed to recover current operating costs and in time, the database creation costs initially paid by providers. The FCC will require the administrator to limit the amount of the offset credited to each provider so that each provider recovers no more than the database creation costs that it paid. Because the FCC believes that providers' internal costs of tracking and reporting permanent disconnection dates to be minimal, the FCC determined that it would be appropriate for providers to recover these costs in their existing fees and charges for telephone service.

The FCC referred to its NANC the role of advising on the framework of the database, as well as the service providers' interaction with the database and the scope of coordination necessary and advisable between the administrator and the billing and collection agent. The NANC is to return recommendations to the FCC on all these issues within six months. The FCC further referred to the NANC questions of how the user fee structure should be designed, as well as the additional question about the initial amount of fees. These expected NANC recommendations will be placed on public notice for public comment.

In deciding to create this single national database, the FCC concluded that the benefits outweigh the anticipated costs. One reason that it was deemed appropriate to create a comprehensive database was the FCC's judgment that the marketplace is highly unlikely to create the type of comprehensive database that is needed. The agency also cited broad support both from consumer groups and callers for a comprehensive database as demonstrating the public benefit. The FCC estimates that the annual cost of operating the database will be less than \$1.2 million, and that the one-time cost of setting up the database will be less than \$2 million.

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