

FCC Proposes New TCPA Rules for AI Calls and Texts

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On August 7, 2024, the Federal Communications Commission (FCC) adopted a [Notice of Proposed Rulemaking and Notice of Inquiry](#) related to the use of artificial intelligence in outbound calls and texts. Among the proposed rules are a definition of an “AI-generated call” and disclosure requirements for placing such calls. This item is the latest in a series of actions taken by the FCC this year under its authority to implement the Telephone Consumer Protection Act (TCPA) and demonstrates the agency’s continued focus on what it says is the “top category of consumer complaints that [it] receive[s].” Initial comments on the proposed rules will be due 30 days after the item is published in the Federal Register, and reply comments will be due 15 days thereafter.

In the Notice of Proposed Rulemaking (NPRM), the FCC first puts forth the following definition of an “AI-generated call”:

- The term *AI-generated call* means 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.

The NPRM explains that this term is limited to outbound calls because “[t]he TCPA’s requirements do not extend to technologies used to answer inbound calls.” As such, the definition was drafted to “avoid[] unintentionally encumbering uses of AI technologies that consumers never interact with and widely used existing customer service technologies on inbound calls.” The FCC is seeking comment on this definition.

Next, the NPRM proposes a number of disclosure requirements for AI-generated calls and texts, including:

- **Prior Express Consent:** Requiring callers that make non-marketing calls using AI-generated artificial or prerecorded voice messages or send autodialed text messages that include AI-generated content to “provide clear and conspicuous disclosure that they intend to use AI-generated voice or text content on such calls when obtaining the prior express consent of the called party”;
- **Prior Express Written Consent:** For marketing calls and texts that require prior express written consent (PEWC), requiring callers to include a disclosure in their opt-in consent agreements that they “intend[] to make use of AI-technology to generate voice or text content and the person signing the agreement specifically agrees to receive calls that include AI-generated content”; and

- **Affirmative Disclosure at Outset of Calls:** Requiring callers, at the beginning of each call, to clearly disclose to the called party that the call is using AI-generated technology.

These AI-specific disclosures would be in addition to other existing disclosure and consent obligations already required under the TCPA rules. The new disclosure for PEWC could likely be added to a business's current opt-in prompts. For non-marketing calls and texts, however, although the FCC has historically said that a consumer knowingly providing his or her phone number is sufficient to demonstrate "prior express consent," the proposed AI disclosure requirement might force businesses to consider how to provide a specific disclosure for the contemplated use of AI-generated content (beyond adding a disclosure into terms and conditions or a privacy policy).

The FCC is requesting comment on these requirements, as well as other matters related to implementation, such as whether the disclosures should have any particular language, and whether the proposed changes to consent disclosures should apply prospectively only (meaning that existing consents would be "grandfathered" either "indefinitely or for a limited time").

Finally, the NPRM proposes to codify two new exemptions in its TCPA rules (one for calls to residential lines and one for calls to wireless numbers) for certain "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." Here, the FCC explains that the "proposed exemptions extend to the use of any technology that assists individuals with disabilities to communicate by artificial or prerecorded voice and are not limited to AI technologies." It further notes the Commission's tentative conclusion that unlike other specific exemptions previously adopted, these calls "should not be a specific numerical limitation." However, such calls cannot be for marketing purposes.

In the Notice of Inquiry (NOI) portion of the item, the FCC "seek[s] additional comment and information on developing technologies that can alert consumers to unwanted or illegal calls and texts, including AI-generated calls," including real-time call detection, call alerting, and call blocking technologies. In particular, the FCC asks what it can do to promote the development and deployment of such technologies, as well as how the Commission might address privacy concerns, especially with respect to protecting the content of calls that are analyzed by these tools.

If you have questions or are interested in submitting comments to the FCC on these proposed rules, please contact [Alysa Hutnik](#), [Jenny Wainwright](#), or your usual Kelley Drye attorney.