

FCC Extends Regulatory Reach Over AI: Announces TCPA Restrictions Cover AI-Generated Voices in Outbound Calls

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On Thursday, February 8, 2024, the FCC issued a Declaratory Ruling – by unanimous vote – to confirm that Telephone Consumer Protection Act (TCPA) rules apply to calls that use artificial intelligence (AI) technology to generate voices. While various headlines and press releases are touting that this move renders AI-generated voices in robocalls “illegal,” the Declaratory Ruling itself states that AI-generated voice calls will be governed like other “artificial or prerecorded voice” calls under the TCPA, which are legal but subject to a range of restrictions.

So what does this mean for callers who are looking to use AI-generated voices in outbound communications? The short answer is: the Declaratory Ruling makes clear that the TCPA’s rules for artificial or prerecorded voices – which include complex consent rules for calls to both wireless and residential landline numbers, as well as identification, disclosure, and opt-out rules – now apply.

Below, we provide context for and analysis of this latest move from the FCC, which is yet another in a growing list of examples of policymakers’ interest in regulating AI.

The FCC’s Declaratory Ruling Confirms that the TCPA Rules Extend to AI-Generated Voice Calls.

The Declaratory Ruling – which is only four-pages in length – “confirm[s] that the TCPA’s restrictions on the use of ‘artificial or prerecorded voice’ encompass current AI technologies that generate human voices.” Declaratory Ruling ¶ 2. Specifically, it explains that callers

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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. *Id.* ¶¶ 5,9. It is important to note that the TCPA rules are complex, so how each of these rules applies to any particular call will depend on the circumstances and content of the outbound communication.

The Declaratory Ruling also makes clear that the Commission is taking a broad view of what type of technology triggers these requirements. In unambiguous terms, the Commission states that the Declaratory Ruling applies to “any AI technology that initiates any outbound telephone call using an artificial or prerecorded voice to consumers.” *Id.* ¶ 9. This includes voice cloning and other similar technologies that emulate real or artificially created human voices for phone calls, including AI voice cloning technologies that either (a) “wholly simulate an artificial voice” or (b) “resemble the voice of a real person taken from an audio clip to make it appear as though that person is speaking on the call to interact with consumers.” *Id.* ¶ 8. As the Commission explains, these voices are considered “artificial” because a person is not speaking them, which the FCC notes, “represent[s] the types of calls the TCPA seeks to protect consumers from.” *Id.* ¶ 5.

Use of AI-Generated Voices in Robocalls Is Now Clearly Regulated – But It Is Not ‘Illegal’ Per Se.

The Commission’s press release that accompanies the Declaratory Ruling suggests that the Declaratory Ruling “makes AI-generated voices in robocalls illegal.” But as noted above, the Declaratory Ruling does not go that far. Rather, the Declaratory Ruling, in declaring how these types of calls are situated under the existing TCPA framework – i.e., as “artificial or prerecorded voice calls” – points to a compliance roadmap for AI-generated voices in robocalls in line with the TCPA’s regulatory requirements (e.g., consent rules; identification and disclosure rules; and opt-out rules).

To be clear, given the complexity and stringent regulatory obligations contained the FCC’s TCPA rules, this is no small compliance task. Companies must continually ensure that their outbound calling practices and procedures are in compliance with the TCPA, including when using new technologies.

The Declaratory Ruling Marks the Latest Example of Policymakers’ Focus on AI.

The Declaratory Ruling follows a November 16, 2023 Notice of Inquiry, where the FCC sought information on the implications of emerging AI technologies on robocalling and specifically asked how to define AI in the TCPA context.

The FCC is certainly not the only federal policymaker interested taking action at the intersection of AI and robocalls. Robocalling campaigns involving AI-generated voices draw congressional and regulatory scrutiny and will likely continue to do so in the near term. For example, Congress is closely scrutinizing the use of AI technologies in robocalls, with legislation introduced in late January to address perceived issues and to, among other things, establish a requirement to disclose the use of AI in calls and texts. Last year, the Senate Committee on Commerce, Science & Transportation convened a hearing where issues related to the use of AI in robocalls were addressed. Wiley’s Megan Brown delivered testimony to the Senate Committee, where she

and other panelists unanimously agreed that the TCPA applied to AI-generated voices used in robocalls.

Given the increased scrutiny of AI, companies should closely review their use of such technologies for robocalling and robotexting to ensure that their compliance strategies are up to date with this rapidly emerging regulatory and legal landscape.

Wiley has a deep and experienced Artificial Intelligence and TCPA/Robocalling bench to counsel on AI compliance and risk management and complex TCPA issues. For more information about the FCC's Declaratory Ruling, please contact one of the authors listed on this alert.