

FCC Notice Of Inquiry Highlights AI Robocall Concerns

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In an iconic scene from "Terminator 2," Arnold Schwarzenegger's good Terminator perfectly impersonates Edward Furlong's voice in a test to see if the teenager's house was under siege by Robert Patrick's evil Terminator. Decades from now, when the history of the 2020s is written by Generation Z's version of Chuck Klosterman — be it human or, more likely, machine — they may point to "Terminator 2" as the big bang moment when artificial intelligence entered the popular imagination before it took over the world. And for people in the robocall space, this telephone scene is particularly relevant to issues the Federal Communications Commission is looking at. Specifically, on Nov. 15, the FCC released a notice of inquiry seeking comment on the implications of emerging artificial intelligence technologies on robocalls and robotexts. The notice of inquiry is part of the FCC's "ongoing efforts to protect consumers from unwanted and illegal telephone calls and text messages under the Telephone Consumer Protection Act (TCPA)." The notice of inquiry follows the White House's release of "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," which called on the FCC to engage in rulemaking to combat AI-enabled robocalls and robotexts.

Defining AI Technologies Under the TCPA First, the FCC seeks comment on how to define AI technologies as it relates to its statutory responsibilities under the TCPA. The FCC's authority under the TCPA already encompasses current uses of AI technologies that generate human voices, such as soundboard technology that uses prerecorded voice messages to interact with consumers. However, the FCC questions if it would be helpful to define AI in a way that considers the ability of such technologies to function as a live person when interacting with consumers. The FCC considers whether AI-specific technologies such as voice cloning and large language models may provide insight on a possible definition. Further, the FCC questions whether "AI technologies function in a way that qualifies as an autodialer" under the TCPA's definition of "automatic telephone dialing systems" such that it should factor into how it defines AI technologies.

Benefits and Risks of AI Technologies Used to Make Robocalls and Robotexts Next, the FCC seeks comment on the potential risks and benefits associated with AI technologies and unwanted robocalls and robotexts. The FCC recognizes the need to understand how AI technologies may affect the functionality of the existing TCPA framework so that it can create policies to ensure that consumers continue to receive the privacy protections afforded under the TCPA. Regarding its potential benefits, the FCC asks whether AI technologies can help consumers and networks detect

unwanted or fraudulent traffic and block such communications before they reach consumers. The FCC questions whether AI technologies have the potential to reduce the burdens associated with TCPA compliance, thereby providing an opportunity to adopt enhanced measures to better protect consumers. To the extent AI technologies are used to analyze call content to block unwanted communications, the FCC seeks comment on potential privacy concerns. Further, the FCC addresses the possible benefits that AI technologies can have on callers. For example, the FCC asks whether AI can "improve the ability of callers to respond to inquiries from consumers, ensure that only parties who have provided consent to the called party are called, process do-not-call requests, keep track of any numerical limits on calls to specific telephone numbers, and avoid calling any emergency lines or wireless telephone numbers when prohibited under the TCPA[.]" The FCC also discusses the potential benefit that AI technologies may have for improving accessibility for persons with disabilities. The FCC asks whether AI can help persons with disabilities exercise their right to revoke consent to calls and text messages, whether AI could work with telecommunications relay services, and whether AI can be used to generate or translate speech. Regarding the potential risks of AI technologies, the FCC seeks comment "on ways that AI is used or potentially could be used to make illegal, fraudulent, or otherwise unwanted robocalls and robotexts." The FCC addresses the potential risks that AI technologies will inadvertently block legitimate communications, decrease the costs of making or sending high volumes of unwanted robocalls and robotexts, and increase the costs for those proactively attempting to detect and reduce unwanted robocalls and robotexts in their networks. The FCC asks if it should consider ways to verify the authenticity of legitimately generated AI-driven calls or text, "such as through the use of watermarks, certificates, labels, signatures or other forms of labels[.]"

The FCC's Next Steps Lastly, the FCC seeks comment on what next steps it should consider to further the inquiry. The FCC questions whether its existing authority under the TCPA — to make "technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone" — provides the FCC with sufficient authority to ensure that emerging AI technologies do not diminish consumer protections under the TCPA or other consumer protection statutes. The FCC notes its belief that the TCPA's existing prohibition on artificial or prerecorded voice messages appears to encompass certain AI technologies, such as voice cloning. However, the FCC seeks comment on what factors it should consider in determining whether future types of AI technologies fall within the scope of the TCPA's prohibitions. Regarding potential liability, the FCC questions if "the developers of AI technology and not just the robocallers using that technology" could and should "be held accountable if their systems are designed to operate in a way that is inconsistent with the TCPA or other related consumer protection statutes." Finally, the FCC asks what steps it can take to identify the root causes of AI-driven robocall and robotext scams. To this point, the FCC asks if it should consider a joint effort with other federal and state agencies, universities and private industry entities in order to remain informed on emerging AI technologies. Comments on the notice of inquiry are due on Dec. 18, and reply comments are due on Jan. 16, 2024.

The FTC's Voice Cloning Challenge The Federal Trade Commission is similarly concerned with the risks posed by AI technologies. The FTC recently announced the launch of its Voice Cloning Challenge where participants can enter "submissions that address fraudulent and/or

unauthorized use of AI-based voice cloning systems." The challenge is aimed at developing approaches to protect consumers from AI-enabled voice cloning harms, such as fraud and misuse of biometric data and creative content. The FTC will accept online submissions from Jan. 2, 2024, to Jan. 12, 2024. The FTC expects to announce the results in early 2024.

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