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Federal Communications Commission Proposes New Rules for AI-Generated Calls and Texts

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In this article, the authors summarize the latest effort by the Federal Communications Commission to regulate artificial intelligence technologies in the calling and texting space.

The Federal Communications Commission (FCC or Commission) has released a Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI)[1] that, among other things, proposes new rules to regulate artificial intelligence (AI)–generated calls and texts and that seeks comment on technologies used to detect and mitigate illegal and unwanted robocalls that use AI.

In particular, the NPRM proposes to amend the agency's Telephone Consumer Protection Act (TCPA) rules to establish new consent (1) and identification disclosure requirements for AI-generated artificial or prerecorded voice calls, and (2) disclosure requirements for autodialed text messages that include AI-generated content.

These proposed new rules would include a definition of "AI generated call" and a proposed exemption designed to facilitate the use of AI to help individuals with speech or hearing disabilities communicate over the phone network. The new rules would be in addition to the FCC's existing consent and disclosure requirements under the current TCPA rules. The NOI, meanwhile, seeks comment on the development, availability, and potential oversight of real-time content-based call detection, alerting, and blocking technologies.

This latest NPRM and NOI add to the growing efforts by the Commission related to AI in a variety of contexts, from robocalls and robotexts to political ads and spectrum sharing.

This article summarizes this latest effort by the FCC to regulate AI technologies in the calling and texting space. The potential

impacts of this FCC rulemaking proceeding are significant for an array of companies, including those that engage in outbound calling or texting and those developing and deploying products to mitigate illegal robocalls. Stakeholders have an opportunity to provide the Commission feedback on the NPRM and NOI through a public comment period. Comments on the NPRM and NOI are due October 10, 2024, and reply comments are due October 25, 2024.

The NPRM Is the Latest in a Series of FCC Actions Focused on AI Across Multiple Industries

Following the President Biden's AI Executive Order[2] from last fall, the FCC has been active in exploring various ways to address the risks and benefits of AI.

For example, in the robocalling and texting space, the FCC issued an NOI[3] in November 2023 that sought information on the implications of emerging AI technologies for calling and texting, focusing almost exclusively on potential revisions to the TCPA rules to address AI risks and benefits in the robocalling context. Following the NOI, the agency issued a Declaratory Ruling[4] in February 2024 that confirmed that calls that use AI to generate voices constitute artificial or prerecorded voice calls under the TCPA and therefore must:

1. Obtain either prior express consent or prior express written consent from the called party (absent an emergency purpose or exemption) before making AI-generated voice calls;
2. Provide certain identification and disclosure information about the party responsible for initiating the AI-generated voice calls; and
3. Offer certain opt-out rights and mechanisms to called parties.

Most recently, this past June, the FCC sent letters to various telecommunications providers asking them about measures that they take to prevent fraudulent political robocalls that use AI.

Beyond these efforts, the FCC has also issued an NOI seeking input on leveraging new technologies to collect and analyze data on non-federal spectrum usage, including through machine learning

and AI. In the broadcasting context, the FCC on July 10 adopted an NPRM[5] that explores whether the agency should require broadcasters and programming entities to disclose the use of AI-generated content in political ads on television and radio.

The latest NPRM and NOI proposing to establish new requirements for AI-generated robocalls and texts add to both the growing list of AI-focused regulatory and enforcement efforts at the FCC, and the overall increased scrutiny of AI across federal agencies and state governments.

The NPRM Proposes to Define "AI-Generated Call" and to Require New Consent and Disclosure Requirements for AI Calls and Text Messages

Definition of "AI-Generated Call"

The NPRM proposes to define an "AI-generated call" as "a call that uses any technology or tool to generate an artificial or prerecorded voice or a text using computational technology or other machine learning, including predictive algorithms, and large language models, to process natural language and produce voice or text content to communicate with a called party over an outbound telephone call."[6] The NPRM notes that this proposed definition only includes AI technologies used to generate outbound calls; the NPRM proposes to specifically exempt from the "AI-generated call" definition any technologies used to answer inbound calls, such as virtual customer service agents.[7] Although the Commission detailed the types of AI-generated voice calls its February 2023 Declaratory Ruling[8] would apply to, this would be the first time the FCC proposes to codify a definition of AI-generated calls.

Consent Disclosure Requirements for AI-Generated Calls and Autodialed Texts Containing AI Content

The NPRM proposes to amend the FCC's TCPA rules to require two distinct consent disclosure requirements: (1) a requirement for "callers making *calls using AI-generated artificial or prerecorded voice messages* to include clear and conspicuous disclosure that the consumer's consent to receive artificial and prerecorded calls may include consent to receive AI-generated calls," and (2) a

requirement for "callers making *autodialed text messages that include AI-generated content* to provide clear and conspicuous disclosure that the consumer's consent to receive such messages may include consent to receive AI-generated content. . . ."[9] In the NPRM, the Commission makes clear that these AI-specific disclosures should be made when receiving initial consent to place these calls and texts.[10] In the voice context, the NPRM separately asks whether the FCC should require callers to offer consumers the option to opt out of future AI-generated calls.[11]

AI-Generated Call Identification Disclosure Requirements

The NPRM proposes to require callers making artificial or prerecorded voice messages that use an AI-generated voice to—at the beginning of each such call—"clearly disclose to the called party that the call is using AI-generated technology."[12]

Additional Questions About AI-Related Disclosures

The NPRM also asks whether the FCC should propose specific language for AI-generated call disclosures, or whether the disclosures should include "a special tone, icon, badging, or other indication that is visual, auditory, or otherwise to the called party."[13]

The NPRM Proposes to Exempt Certain AI-Generated Calls Made by Individuals with Speech or Hearing Disabilities

The NPRM seeks comment on exempting from the TCPA's requirements "artificial or prerecorded voice calls made by an individual with a speech or hearing disability using any technology, including artificial intelligence technologies, designed to facilitate the ability of such individuals to communicate over the telephone."[14] In doing so, the NPRM tentatively concludes that such an exemption for both landline and wireless calls made by individuals with speech and hearing disabilities would serve the public interest.[15] To rely on the exception, however, the NPRM proposes that such calls may not contain telemarketing or an advertisement.[16]

The NPRM Seeks Comment on the Costs and Benefits of the Proposed Regulation, and the Commission's Legal Authority to Adopt the Proposals

Costs and Benefits

The NPRM also seeks input on the potential costs and benefits of its proposals, including the degree to which the proposed changes will "improve consumers' ability to identify, manage, and benefit from the use of calls that contain AI-generated voices," and the potential costs of its proposals on callers, including smaller entities, to disclose the use of AI-generated calls.[17]

Legal Authority

The NPRM tentatively concludes that the TCPA provides the Commission with the authority to adopt its rule proposals. Specifically, the NPRM highlights Section 227(d)(3) of the Communications Act, which authorizes the FCC to make "technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone."[18] The NPRM separately asserts that Section 227(b)(1) of the Communications Act gives the agency authority because it "prohibits the use of an artificial or prerecorded voice message in calls to a residential or wireless telephone number absent the prior express consent of the called party or a recognized exemption."[19] In light of the U.S. Supreme Court's landmark *Loper Bright* decision, which overturned the four-decades-old *Chevron* deference doctrine and made agency rules more vulnerable to legal challenges, the Commission's claimed authority to adopt these rules pursuant to the TCPA will likely be a topic of comment and further discussion.

The NOI Seeks Comment on the Development, Availability, and Potential Oversight of AI Call Detection, Alerting, and Blocking Technologies, and the Privacy Implications of Such Technologies

The NOI, meanwhile, broadly seeks comment on the development and availability of technologies on either the device or network level that are capable of:

- Detecting incoming calls that are potentially fraudulent and/or AI-generated based on real-time analysis of voice call content,
- Alerting consumers to the potential that such voice calls are fraudulent and/or AI-generated, or
- Potentially blocking future voice calls that can be identified as similar AI-generated or otherwise fraudulent voice calls based on analytics.[20]

The NOI also asks what steps the FCC can take to promote the development and deployment of such technologies.[21]

Separately, the NOI seeks comment on the privacy implications of AI call detection, alerting, and blocking technologies, and whether the FCC should "consider requirements to protect the privacy of callers and called parties...."[22] As part of this inquiry, the NOI asks how such technologies capture and assess call content data; potential "steps that developers and users of these tools can use or are already using to protect the privacy of both callers and called parties"; and what federal and state privacy laws already apply to the use of call detection, alerting, and blocking technologies, and whether such laws offer sufficient privacy protections.[23]

Finally, the NOI seeks comment on how the National Institute of Standards and Technology's AI Risk Management Framework "could further the Commission's understanding related to the risks surrounding the use of AI technologies to combat unwanted and fraudulent calls."[24]

Notes

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1. https://docs.fcc.gov/public/attachments/FCC-24-84A1.pdf.

2. https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.

3. https://docs.fcc.gov/public/attachments/FCC-23-101A1.pdf.

4. https://docs.fcc.gov/public/attachments/FCC-24-17A1.pdf.

5. https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf.

6. NPRM ¶ 10.

7. Id. ¶ 11.

8. https://docs.fcc.gov/public/attachments/FCC-24-17A1.pdf.
9. Id. ¶ 14 (emphasis added).
10. Id. ¶ 14.
11. Id. ¶ 18.
12. Id. ¶ 14.
13. Id. ¶ 18.
14. Id. ¶ 19.
15. Id. ¶¶ 21-24.
16. Id. ¶¶ 21, 23.
17. Id. ¶ 31.
18. Id. ¶ 32.
19. Id. ¶ 33.
20. Id. ¶ 35.
21. Id.
22. Id. ¶ 38.
23. Id. ¶¶ 39-40.
24. Id. ¶ 46.