

FCC Opens Inquiry Into AI's Evolving Use in Robocalls and Robotexts, and Potential Consumer Impacts

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The FCC has adopted a **Notice of Inquiry** seeking public comment on the use of evolving AI technologies in robocall and robotext campaigns, potential consumer impacts, and associated issues surrounding TCPA compliance and the FCC's TCPA regulations. The "robo" prefix is a term used by the FCC and others to connote mass calling or texting campaigns using automated equipment that are typically in connection with fraudulent schemes or involve uninvited or unwanted telemarketing communications.

As part of its inquiry, the FCC is considering, and asking for comment on, the benefits that AI analytics tools could provide in blocking robocalls and robotexts. The FCC is also considering the exploitive potential that AI presents for bad actors to defraud consumers through calls that use AI to mimic voices of trusted sources, or texts that include AI-generated text or media that likewise appear to be from a trusted source. In addition, the FCC is seeking comment on how it should define AI in the robocall and robotext context and the interplay between the development of AI technologies and the FCC's TCPA regulations, which govern TCPA compliance and guide the courts in TCPA litigation brought

under the TCPA's private right action provisions.

In the NOI, the FCC observes that current generative AI technologies, if used for robocalls likely fall within the TCPA's existing prohibition on artificial or prerecorded voice messages to mobile numbers, absent the called party's consent or an emergency purpose (as well as the use of artificial or prerecorded voice telemarketing to residential numbers). The FCC also appears to signal, based on its existing decisions under the TCPA in analogous contexts, that even as AI technology develops in the future to a point where the technology serves as a functional equivalent to an interaction with a live person, as real as it may seem, an artificial voice or system is still being used. These also among the issues on which the FCC is seeking comment.

Somewhat buried in the NOI, but worth noting, is the FCC's question as to whether AI technologies can function in a way that qualifies as an automatic telephone dialing system, which would then be subject to the prohibition on the use of an autodialer for calls and texts to mobile numbers. The scope of the autodialer definition, and hence dialing platforms subject to the TCPA autodialer prohibition, was significantly narrowed by the Supreme Court in its 2021 decision in *Facebook v. Duguid*, and the question is whether there are uses of AI technology that could bring a dialing platform within the *Facebook v. Duguid* requirement that the equipment, as specified in the statutory definition, must have the capacity to use a random or sequential number generator to either store or produce phone numbers to be called.

Given that this is only an NOI, the FCC would need to take additional procedural steps following the submission of public comments, such as issuing a notice of proposed rulemaking, before adopting new regulations around the use of AI in calling and texting

campaigns. In theory, short of new regulations, the FCC could release a declaratory ruling on particular issues raised in the NOI, depending on how robust the comment record is, though typically a request for further comment by the FCC would be expected before it proceeded down that path. Most immediately however, users of AI technologies in calling campaigns should, in addition to monitoring the proceeding and considering submitting comments, be mindful of the TCPA prohibitions, limitations and requirements applicable to artificial voice calls, as well as whether there are AI uses that could trigger TCPA compliance implications for text messaging communications.

Comments on the NOI are due **December 18, 2023** and reply comments are due **January 16, 2024**.

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