

## FCC Issues Notice of Proposed Rulemaking Regarding the Use of AI-Generated Technologies for Consumer Communications



### CONTRIBUTORS



Allie Fellows



Alyssa M. Worsham

Christine K. Au-Yeung



Hale Melnick

### ALERTS

August 23, 2024

The Federal Communications Commission (FCC) recently issued a unanimous Notice of Proposed Rulemaking and Notice of Inquiry targeting the use of AI-related technologies for communicating with consumers.<sup>1</sup> In the proposed rule, the FCC seeks to impose a broad definition for AI technologies subject to the requirements of the Telephone Consumer Protection Act (TCPA). Companies using technology falling within the FCC's proposed definition would be required to make certain disclosures under the TCPA to notify consumers that they are communicating with AI-technology. This proposal is the latest move by the FCC to tackle its largest source of consumer complaints: unwanted and illegal robocalls and robotexts.<sup>2</sup> The proposed new rule may require companies to modify their current approach in engaging with consumers through AI-generated calls and/or texts, including potentially altering their current practices in collecting consent where necessary.

#### Background

The TCPA generally prohibits telephone calls and/or text messages using an “artificial or pre-recorded voice” made to residential and wireless phone lines without certain types of prior consent.<sup>3</sup> In February 2024, the FCC issued a Declaratory Ruling confirming that AI technologies simulating human voices or using prerecorded voices fall within the meaning of “artificial” under the TCPA.<sup>4</sup> Therefore, absent a statutory exemption, callers using such technologies must ensure they have the required consent of the called party prior to contacting the consumer.<sup>5</sup>

Over the past year, AI technology has remained on the forefront of the FCC's radar as consumers become increasingly concerned over deepfakes and other potentially harmful uses of AI. In November 2023, the FCC issued a Notice of Inquiry to collect feedback from the public on AI-related technologies and the degree to which such technologies affect consumers.<sup>6</sup> Shortly thereafter, the FCC declared that certain AI technologies fall within the purview of the TCPA.<sup>7</sup> Now, the FCC proposes to introduce additional disclosure requirements under the TCPA in order to increase transparency for companies using AI to engage with their consumers.

#### FCC's Proposed Rule

To better establish the scope of the FCC's new proposed disclosure requirements, the FCC proffered a definition for what types of AI technologies would be covered by the TCPA. Under the proposed rule, an “AI-generated call” is one “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.”<sup>8</sup> For calls or texts qualifying as an “AI-generated call,” the FCC proposes the following disclosure requirements:

1. *Disclosures required when seeking prior express consent.* When obtaining prior express consent, callers making non-telemarketing calls or texts using AI-related technologies will now be required to provide “clear and conspicuous disclosure” that such consent includes authorization to receive AI-generated calls or text messages.<sup>9</sup>
2. *Disclosures required when seeking prior express written consent.* For telemarketing calls and texts requiring prior express written consent, callers must include “clear and conspicuous disclosure” in the written agreement informing the party that they are authorizing the caller to communicate via AI-generated technology.<sup>10</sup>
3. *Disclosures required when using AI-generated voices.* Callers using AI-generated voices must clearly disclose at the outset of a call that the call is made using AI technology. Additionally, those callers must also provide “certain information that would enable the called party to identify the person or entity initiating the call.”<sup>11</sup>

The FCC proposed certain limited exemptions to the above disclosure rules. For example, the FCC’s proposed rule would exempt individuals with hearing and/or speech disabilities who utilize AI-related technologies for non-telemarketing calls from the applicable provisions of the TCPA.<sup>12</sup> The FCC’s proposed disclosure rules would also not apply to certain calls already partially exempted by the TCPA, such as i) calls to residential landlines containing “healthcare” messages made by or on behalf of a HIPAA “covered entity” or its “business associate” and ii) certain specific types of calls made by, or on behalf of, healthcare providers (whether or not covered by HIPAA) such as appointment and exam confirmations and reminders, wellness checkups, and hospital pre-registration instructions; provided that certain other conditions are met.<sup>13</sup>

The FCC is seeking comments on its proposed new rules, including, for example, whether the FCC should grandfather existing consent for automated calls, or whether callers should be required to obtain separate consent.<sup>14</sup> Additionally, in its Notice of Inquiry, the FCC also sought comment for the implications of technologies capable of detecting and/or blocking AI-generated voice calls.<sup>15</sup>

Public comments are due 30 days after the Notice of Proposed Rulemaking is published in the Federal Register, and reply comments are due 45 days after publication.

### Implications

As a result of the FCC’s proposed actions, companies engaging with consumers through AI-voice calls or text messages may be required to modify their current practices. Companies may be required to re-acquire consent from consumers who previously provided express consent and/or express written consent and must disclose that the company intends to use AI-related technologies to communicate with the consumer. Additionally, companies may need to modify any previously used voice recordings to include requisite disclosures at the outset of the call. In the interim, companies with any comments or concerns are welcome to provide feedback to the FCC on its proposed rules before they are finalized.

For companies offering AI-related communication services, transparency is likely to remain a priority for the FCC and consumers more broadly. AI-related communication companies as well as companies utilizing AI for communications should remain familiar with the evolving regulatory landscape around providing and using such technology.

For more information on the FCC’s Notice of Proposed Rulemaking and Notice of Inquiry, please contact Wilson Sonsini attorneys [Christine Au-Yeung](#), [Alyssa Worsham](#), [Hale Melnick](#), or any member of the [trademark and advertising](#) or [data, privacy, and cybersecurity](#) practices.

---

[1] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Dkt. No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 24-84 (Aug. 8, 2024).

[2] *Id.*

[3] 47 U.S.C. § 227(b)(1); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

[4] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17 (rel. Feb. 8, 2024).

[5] *Id.*; see also Christine K. Au-Yeung, et al., *Federal Communications Commission Rules That AI-Generated Voices Are “Artificial” Under the Telephone Consumer Protection Act*, 41 Comput. & Internet Law. 5 (May 2024).

[6] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Inquiry, FCC 23-101 (rel. Nov. 16, 2023) (AI NOI).

[7] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17 (rel. Feb. 8, 2024).

[8] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Dkt. No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 24-84 (Aug. 8, 2024).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*; see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1853-54 (2012) (2012 TCPA Order).

[14] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Dkt. No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 24-84 (Aug. 8, 2024).

[15] *Id.*