



**The Journal of Robotics,
Artificial Intelligence & Law**

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Victoria Prussen Spears

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Federal Communications Commission Requires Consent for Artificial Intelligence–Generated Cloned Voice Calls

Jason D. Krieser, Shawn C. Helms, and Brian Long*

In this article, the authors discuss a declaratory ruling issued recently by the Federal Communications Commission banning robocalls and robotexts using artificial intelligence–generated cloned voices unless callers have obtained prior express consent from the party receiving the call.

The Federal Communications Commission (FCC) has issued a declaratory ruling banning robocalls and robotexts using artificial intelligence (AI)–generated cloned voices (the Declaratory Ruling).¹ Effective immediately, under the FCC’s authority provided by the Telephone Consumer Protection Act of 1991 (TCPA), AI-generated voices are considered “artificial,” and the use of them in robocalls is illegal unless callers have obtained prior express consent from the party receiving the call. This clarification gives state attorneys general an avenue to pursue bad actors making robocalls and seek damages under the TCPA.

The Declaratory Ruling

The FCC’s unanimous Declaratory Ruling confirms that the TCPA’s restriction on the use of “artificial or prerecorded voice” encompasses current AI technologies that generate human voices. As a result, the use of such technologies falls under the TCPA and the FCC’s implementing rules and therefore require the prior express consent of the called party to initiate such calls absent an emergency purpose or exemption. Additionally, any artificial or prerecorded voice message must provide identification and disclosure information by the entity making the call.

If a call is made for advertisement purposes or constitutes as telemarketing, there must be an option for the consumer to opt out or request their number be removed from the calling list. All requirements included in the FCC's Declaratory Ruling will apply to any AI technologies that initiate outbound telephone calls using artificial or prerecorded voices. In addition to FCC scrutiny, failure to comply with these requirements is likely to invite scrutiny from the Federal Trade Commission, which enforces false and deceptive advertising and telemarketing requirements.

The FCC clarifies that voice cloning enabled by AI technologies are within the scope of the TCPA's prohibition of artificial or pre-recorded voice because the technology emulates real or artificially created human voices used for telephone calls to target consumers. The FCC's Declaratory Ruling asserts that these calls are what the TCPA seeks to protect consumers from because it's not a real person speaking on the call. The FCC also recognizes the potential to use AI to communicate with consumers using prerecorded voice messages and concluded that a call "using" a "prerecorded" voice falls within the meaning of the TCPA. The FCC believes this finding will deter negative uses of AI and ensure consumers are protected when they receive such calls.

The FCC's Declaratory Ruling was released following a series of government actions focused on how to regulate AI, including President Joe Biden's recent executive order aimed at managing the risks of AI. Twenty-six state attorneys general wrote to the FCC supporting its approach ahead of the Declaratory Ruling's release.

Prior to the current Declaratory Ruling, on November 16, 2023, the FCC launched a Notice of Inquiry (NOI) "to build a record to help combat illegal robocalls where AI might be involved," according to FCC Chair Jessica Rosenworcel's statement. While the NOI asked how AI might be used for robocall scams, it was also interested in using AI to help with pattern recognition in order to detect illegal robocalls before they reach consumers.

AI Robocalls

The FCC's Declaratory Ruling coincides with the growing number of AI robocalls. The FCC cited recent instances, such as one where robocalls interfered with potential primary voters in New Hampshire² via calls purportedly from President Biden

telling voters to stay home and skip the state’s primary. The FCC is concerned about generative AI’s growing threat and its ability to support voter suppression schemes during the upcoming campaign season.³ The FCC is also concerned about generative AI’s ability to mimic children and family members, requesting money to get out of trouble or targeting elderly family members through grandparent scams.⁴

While the FCC confirms the inclusion of AI technologies under the TCPA, its Declaratory Ruling has not provided clarity as to how express consent can be obtained for robocalls, including whether consent can be obtained via AI technologies. Historically, businesses have often been forced to rely on litigation to gain guidance on what constitutes as prior express consent. There is a line of cases for the proposition that “prior express consent is satisfied ‘by the simple act of giving one’s phone number directly to a caller.’” As the FCC noted, “persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.” Businesses that request consent for robocalls will likely expand that consent to expressly include the use of AI (if they have not already done so).

Conclusion

Since the TCPA’s effectiveness relies on enforcement actions, we have yet to see how this Declaratory Ruling will achieve its goal of “protecting consumers from AI-enabled voice cloning harms.” One may even argue that the original language in the TCPA already encompasses AI technologies as there is little debate in considering AI-generated voice to be “artificial.” The TCPA allows individuals to seek damages under private rights of action and the callers generally have the burden of proving that the required consent was obtained. This poses a tangible risk of increased class action litigation as we have seen members of the TCPA plaintiffs’ bar frequently file suits based on tenuous or even frivolous claims—and such claims must be addressed and defended.

Despite the Declaratory Ruling’s clarification on AI technologies, the lack of guidance as to what constitutes consent continues to pose challenges for businesses that would like to leverage technologies in consumer communications.

Notes

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1. <https://docs.fcc.gov/public/attachments/FCC-24-17A1.pdf>.
2. <https://apnews.com/article/new-hampshire-primary-biden-ai-deep-fake-robocall-f3469ceb6dd613079092287994663db5>.
3. <https://www.pbs.org/newshour/politics/fcc-bans-ai-generated-voices-in-robocalls-that-can-deceive-voters>.
4. <https://www.fcc.gov/grandparent-scams-get-more-sophisticated>.