

Policy Backgrounder: FCC Ruling on AI-Generated Robocalls

February 16, 2024

Trusted Insights for What's Ahead™:

The Federal Communications Commission (FCC) unanimously issued a [Declarative Ruling](#) last week on AI-generated robocalls. The decision classifies AI-generated voices in robocalls under the same standards as the Telephone Consumer Protection Act (TCPA) of 1991, effectively making them illegal without prior customer consent. The Ruling comes just several weeks after a robocall impersonating the voice of the President told voters not to vote in the New Hampshire primary election.

- The proliferation of generative AI technologies gives users the ability to develop deepfakes – realistic yet fabricated audio, video, and images – making it easier than ever for bad actors to spread disinformation.
- Last month, a [robocall](#) went out to 5,000-25,000 individuals telling them not to vote in the New Hampshire presidential primary. The call featured the supposed voice of the President urging Democrats to withhold their vote until November.
- The Ruling applies to all “current AI technologies that generate human voices.” As a result, these AI-generated calls will “require the prior express consent of the called party to initiate such calls absent an emergency purpose or exemption.”
- The FCC is not the first agency to take steps to protect the public from harmful uses of generative AI technologies. The Federal Election Commission (FEC) in August began a process to [potentially regulate](#) AI-generated deepfakes in political ads, and the Federal Trade Commission (FTC) recently finished accepting submissions for its [effort](#) to encourage products, policies, and procedures aimed at protecting consumers from AI-enabled voice cloning harms.

FCC Action Against AI-Generated Robocalls

The Telephone Consumer Protection Act (TCPA) of 1991 regulates calls using an “automatic telephone dialing system” or “an artificial or prerecorded voice” – all considered “robocalls.” Now, the FCC has clarified – in a unanimous vote for a [Declaratory Ruling](#) – that the TCPA applies to all calls in which AI systems generate a human voice. These calls will require the express prior consent of the called party to avoid being treated as illegal robocalls. In addition, callers must provide “identification and disclosure information” and, if the message “introduces an advertisement or constitutes telemarketing,” callers “must also offer specified opt-out methods” so the recipient can stop receiving the calls.

The Ruling takes effect immediately and clarifies the AI voice-cloning technologies as “artificial” under the TCPA because they “artificially simulate a human voice.” “Our finding will deter negative uses of AI and ensure that consumers are fully protected by the TCPA when they receive such calls.” While the Ruling notes that not all AI-generated calls may be deceptive or annoy all consumers, the TCPA fully applies to these calls, and consumers themselves must be able to decide whether to receive them.

As a prerequisite for its action, the FCC posted a Notice of Inquiry in November requesting input on the implications and usage of AI technology in consumer communications and how the agency can protect consumers from threats. A bipartisan group of 26 state attorneys general led by Michelle Henry of Pennsylvania sent a [letter](#) emphasizing the potential harm of the use of generative AI by telemarketers and asking the FCC to restrict its usage. “This new technology cannot be used as a loophole to barrage consumers with illegal calls,” she [said](#). The FCC was able to act under a Declaratory Ruling, rather than full notice-and-comment rulemaking, because the TCPA’s language was sufficiently clear and broad simply to expand *current* rules to a new technology (rather than requiring new rules). The Ruling is also consistent with the FCC’s [Soundboard Ruling](#) in 2020, “which confirmed that the TCPA applies to *any* telephone call that is initiated using an artificial or prerecorded voice message.”

Addressing the Deepfake Threat

The introduction of widely accessible, rapidly advancing AI technology gives users the ability to easily develop deepfakes, realistic yet fabricated video, audio, or images using AI algorithms. “Bad actors are using voice cloning – a generative AI technology that uses a recording of a human voice to generate speech sounding like that voice – to threaten election integrity, harm public safety, and prey on the most vulnerable members of society,” [said](#) FCC Commissioner Geoffrey Starks.

The FCC’s ruling comes just several weeks following a [robocall](#) that went out to 5,000 to 25,000 individuals impersonating the voice of the President telling voters not to vote in the upcoming New Hampshire primary election. The robocall was “spoofed,” a situation in which the originator disguises a phone number, display name, or email address to convince the victim that they are interacting with a trusted source. The message concluded with a phone number belonging to the treasurer of a committee supporting the New Hampshire Democratic Presidential Primary write-in efforts for President Biden. (Both the spoofing and the link to an inaccurate number are violations of TCPA under the Ruling.) Two weeks following the calls, the New Hampshire attorney general’s office [identified](#) Texas-based company Life Corp. as the source of the calls, issuing a cease-and-desist order citing laws against voter suppression.

The Commission was also particularly concerned about ways in which the “still evolving” uses of voice cloning and other AI applications “can uniquely harm consumers and those whose voice is cloned.” For instance, the Ruling highlights that “[v]oice cloning can convince a called party that a trusted person, or someone they care about such as a family member, wants or needs them to take some action that they would not otherwise take. Requiring consent for such calls arms consumers with the right not to receive such calls or, if they do, the knowledge that they should be cautious about them.” The broad nature of the Ruling is designed to help protect against these evolving threats from scammers who may initiate fake calls [suggesting](#) that loved ones are in distress.

FCC Chairwoman Jessica Rosenworcel [wrote](#) that “[n]o matter what celebrity or politician you favor, or what your relationship is with your kin when they call for help, it is possible we could all be on the receiving end of these faked calls.” The Ruling gives the FCC the [power](#) to fine companies that use AI-generated voices in their calls or block the service providers that carry them. It also gives call recipients the opportunity to file lawsuits and state attorneys general a new way to address violators.

Bipartisan Agreement on the Need for Addressing Political Deepfakes

The New Hampshire robocall against the President is not the first use of a deepfake to spread disinformation before an election. During Chicago’s mayoral race last year, a [deepfake video](#) of Paul Vallas was posted to Twitter shortly before the primary. The AI-fabricated video showed Vallas, who was considered to be “tough on crime,” supposedly making light of police brutality. The tweet quickly went viral, and Vallas lost to rival candidate Brandon Johnson. (No charges have been brought in this matter.)

In August, the Federal Election Commission began a process to [potentially regulate](#) AI-generated deepfakes in political ads, voting unanimously to advance a petition to initiate a rulemaking to clarify that the Federal Election Campaign Act (FECA) prohibits deceptive advertisements created by generative AI. In the Senate, the bipartisan [Protect Elections from Deceptive AI Act](#) would amend the Federal Election Campaign Act of 1971 to prohibit distributing materially deceptive AI-generated video, images, or audio related to candidates for federal office. If signed into law, it would also allow federal candidates targeted by deceptive content to have the material taken down and to seek damages in federal court. Another prominent bill is the proposed [REAL Political Advertisements Act](#) in the House, which would require disclosures of AI-generated texts, images, video, and audio in political content. The two bills have been introduced with no further action.

Conclusion

The FCC's unanimous action is part of a broader discussion across the government, in the Executive Branch and Congress, on how best to regulate AI to protect the public from negative effects from this evolving technology. As the Ruling hints, bad actors clearly have the ability to harm businesses and commercial activity in the same way that the fake AI robocall in New Hampshire sought to influence the political process. (Imagine, for instance, a deepfake of a CEO "announcing" a product recall that did not exist.) In the political arena, with the November 2024 election only several months away, it seems likely that bad actors will continue to use these technologies to spread harmful disinformation. While legislation on political deepfakes may not pass before the November, the FCC's Ruling and the FEC's initiation of a regulatory proceeding shows that some agencies with the authority to regulate AI will continue to work to regulate its harmful use within the limits of their existing authority.

About the Authors

[Dr. Lori Esposito Murray](#) is President at the Committee for Economic Development, the public policy center of The Conference Board.

[Mallory Block](#) is a Public Policy Analyst at the Committee for Economic Development, the public policy center of The Conference Board.

About The Conference Board

The Conference Board is the member-driven think tank that delivers Trusted Insights for What's Ahead™. Founded in 1916, we are a non-partisan, not-for-profit entity holding 501 (c) (3) tax-exempt status in the United States. www.ConferenceBoard.org

The Committee for Economic Development (CED) is the policy center of The Conference Board. The nonprofit, nonpartisan, business-led organization delivers well-researched analysis and reasoned solutions in the nation's interest. CED Trustees are chief executive officers and key executives of leading US companies who bring their unique experience to address today's pressing policy issues. Collectively, they represent 30+ industries and over 4 million employees. www.tcb.org/us/committee-economic-development