

**Before the
Federal Communications Commission
Washington, D.C.**

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| In the Matter of |) | |
| |) | |
| Implications of Artificial Intelligence |) | CG Docket No. 23-362 |
| Technologies on Protecting Consumers from |) | |
| Unwanted Robocalls and Robotexts |) | |

**REPLY COMMENTS OF THE AMERICAN BANKERS ASSOCIATION TO THE
NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY**

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INTRODUCTION AND SUMMARY

The American Bankers Association¹ (ABA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking and Notice of Inquiry (Proposal) in the above-captioned proceeding.² In the Proposal, the Federal Communications Commission (Commission) proposes to require callers making calls using an artificial intelligence (AI)-generated voice or text to obtain the consumer’s specific, prior consent to receive AI-generated calls and to provide a disclosure at the beginning of a call that uses an AI-generated voice.

ABA supports the Commission’s efforts to eliminate illegal automated calls, including calls that use artificial intelligence to defraud or deceive the consumer, as the Commission implements President Biden’s direction that the agency engage in rulemaking or other policymaking to combat illegal calls and text messages that are “facilitated or exacerbated” by AI.³ Voice calls (and text messages) that impersonate banks and other legitimate businesses – including through the use of artificial intelligence – cause tremendous harm to consumers and undermine businesses’ ability to communicate with their customers. ABA has been a strong proponent of regulatory proposals intended to curb these illegal practices, including the draft Report and Order (Order) that had been scheduled to be considered during the September 26

¹ The American Bankers Association is the voice of the nation’s \$23.9 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

² *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 24-84, CG Docket No. 23-362 (rel. Aug. 8, 2024) [hereinafter, *Proposal*].

³ Exec. Order 14,110, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, 88 Fed. Reg. 75,191, 75,217 (Nov. 1, 2023).

Open Meeting.⁴ That Order would take important steps to combat illegal calls and texts, and we urge the Commission to adopt it without delay.⁵

We are concerned, however, that the Proposal could be interpreted as imposing new consent and disclosure requirements on a broad swath of consumer-benefitting calls placed by banks, including suspicious activity alerts, one-time passcode requests, and callbacks placed by the bank at the customer's request. These calls could be viewed as subject to the Proposal's requirements because the Proposal's definition of "AI-generated call" is overly broad, capturing any call that uses "any technology or tool," including commonplace, mainstream technologies, such as "predictive algorithms," or those that are vague and undefined, such as "computational technology," to communicate with the call recipient.⁶ If the Commission adopts its expansive definition of "AI-generated call" as proposed, consumers may also be confused and decline to consent to receive these important, consumer-benefitting calls.

Balanced against this harm to the consumer, the Commission's proposed consent and disclosure requirements for "AI-generated calls" will provide little, if any, additional protection to consumers because the Telephone Consumer Protection Act (TCPA) already requires a caller

⁴ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Targeting and Eliminating Unlawful Text Messages*, CG Docket Nos. 17-59 & 21-402, Eighth Report and Order in CG Docket No. 17-59 and Third Report and Order in CG Docket No. 21-402, FCC-CIRC2409-02 (rel. Sept. 5, 2024).

⁵ See Letter from Am. Bankers Ass'n *et al.*, to Marlene H. Dortch, Sec., Fed. Comm'n's Comm'n (Oct. 4, 2024), <https://www.fcc.gov/ecfs/document/1005277481268/1>; Letter from Am. Bankers Ass'n *et al.*, to Marlene H. Dortch, Sec., Fed. Comm'n's Comm'n (Oct. 18, 2024), <https://www.fcc.gov/ecfs/document/1019107422584/1>; Letter from Am. Bankers Ass'n *et al.*, to Marlene H. Dortch, Sec., Fed. Comm'n's Comm'n (Oct. 25, 2024), <https://www.fcc.gov/ecfs/document/102646594849/1>; Letter from Am. Bankers Ass'n *et al.*, to Marlene H. Dortch, Sec., Fed. Comm'n's Comm'n (Nov. 7, 2024), <https://www.fcc.gov/ecfs/document/1108155673580/1>; accord Letter from 52 State Bankers Ass'ns to Jessica Rosenworcel, Chairwoman, Fed. Comm'n's Comm'n (Oct. 18, 2024), <https://www.fcc.gov/ecfs/document/101814995209/1>.

⁶ *Proposal, supra* note 2, at 21, Appx. A (*to be codified at* 47 C.F.R. § 64.1200(f)(20)).

to obtain the prior express consent of the called party in order to place an informational call that uses an artificial or prerecorded voice (and prior express written consent to place a telemarketing calls that uses an artificial of prerecorded voice).⁷

The fight to stop fraud will not be won because the government imposes new restrictions and prohibitions on banks and other lawful callers. It will be won when entities in the calling ecosystem implement technologies that prevent illegal calls (which spoof legitimate businesses with the intent to defraud a consumer) from reaching their intended recipients or that warn consumers that a call is highly likely to be illegal.

Therefore, ABA urges the Commission to withdraw the proposed duplicative consent and disclosure requirements. Instead, ABA reiterates its recommendation that the Commission take the following actions to stem the flow of illegal calls:

- Prohibit voice service providers from displaying data on the consumer’s caller ID device when the authenticity of calls cannot be adequately verified through a direct and verified relationship with the call originator.
- Increase enforcement of voice service providers that improperly sign calls with “A-level” attestation.
- Require non-IP network providers to implement a commercially available authentication solution within six months of the Commission’s order imposing this requirement.

ARGUMENT

I. THE COMMISSION’S DEFINITION OF “AI-GENERATED CALL” IS OVERLY BROAD, POTENTIALLY RESTRICTING CONSUMER-BENEFITTING COMMUNICATIONS

The Commission proposes to require callers making an “AI-generated call” (as the Commission defines that term in the Proposal) to obtain the consumer’s prior express consent to

⁷ 47 U.S.C. 227(b).

receive these “AI-generated calls.”⁸ The Commission also proposes to require callers to provide a disclosure, at the beginning of the call, if the call uses “an artificial intelligence-generated voice.”⁹

The Commission’s primary intent is to target calls that use “voice cloning” – technology that mimics the voice of another person – in an attempt to defraud consumers.¹⁰ But the Commission has proposed a definition of an “AI-generated call” that would encompass a much broader range of calls than just those that use voice cloning technology, and could instead include lawful and consumer-benefitting calls that banks place to their customers.

The Commission proposes to define an “AI-generated call” to mean “a call that uses any technology or tool to generate an artificial or prerecorded voice or a text using computational technology or other machine learning, including predictive algorithms, and large language models, to process natural language and produce voice or text content to communicate with a called party over an outbound telephone call.”¹¹

Suspicious activity alerts (also referred to as fraud alerts) sent by banks to their customers use predictive algorithms to identify a potentially fraudulent transaction and to generate a text message or prerecorded voice call, depending on the customer’s stated preferences, to advise the customer of the suspicious transaction. These alerts, when sent to the customer as a voice call or text, could be interpreted as being within the scope of the Commission’s proposed definition of an “AI-generated call.”

⁸ *Proposal, supra* note 2, at 20, Appx. A (*to be codified at* 47 C.F.R. § 64.1200(a)(13)).

⁹ *Id.*, at 20-21, Appx. A (*to be codified at* 47 C.F.R. § 64.1200(b)(1)).

¹⁰ *Proposal, supra* note 2, ¶ 7 (observing that several commenters in a prior proceeding “highlighted the ability of AI-generated technologies such as voice cloning to enhance the potential for fraud and scams”).

¹¹ *Proposal, supra* note 2, at 21, Appx. A (*to be codified at* 47 C.F.R. § 64.1200(f)(20)).

Similarly, one-time passcodes – which a bank may send when its customer seeks to log into the account from a device unfamiliar to the bank – could fall within the Commission’s proposed definition of an “AI-generated call.”¹² These passcodes, which may be conveyed to the customer through a prerecorded voice call or text, use a “technology” to process the customer’s request for the passcode and produce the prerecorded voice call or text.

In addition, when a customer calls a bank, and no bank representative is available to speak with the customer, the customer may request a return call. These return calls from the bank – which begin with a prerecorded voice asking for confirmation that the customer is on the line – also use a “technology” to process the customer’s request for the callback and produce the call that includes the prerecorded voice at the beginning of the call.

Some might even argue that a prerecorded voice call in which the bank’s “script” for the call has been improved through the use of artificial intelligence may fall under the Commission’s proposed definition of “AI-generated call” if the script was generated through the application of “machine learning” that “process[es] natural language” in order to assist with “produc[ing] voice . . . content” for the call.

Under the Proposal, each of these scenarios – and likely others – might be viewed as requiring the bank to obtain the consumer’s prior express consent to receive an “AI-generated call” and to disclose at the beginning of the call that the call uses AI-generated technology. As banks embed AI into more aspects of their calling program, nearly every call could involve a “technology” that is involved in producing the voice content in the call and, as such, may fall under the Commission’s proposed definition of “AI-generated call.”

¹² If the customer seeks to log into the account from a device or phone number that is unfamiliar to the bank, the bank may send a one-time passcode via text message or prerecorded voice call (depending on the customer’s stated preferences).

Consumers will be confused by this new legal framework. They will wonder what additional features or functions they are consenting to when agreeing to receive an “AI-generated call” and may reflexively decline to provide consent to receive these calls – effectively declining to receive suspicious activity alerts, one-time passcodes, and callbacks. Moreover, under the Commission’s order regarding revocation of consent, the bank must apply a consumer’s revocation of consent to all categories of calls that are subject to the TCPA – not solely the category of call to which the revocation was made (such as an “AI-generated call”).¹³ Consequently, a customer that revokes consent in response to an “AI-generated call” out of confusion or fear will be opted out of *all* artificial or prerecorded voice calls, including those that do not involve AI.

Banks also may feel compelled not to rely on existing consents when placing artificial or prerecorded voice calls, out of fear that the call is an “AI-generated call.” And if banks decide not to obtain AI-specific consent or provide AI-specific disclosures, they may be subject to class action litigation alleging the bank did not obtain the AI-specific consent or provide the AI-specific disclosure. Indeed, with statutory damages of up to \$1,500 per allegedly unlawful call,¹⁴ an increase in class action litigation can be expected, which does not advance consumer protection or the fight against fraud.

The requirement to “disclose whether the call uses an artificial intelligence-generated voice” is problematic for another reason: The phrase “artificial intelligence-generated voice” is not defined in the Proposal, which creates confusion about its meaning and the circumstances

¹³ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 29-32 (rel. Feb. 16, 2024).

¹⁴ 47 U.S.C. 227(b)(3).

under which it applies. The mandate to disclose “whether” such a voice is being used is ambiguous. On one hand, it can be interpreted to mean that the disclosure is required only if an “artificial intelligence-generated voice” is used. But it can also be read to mean that a disclosure is required even if no “artificial intelligence-generated voice” is used (and that the disclosure would need to say as much). In either case, the benefit to the consumer of receiving the disclosure is not apparent. As noted above, the Commission’s definition of “AI-generated call” is overly broad. A consumer, upon learning that “artificial intelligence” is being used in the call, may reflexively hang up, and thus lose the opportunity to engage with the caller. Even if they continue the call, it is unclear what, if anything, they are expected to do differently having learned that the call uses an “artificial intelligence-generated voice.” As drafted, the proposed disclosure serves only to lengthen an already-lengthy disclosure and to confuse or discourage consumers from continuing with the call.

Against these harms to the consumer, the Commission’s proposed consent and disclosure requirements for “AI-generated calls” will provide little, if any, value to consumers. The TCPA already requires a caller to obtain the prior express consent of the called party in order to place an informational call that uses an artificial or prerecorded voice (and prior express written consent to place a telemarketing call that uses an artificial or prerecorded voice).¹⁵

This past February, the Commission affirmed that calls using “current AI technologies that resemble human voices and/or generate call content using a prerecorded voice” are an artificial or prerecorded voice for TCPA purposes (“AI Declaratory Ruling”).¹⁶ By this ruling,

¹⁵ 47 U.S.C. 227(b).

¹⁶ *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, Declaratory Ruling, FCC 24-17, CG Docket No. 23-362, ¶ 5 (rel. Feb. 8, 2024) [hereinafter, *AI Declaratory Ruling*].

recipients of calls placed with an AI-generated voice are subject to the protections afforded to recipients of artificial or prerecorded voice calls – namely, that the caller must obtain the called party’s prior express consent prior to placing the call,¹⁷ accurately identify itself at the start of the call, and provide a call back number.¹⁸ We agree with the Commission’s statement in the AI Declaratory Ruling that this ruling “will deter negative uses of AI and ensure that consumers are fully protected by the TCPA when they receive such calls.”¹⁹ The proposed additional disclosure will not provide additional protection to consumers. Rather, if consumers reflexively refuse to consent to receive an AI generated call, they may not receive important calls such as fraud alerts, onetime passcodes, and servicing call backs. Therefore, the Commission should withdraw the proposed duplicative consent and disclosure requirements.

II. THE COMMISSION SHOULD IMPLEMENT ABA-RECOMMENDED APPROACHES TO STEM THE FLOW OF ILLEGAL CALLS

ABA has urged the Commission to take specific steps that will degrade the ability of criminals to place illegal calls to consumers, including calls that use artificial intelligence to deceive consumers. We urge the Commission to focus its energy on implementing these recommendations.

First, the Commission should prohibit voice service providers from displaying data on the consumer’s caller ID device when the authenticity of calls cannot be adequately verified through a direct and verified relationship with the call originator. Only those calls that demonstrate a verified relationship between the originating provider and the call originator should be allowed

¹⁷ See 47 C.F.R. § 64.1200(a).

¹⁸ See *id.*, § 64.1200(b)(1) (“All artificial or prerecorded voice telephone messages shall: (1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. . . .”); *id.*, § 64.1200(b)(2) (“During or after the message, [the caller must] state clearly the telephone number” of the business placing the call).

¹⁹ *AI Declaratory Ruling*, *supra* note 16, ¶ 6.

to display any data in the caller ID device. This approach would let call recipients know whether the caller has a verified relationship with its originating provider, provide a strong incentive for legitimate callers to seek A-level attestation, and discourage bad actors from placing calls.

Second, the Commission should increase enforcement of voice service providers that improperly sign calls with “A-level” attestation. Under the STIR/SHAKEN call authentication framework, a call may receive “A-level” attestation—the highest level of attestation available—if the originating voice service provider can verify the caller’s identity and verify that the caller has lawful access to the number that is displayed in the recipient’s caller ID. An ABA member reported that voice service providers are improperly signing outbound calls with A-level attestation without verifying the caller’s identity or that the caller has lawful access to the number that is displayed in the recipient’s caller ID.

Third, the Commission should require non-IP network providers to implement a commercially available authentication solution within six months of the Commission’s order imposing this requirement. To prevent illegal number spoofing, the Commission requires IP-based originating providers to attest to the authenticity of the telephone number that will be displayed in the recipient’s caller ID. Each intermediate provider in the call path that has an IP network must pass this STIR/SHAKEN attestation information to the next downstream IP-based provider until the call reaches the terminating provider. However, because STIR/SHAKEN only works on IP networks, any non-IP network in the call chain will prevent the STIR/SHAKEN attestation from being transmitted. Evidence suggests that the presence of non-IP networks is substantially undermining the STIR/SHAKEN framework by allowing calls to be delivered to

the recipient without authentication.²⁰ Therefore, the investment by network providers and others to implement STIR/SHAKEN is being undermined by the continuing prevalence of unauthenticated non-IP networks, and the laudatory goal of STIR/SHAKEN to prevent illegal number spoofing is not being met.

CONCLUSION

We support the Commission's efforts to combat illegal calls (and texts) but are concerned that the Proposal will inadvertently capture consumer-benefitting calls, including suspicious activity alerts, one-time passcode requests, and request for a callback. We urge the Commission to focus its efforts on encouraging or requiring entities in the calling ecosystem to implement technologies that prevent illegal calls from reaching their intended recipients or that warn consumers that a call is highly likely to be illegal.

Respectfully submitted,

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²⁰ TransNexus (a provider of telecommunications solutions) found an increase between January and August 2022 in the number of providers "signing" calls under the STIR/SHAKEN call authentication framework. Yet, in each month during this time period, only 24% of calls that were delivered to recipients included STIR/SHAKEN call authentication information. For the remaining calls, either the call was not signed at origination or that signature was lost during the call's transit, indicating that non-IP networks may be preventing the transmission of the attestation information. Reply Comments of TransNexus, CG Docket No. 17-59, WC Docket No. 17-97, at 6 (rec. Sept. 16, 2022), <https://www.fcc.gov/ecfs/document/10916337622768/1>.