

FCC Proposes First AI-Generated Robocall and Robotext Rules, by Richard J. Perr, Esq., Monica M. Littman, Esq. and Justin Russell, Esq., 11-13-2024

The Federal Communications Commission (FCC) recently released a Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) seeking to establish requirements for outbound AI-generated calls and text messages.

This comes on the heels of the FCC in February 2024 issuing a Declaratory Ruling clarifying that calls that use voice cloning technology are subject to the requirements of the Telephone Consumer Protection Act (TCPA). The move was prompted following an incident involving robocalls that used AI to imitate President Biden's voice ahead of the New Hampshire primary urging Democratic voters not to vote.

Within the proposed rules, the agency provides a definition of an "AI-generated call" as well as specific disclosure requirements for AI-generated communications.

Proposed AI-Generated Call Definition

The agency proposes to define 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."

AI-Generated Call Disclosure

Among disclosure provisions, the rule proposes:

- Requiring 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;
- Requiring 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; and,
- Requiring callers using AI-generated voice to, at the beginning of each call, clearly disclose to the called party that the call is using AI-generated technology.

The FCC already requires callers to obtain prior express consent from consumers to make artificial or prerecorded voice calls or autodialed calls absent an exemption. In addition, there are limited safe harbor protections provided by the Reassigned Numbers Database ("RND") which apply to artificial voice calls under the TCPA but come with strict guidelines that must be followed to avoid liability. Given these complexities, it is best to confer with counsel.

Under the proposed rule, for calls that require the prior express written consent of the called party and which contain AI-generated messages, the FCC proposes that "the written agreement authorizing delivery of such calls include clear and conspicuous disclosure informing the called party that they specifically authorize the caller to make calls containing AI-generated content."

Exemption for individuals with disabilities

The FCC proposes to exempt 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." This exemption aims to ensure that "our protections against AI abuses do not deter development and use of AI-powered tools that enable people with disabilities to better use the telephone network," according to the proposed rule.

Separately, in its NOI, the FCC seeks "additional comment and information on developing technologies that can alert consumers to AI-generated unwanted and illegal calls and texts."

Next Steps

The NPRM was published in the Federal Register on September 10. The FCC has not yet set a specific deadline for action, though public comment periods typically last 30 – 60 days following publication. Kaufman Dolowich will continue to monitor developments.

If you have any questions regarding the proposed rule or your obligations under the TCPA, please contact the skilled attorneys in our Financial Services and Institutions team.