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## Recent Developments: The Telephone Consumer Protection Act\*

In January and February 2024, a number of new developments occurred impacting the federal Telephone Consumer Protection Act, 47 USC 227 *et seq.* (TCPA), and the FCC's implementing rules, 47 CFR 64.1100 *et seq.* First, the FCC issued a declaratory ruling in which it concluded that an artificial intelligence (AI)-generated voice communication falls within the TCPA's definition of an "artificial or prerecorded voice," and therefore requires the prior express consent of the called party prior to initiating such communications. Separately, the FCC furthered its efforts to reformulate its TCPA rules on revocation of consent by publishing a final order on this topic. The FCC's final order revised certain aspects of its initial proposed rule based on feedback from industry trade groups, such as the American Bankers Association (ABA), which issued a comment letter urging the FCC to ease TCPA requirements for financial institutions attempting to contact their customers.

***AI-generated Voice Communications.*** Generally, the TCPA's restrictions apply to autodialed, artificial-voice, or prerecorded-voice calls and text messages. Specifically, the TCPA prohibits initiating "any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party" unless a statutory exception applies. The TCPA also prohibits, without the prior express consent of the called party, any autodialed, artificial-voice, or prerecorded informational calls or texts to a wireless number unless the called party's prior express consent has been obtained (the rules are even stricter for telemarketing calls).

On February 8, 2024, the FCC published Declaratory Ruling 24-17 (FCC 24-17), in which the agency concluded that the TCPA's restrictions on the use of an "artificial or prerecorded voice" apply to current AI technologies that generate human voices, including "voice cloning" technology. According to the declaratory ruling, the rules related to "artificial-voice or prerecorded calls" apply to AI used in robocalling and robotexting, "e.g., emulating human speech and interacting with consumers as though they were live human callers when generating voice and text messages."

***FCC Adopts Rule on Revocation of Consent.*** Under the TCPA, prior to making certain informational autodialed, artificial-voice, or prerecorded-voice calls and text messages, the caller must obtain the called party's prior express consent. In 2015, the FCC issued a declaratory ruling

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which provides that the called party may revoke his or her consent to be contacted using any reasonable means.

On February 15, 2024, the FTC announced that it had adopted a final order to amend the FCC's TCPA regulations to: (i) specify what constitutes reasonable methods of revocation (for example, the order specifies that using the words "stop," "quit," "end," "revoke," "opt out," "cancel," or "unsubscribe" via reply text message constitutes a reasonable means to revoke consent); (ii) require that, within 10 business days of receipt, callers must honor company-specific do-not-call and revocation of consent requests for calls and texts that are subject to the TCPA; and (iii) codify the FCC's declaratory ruling, which stated that a one-time text message confirming a consumer's request to cease further text messages does not violate the TCPA, as long as the confirmation text confirms the called party's opt-out request without including any marketing or promotional content. The order also permits the text sender to request clarification in its one-time confirmation message regarding the scope of the recipient's revocation request when the recipient has previously consented to receiving multiple categories of informational messages from the sender. In a proposed rulemaking, the FCC specifically stated that "banks and financial institutions support this request, indicating that consumers often consent to receive multiple categories of informational messages, such as fraud alerts, payment notices, and declined card transactions. In these situations, opt-out requests can be ambiguous as to whether the request applies to all or just certain types of those messages."

In anticipation of the FCC's order, on February 7, 2024, the ABA and several other financial services industry trade groups published a comment letter. Among other things, the comment letter urged the FCC to carve out a revocation exception for financial institution fraud alerts. The comment letter also urged the FCC to shift the burden of proof to consumers to prove that their revocation was reasonable when the consumer uses a "non-standard or non-conforming means of revocation." The ABA's comment letter cited a number of examples of what could be a non-conforming revocation, including text messages from consumers containing gibberish, emojis, or obscenities rather than conforming words such as "Stop" or "Opt Out."

Because the TCPA remains a hotly litigated area of law carrying significant penalties for violations, institutions are urged to have strong and up-to-date TCPA policies and procedures. For more information on TCPA recent developments, contact Tricia Engelhardt at **[TEngelhardt@ABLAWYERS.COM](mailto:TEngelhardt@ABLAWYERS.COM)**.