

Locke Lord QuickStudy: FCC Cracks Down on AI-Generated Telephone Calls Under TCPA

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The FCC issued a quick and unanimous Declaratory Ruling confirming that telephone calls (a) featuring artificial intelligence-generated messages simulating or cloning a human voice or (b) generating call content using a prerecorded voice are “artificial or prerecorded voices” for purposes of the TCPA. This ruling outlaws the use of artificial intelligence (“AI”) in calls without prior written express consent from the consumer, and takes effect immediately. The Ruling follows a proposal submitted on January 31, 2024 by Chair Jessica Rosenworcel, during an inquiry (No. 23-362) opened November 16, 2023 to address the use of AI in telemarketing and to prepare for changes in calling and texting practices that may result from new AI-influenced technologies. The ruling was supported by the Attorneys General of 26 states.

The FCC has authority under the Telephone Consumer Protection Act (the “TCPA”) to “prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone.” 47 U.S.C. § 227(d)(3). The stated purpose of the FCC inquiry was to discover how “AI technologies can be defined in the context of robocalls and robotexts” to discover the impact of AI technology on consumers, including any benefits and risks the technology may create, and to “ask what next steps we should take to ensure that the Commission can fulfill its statutory obligation under the TCPA to protect consumers.” FCC 23-101, at 3.

The ruling, which takes effect immediately, holds that “the TCPA’s restrictions on the use of ‘artificial or prerecorded voice’ encompass current AI technologies that resemble human voices and/or generate call content using a prerecorded voice. Therefore, callers must obtain prior express consent from the called party before making a call that utilizes artificial or prerecorded voice simulated or generated through AI technology.” ¶5. The Commission’s ruling “makes clear that the TCPA does not allow for any carve out of technologies that purport to provide the equivalent of a live agent, thus preventing unscrupulous businesses from attempting to exploit any perceived ambiguity in our TCPA rules.” ¶6. It also notes that the ruling is “consistent with the Commission’s Soundboard Ruling,” which confirmed that the TCPA applies to any telephone call that is initiated using an artificial or prerecorded voice message. There the Commission confirmed that the presence of a live agent on a call selecting the prerecorded messages to be played “does not negate the clear statutory prohibition against initiating a call using a prerecorded or artificial voice.” The FCC found that “this rationale applies to AI technologies, including those that either wholly simulate an artificial voice or 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.” ¶8.

Rosenworcel released a statement along with the Declaratory Ruling, stating that: “[b]ad actors are using AI-generated voices in unsolicited robocalls to extort vulnerable family members, imitate celebrities, and misinform

voters. We're putting the fraudsters behind these robocalls on notice." She added that "State Attorneys General will now have new tools to crack down on these scams and ensure the public is protected from fraud and misinformation." This ruling raises compliance requirements, with the FCC promising to crack down on the use of emerging technology. Also concerning are the implications of the Declaratory Ruling on litigation under the TCPA, which provides a private right of action with statutory damages to the called party, and has led to massive volumes of class action litigation.

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