

FCC to Scrutinize Customer Service Practices Across Communications Industry

October 25, 2024

On October 23, the Federal Communications Commission (FCC or Commission) issued a Notice of Inquiry (NOI) focused on customer service across a wide array of communications companies, expressly singling out providers of voice, broadband, cable, and direct broadcast satellite (DBS) services. The NOI's objective is to assess whether customers "have appropriate access to the customer service resources they require to interact with their service provider in a manner that allows them to efficiently resolve issues, avoid unnecessary charges, and make informed choices regarding the services they obtain from these service providers." The NOI also explores possible regulatory approaches, including as related to service cancellation, service installations and outages, automatic service renewals, the use of artificial intelligence (AI), and customer service practices for individuals with disabilities and English as a second language customers, among other things. Throughout the NOI, the Commission asks detailed questions about current customer service practices and the impacts of potential new requirements, including potential privacy impacts. The Commission approved the NOI by a 3-2 party-line vote, with Commissioner Brendan Carr issuing a dissenting statement questioning the FCC's authority to regulate customer service standards for the industry.

This NOI is part of broader initiatives to address both customer service and AI issues across the federal government, and while not limited to AI, it represents the Commission's latest action exploring AI technologies in the communications sector. This NOI is the FCC's initial stage of a potential rulemaking activity in this space, and the impacts of potential new customer service rules could be significant for an array of providers across the communications sector.

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Comments on the NOI are due November 22 and reply comments are due December 9.

Below, we summarize the Commission's wide-ranging inquiry into communications industry customer service practices and analyze how it fits into broader Administration efforts.

The NOI Asks About Available Cancellation Methods, Access to Live Customer Service Representatives, and the Prevalence of Auto Renewals in the Communications Industry.

Service Cancellation. Observing that "service providers often make it simple to sign up for a service but limit the ability of subscribers to cancel that same service," the NOI asks whether service providers should either offer more than one service cancellation mechanism or offer mechanisms "that mirror any available method that consumers can use to subscribe to the service." The NOI asks whether service providers should allow customers to cancel on the service provider's website "in every instance," and whether service providers "clearly and conspicuously disclose" how subscription services can be cancelled at the point of sale and on billing statements. The NOI also asks whether the process of returning rented equipment as part of a cancellation should "be subject to similar standards of disclosure."

The NOI separately asks about privacy issues that may arise in the service cancellation process, including whether providers' collection of information for cancellation (e.g., the reasons for cancellation) trigger privacy obligations for telecommunications carriers, DBS providers, or cable operators under the Communications Act.

Access to Live Representatives. Noting that consumers "are understandably frustrated" when they are unable to speak to a live representative to resolve a service issue, the NOI seeks comment on "whether service providers offer live customer service representative support by phone within a reasonable timeframe." The NOI also asks whether cable operators are meeting their customer service representative obligations under the FCC's current rules, and whether such rules should be expanded to apply to other communications providers. The NOI separately asks about other potential regulatory solutions, including identifying a "reasonable amount of time" in which a customer should be connected with a live representative, and requiring providers to allow customers to dial "0" to talk to a live representative.

Additionally, the NOI seeks comment on potential privacy issues related to any updated customer service requirements, such as recording of customer interactions, and whether customers should be notified if recorded interactions are used to train AI systems. Relatedly, the NOI seeks comment on the extent to which emerging AI technologies "would impact a requirement that service providers offer live customer service support."

Auto Renewals. The NOI states that service providers "often advertise discounted trial or promotional periods to entice consumers to subscribe to their services without clearly disclosing future price increases or automatic renewal of such services absent an affirmative act by the subscriber," and asks whether the FCC should require that consumers be provided with notice and a reasonable opportunity to end a service before incurring new or increased costs. The NOI also seeks comment on several aspects of automatic renewal processes that do not obtain further consent and are offered with trial or promotional subscriptions, including whether there are benefits to auto renewal programs.

The NOI Seeks Comment on Additional Ways to Improve Customer Experience.

The NOI asks whether the FCC should update or strengthen its existing standards for cable operator installations, outages, and service calls. The NOI also seeks comment on whether providers should be required to credit a consumer's bill if the provider fails to attend a scheduled service appointment without prior notification, and whether providers should be required to offer service appointments outside of regular business hours. Additionally, the NOI asks about common practices for service installations, outages, and calls across the communications industry.

The NOI also considers the customer service experience for customers with disabilities. Recognizing that the Commission's accessibility rules, which include customer service obligations, apply to telecommunications providers, advanced telecommunications providers, and equipment manufacturers, the NOI seeks comment on "the state of accessible customer service" broadly. The NOI again asks about a potential dial "0" rule to reach a live agent, and whether the FCC should require providers to implement alternatives for customers who cannot dial "0" due to a disability. Additionally, the NOI seeks comment on how the issues raised in the NOI impact English as a second language consumers, and whether there are any considerations that the FCC has not included.

Finally, the NOI asks a number of questions specific to the cable industry, and about whether the Commission should accept requests for potential new rules in this space.

The NOI Is One Component of a Broader Federal Effort to Address Both Customer Service Practices and AI Issues.

The FCC's NOI is consistent with broader efforts from the Biden Administration to address perceived customer service issues across industry sectors. For example, in September 2022, the Administration announced an initiative to address so-called "junk fees," which launched a number of proceedings across the federal government, including at the Consumer Financial Protection Bureau, Federal Trade Commission (FTC), and FCC. And this NOI comes just over two months after the Biden Administration launched the Time is Money initiative, which is "a new governmentwide effort" to address perceived "unfair" customer service practices across the economy. As part of this effort, the FTC recently finalized its "click-to-cancel" rule that regulates both sign-up and cancellation processes for subscriptions or other recurring charges, including requiring companies to make cancellation as easy as sign up. These new requirements apply to communications companies to the extent they are offering non-common-carriage service, raising questions about how the FTC's new regime may interact with any rules ultimately adopted by the FCC in this proceeding; indeed, these concerns led Commissioner Carr to assert in dissent that "much of what the FCC considers here would fit more appropriately within the scope of the [FTC's] jurisdiction."

The NOI is also consistent with efforts across the federal government to address concerns surrounding the increased use of AI. Following President Biden's October 2023 AI Executive Order, the FCC has actively explored ways to address AI risks and benefits. For example, the FCC is focused on the intersection of robocalls and AI and has taken a number of actions in this space, including issuing an NOI in November 2023

that sought information on the implications of emerging AI technologies for calling and texting; issuing a Declaratory Ruling in February of this year confirming that calls that use AI to generate voices constitute artificial or prerecorded voice calls under the TCPA and therefore must adhere to the rules governing such calls; and adopting a Notice of Proposed Rulemaking and NOI last month that, among other things, proposes new rules to regulate AI-generated calls and texts. In the broadcasting context, the FCC launched a rulemaking proceeding to explore whether the agency should require broadcasters and programming entities to disclose the use of AI-generated content in political ads on TV and radio. And the FCC has also issued an NOI seeking input on leveraging new technologies, including through machine learning (ML) and AI, to collect and analyze data on non-federal spectrum usage. In short, the FCC – consistent with other agencies across the federal government – has taken an active interest in emerging AI issues, including with this latest NOI asking questions about the use of AI in communications sector customer service practices.

For more information about the FCC's NOI, please contact one of the authors listed on this alert.