

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**JOINT COMMENTS OF INCOMPAS AND
THE CLOUD COMMUNICATIONS ALLIANCE**

Christopher L. Shipley
INCOMPAS
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5746

Michael H. Pryor
*Counsel to the Cloud Communications
Alliance*
Brownstein Hyatt Farber Schreck LLP
1155 F Street, N.W.
Suite 1200
Washington, DC 20004
(202) 383-4706

October 10, 2024

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	3
II. THE COMMISSION’S PROPOSED DISCLOSURE RULES ARE UNNECESSARY AND WILL NOT DETER HARMFUL USES OF AI-GENERATED CALLS.....	5
III. INCOMPAS AND THE ALLIANCE SUPPORT THE COMMISSION’S EFFORT TO PROMOTE THE USE OF TELEPHONE SERVICE BY INDIVIDUALS WITH DISABILITIES	8
IV. BEFORE REQUIRING ADDITIONAL INVESTMENT, THE COMMISSION SHOULD TAKE ACTION TO IMPROVE THE EFFICACY OF EXISTING MEASURES SUCH AS STIR/SHAKEN.....	10
a. Flexibility and Innovation Will Allow Providers and Consumers to Use AI Technologies To Eliminate Fraudulent Communications and Increase the Efficacy of Mitigation Efforts.....	10
b. The Commission Must Address the Lack of IP Interconnection to Ensure Robocall Mitigation Are Standardized and Successful.....	11
V. THE COMMISSION LACKS AUTHORITY TO EXPAND THE USE OF THE TCPA IN THE MANNER PROPOSED IN THE NOTICE.....	13
VI. CONCLUSION.....	14

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**JOINT COMMENTS OF INCOMPAS AND
THE CLOUD COMMUNICATIONS ALLIANCE**

INCOMPAS and the Cloud Communications Alliance (“Alliance”) submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking and Notice of Inquiry* (“*Notice*”) proposing to adopt protections for consumers related to the use of artificial intelligence (“AI”) in robocalls and seeking comment on positive uses of “developing technologies that can alert consumers to unwanted or illegal calls and texts, including AI-generated calls.”¹

I. INTRODUCTION AND SUMMARY

INCOMPAS, the national industry association for providers of internet and competitive communications networks, represents a variety of different voice service models, including traditional CLECs and VoIP providers, that serve residential and enterprise customers. At the same time, INCOMPAS represents technology companies, both large and small, that are industry leaders in the development and integration of artificial intelligence technologies and products that are being used to enhance and protect the communications experience of their residential and

¹ *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 22-263, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 24-84, para. 2 (rel. Aug. 9, 2024) (“*Notice*”).

business customers, including through the mitigation and elimination of unwanted robocalls and robotexts.

The Alliance is a peer association dedicated to the growth of the cloud communications industry. The Alliance's members' enterprise customers increasingly demand AI technologies to improve engagement with their own customers and increase productivity and efficiency of their operations.

Our members are committed to mitigating the threat of illegal robocalls and robotexts to their customers while working with the Commission to concurrently identify ways to preserve consumer trust in voice and messaging services while promoting policies that encourage competition, innovation and economic development. Together, our members will be leaders in employing AI technologies to enhance the customer's voice service experience and protect residential and business customers from fraudulent robocalls and robotexts. The Commission's efforts in this proceeding should continue to primarily address bad actors' use of AI to clone voices or otherwise impersonate legitimate companies to engage in fraud and should be complementary to the Administration's holistic approach to the development and use of AI. While the Commission must play an important role in ensuring that AI technologies are developed and deployed with the safeguards necessary to protect competition as well as consumer privacy and security, the agency's approach must take into account the noted benefits that the current flexible approach has allowed, including the development "of call detection and alerting technologies that can help detect scam calls or calls that use AI-generated voice based on real time content analysis of the incoming call."² As such, INCOMPAS and the Alliance urge the

² *Notice* at para. 36.

Commission to refrain from premature regulation that could have the unintended effect of hampering the deployment or use of these exciting new technologies.

II. THE COMMISSION’S PROPOSED DISCLOSURE RULES ARE UNNECESSARY AND WILL NOT DETER HARMFUL USES OF AI-GENERATED CALLS

The use of AI is exploding and, as the Commission notes, it “holds great promise in many aspects of our daily lives.”³ As a relatively new technology, the Commission should proceed with caution and studied observation before engaging in further regulation of nascent AI technologies. Correspondingly, the Commission should table its proposal to require specific prior consent to make or send an AI-generated call or text and to require disclosure of the use of an AI-cloned voice at the beginning of a call.

The immediate predicate for the additional disclosure rules proposed in the *Notice* is to mitigate the use of AI-cloned voices to fool callers or worse, commit outright fraud. The Commission has already moved to address this concern by making clear that an AI-cloned voice is an artificial voice under the Telephone Consumer Protection Act (“TCPA”)⁴ and thus requires prior consent to be used.⁵ The proposal to amend the TCPA to require additional consent is unnecessary and will do little, if anything, to curb bad actors from using AI technology to clone voices for illegal purposes. Bad actors do not care about or abide by TCPA consent rules and are no more likely to request consent to use AI than they are to obtain consent for a prerecorded or

³ *Notice* at para. 1.

⁴ Codified at 47 U.S.C. § 227.

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

artificial voice call. Adding one more layer of consent will not further protect consumers from bad actors.

Nor has the Commission established an empirical record of the harm caused by the use of AI. To be sure there are reports of voice cloning—such as cloning President Biden’s voice in a prerecorded political message⁶—but these scattered reports, as bad as some of them are, do not justify sweeping new consent rules for voice calls and texts that may use AI technology in whole or in part to generate them. Outside the context of fraud, there is no indication that the use of AI by legitimate companies in making outbound calls justifies regulation. Failure to create such a record undermines the ability to realistically assess the benefits of the proposed disclosure rules, which must be weighed against burdens for callers to obtain and retain double consent to use AI technology, first as an artificial voice, and then again as AI-generated.

The proposed prior consent rule is further rendered unnecessary by the wide and ever-growing array of tools and regulatory obligations on providers to police networks and stop illegal and unwanted calls and texts. These tools include requiring providers to adopt and apply rigorous mitigation plans that include know-your-customer or upstream provider obligations, authorized and mandatory blocking of illegal or unwanted traffic, and STIR/SHAKEN technology to reduce use of number spoofing, a tactic that appears to be prevalent with the use of cloned voices.⁷ If adopted, the Commission’s proposed additional disclosure rule would add more responsibility on providers who would be required to ensure that their networks are not

⁶ *In the Matter of Steve Kramer*, Forfeiture Order, FCC 24-204 (rel. September 30, 2024).

⁷ *See, id.* at para. 21 (noting violation of the Truth in Caller ID Act).

being used to pass unconsented-to AI-generated calls and texts, assuming it were even possible at this point to identify such calls.

The lack of justification for the Commission’s proposals further renders it unnecessary to promulgate a potentially problematic definition of AI. The Commission proposes to define an AI-generated call for purposes of the TCPA as: “a call that uses any technology or tool to generate an artificial or prerecorded voice or 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.”⁸ One problematic aspect of the definition is including text messages.⁹ Including, among other matters, inclusion of text messages creates difficult line drawing exercises regarding the extent to which AI must be used in order to trigger a prior consent obligation.

Imposing an additional consent requirement for AI-generated texts is also unnecessary because, as the *Notice* explains, the requirement would only apply to texts sent by an automatic telephone dialing system (“ATDS”) as defined by the TCPA.¹⁰ Thus, as with a voice call, the need to obtain consent to use AI to generate a text would require double consent, first consent to send a text using an autodialer, and then additional consent to use AI. Such double-layered consent is unnecessary.

⁸ *Notice* at para. 10.

⁹ *Id.* at para. 10. The reference to text messages is presumably limited to SMS and MMS although that is not entirely clear.

¹⁰ *Id.* at para. 11.

The proposal to require disclosure at the beginning of the call that an AI-generated voice is being used is also unnecessary. If the proposal is designed to prevent fraud, it is duplicative of the existing requirement that a caller accurately identify itself at the beginning of a call if using a prerecorded or artificial voice, which includes an AI-generated voice. If, after the calling party accurately identifies itself, the call recipient wishes to continue the call, presumably the use of an artificial, AI-generated voice will be acceptable to the called party. Of course, a bad actor using voice cloning to further an illegal scheme will not accurately identify themselves, rendering the proposal useless to curb illegal activities.

We are not insensitive to concerns that consumers know that they are interacting with AI. A broad disclosure at the beginning of calls does not, however, appear to be the best approach. Adding further information and disclaimers at the beginning of calls will exacerbate consumer annoyance at having to listen to multiple disclaimers. Moreover, interaction with AI tools may only occur after the call has started, for example, to efficiently process a consumer request or order. The Commission should develop a further record before assuming consumer wish to know whenever they may be interacting with AI.

Rather than layer on additional consent and disclosure obligations, the Commission should encourage the development of technologies that can identify when a cloned voice is being used and alert the caller. The development of these technologies, and necessary policies, such as IP interconnection, to enable them to work, are discussed below.

III. INCOMPAS AND THE ALLIANCE SUPPORT THE COMMISSION'S EFFORT TO PROMOTE THE USE OF TELEPHONE SERVICE BY INDIVIDUALS WITH DISABILITIES

INCOMPAS and the Alliance welcome the Commission's efforts to promote access to telephone service by individuals with disabilities through the consideration of limited

exemptions for artificial or prerecorded voice calls to the TCPA's consent and identification requirements. Our associations agree with the Commission's intent "to exempt from the TCPA [consent and identification] requirements artificial or prerecorded voice calls made by an individual with a speech or hearing disability using any technology, including AI technologies designed to facilitate the ability of such individuals to communicate over the telephone."¹¹ While the Commission indicates that its proposals are not limited to AI technologies, the Commission is correct to harness the assistive nature of these technologies which can help maintain and improve the independence and function of individuals with disabilities.

As the Commission suggests in the *Notice*, the most effective way to ensure that the TCPA and related Commission rules avoid discouraging the use of assistive communication technologies by individuals with disabilities is to make clear that the use of technologies does not fall under the definition of an "artificial or prerecorded voice" under the TCPA.¹² In the alternative, the Commission should adopt the proposed residential and wireless exemptions, with modifications to allow for the use of assistive communications technologies by individuals with disabilities in all settings, including telemarketing, to promote the public interest and advance the Commission's goal of universal service. In order to advance that objective, INCOMPAS and the Alliance suggest that the Commission modify the proposed disclosure requirement for whether a call uses an artificial intelligence-generated voice by exempting calls initiated by individuals with a speech or hearing disability.

¹¹ *Id.* at para. 19.

¹² *Id.* at para. 30.

IV. BEFORE REQUIRING ADDITIONAL INVESTMENT, THE COMMISSION SHOULD TAKE ACTION TO IMPROVE THE EFFICACY OF EXISTING MEASURES SUCH AS STIR/SHAKEN

a. Flexibility and Innovation Will Allow Providers and Consumers to Use AI Technologies To Eliminate Fraudulent Communications And Increase the Efficacy of Mitigation Efforts

Industry is engaged in a multi-front effort to reduce the instances of illegal robocalls and robotexts on the nation's communications networks, and providers are already leveraging AI technologies to reduce the threat to consumers. In the *Notice*, the Commission identifies a number of detection and consumer alert products that are in development or are under consideration for integration into providers' voice service networks. The members of INCOMPAS and the Alliance—whether they be voice service providers or the developers themselves—expect that AI can and will be integrated into voice service networks in accordance and compliance with current law and in a manner consistent with the extensive governance principles of fairness, reliability and safety, privacy and security, inclusiveness, transparency, and accountability called for by the current administration and consumer advocates. We therefore urge the Commission to maintain the relative flexibility that developers currently have to create products that meet the needs of providers and consumers alike. At the same time, INCOMPAS and the Alliance caution the Commission that new regulatory obligations on the use of AI in telecommunications services could present limits on innovation and development of AI solutions.

AI technologies will require continuous refinement and monitoring to ensure that their use in protecting consumers from illegal robocalls and robotexts does not inadvertently impair

legitimate voice traffic and text messaging.¹³ To the extent that AI is being used to identify illegal calling patterns and conduct network-based blocking of robocalls and robotexts, INCOMPAS and the Alliance urge the Commission to encourage the use of “safeguards to avoid suspending legitimate automated calls” as called for by industry and to ensure that AI technologies are employed across industry segments in a non-discriminatory and competitively neutral manner (particularly in the absence of a standardized notification solution to alert callers and providers that calls are subject to network-based blocking).¹⁴

b. The Commission Must Address the Lack of IP Interconnection to Ensure Robocall Mitigation Are Standardized and Successful

Before imposing additional obligations, the Commission should take action that would improve the efficacy of existing mitigation measures, such as the implementation of STIR/SHAKEN. Companies have spent considerable amounts to deploy STIR/SHAKEN only to see that technology undermined by a lack of IP interconnection. The agency should prioritize resolution of that issue before creating additional obligations.

While some AI applications will not require end-to-end interconnection to be effective,¹⁵ IP interconnection remains critical to the success of Commission-adopted robocall mitigation and call authentication efforts. In February, our organizations joined with NTCA and the VON Coalition to draw attention to the detrimental effect that the lack of an IP interconnection

¹³ See Letter of INCOMPAS and the Cloud Communications Alliance, CG Docket No. 17-59, WC Docket No. 17-97, 7-9 (filed Dec. 6, 2023) (urging the Commission to conduct closer oversight of call labeling and call presentation treatment at the terminating end of the call path).

¹⁴ See Comments of CTIA, CG Docket No. 23-263, 6 (filed Dec. 18, 2023).

¹⁵ In-call algorithmic analysis, for example, does not require IP interconnection, however, flagging a call as AI-generated and exchanging that information along the call path would.

framework has on the Commission’s goals.¹⁶ With respect to STIR/SHAKEN, we noted at the time “[i]t has been observed that networks relying entirely on IP, and which sign 100% of their outbound calls, are receiving only a fraction of inbound calls with STIR/SHAKEN information, limiting the benefits of STIR/SHAKEN to curb fraudulent activities within the ecosystem.¹⁷

INCOMPAS and the Alliance remain concerned that without addressing IP interconnection, the Commission risks its long-term goals with respect to call authentication and call identification (including rich call data information which is an additional claim in the STIR/SHAKEN identity token). The Commission’s recent decision in the NG911 proceeding requiring originating service providers to complete all translation and routing to deliver 911 traffic in an IP-based format can and should act as a guide to establishing a long-term solution for the current lack of IP interconnection.¹⁸

¹⁶ See Letter of INCOMPAS, NTCA—The Rural Broadband Association, the Cloud Communications Alliance, and the Voice on the Net Coalition, CG Docket No. 17-59, WC Docket No. 17-97 (filed Feb. 13, 2024). In February, INCOMPAS, the Cloud Communications Alliance, the Voice on the Net Coalition, and NTCA—The Rural Broadband Association called for the Commission to address the lack of an IP interconnection framework. The joint associations noted that “[w]ithout a framework, providers are not incented to exchange voice traffic in IP, undermining the robustness and security of our telecommunications infrastructure. Several critical developments, including the implementation of STIR/SHAKEN and other forthcoming caller ID authentication initiatives, have been, and will continue to be, impeded without ubiquitous IP interconnection.” INCOMPAS and the Alliance urge the Commission to “proactively examine and endorse measures that promote IP interconnection.”

¹⁷ *Id.* at 1-2.

¹⁸ See *Facilitating Implementation of Next Generation 911 Services (NG911), Location-Based Routing for Wireless 911 Calls*, PS Docket No. 21-479, PS Docket No. 18-64, Report and Order, FCC 24-78 (rel. July 19, 2024) (obligating service providers to deliver 911 traffic in IP format upon request).

V. THE COMMISSION LACKS AUTHORITY TO EXPAND THE USE OF THE TCPA IN THE MANNER PROPOSED IN THE *NOTICE*

In the *Notice*, the Commission concludes that the agency has legal authority subject to section 227 of the TCPA to adopt its disclosure proposals because the Act authorizes the Commission to “make technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone.”¹⁹ That provision does not confer authority to regulate any technology that may be tangentially related to telecommunications. Generating a voice or text using AI is not a system “used to transmit” an artificial or prerecorded voice. In context, section 227(d) relates to standards for autodialers and fax machines and the specific standards identified under (d)(3) pertaining to “systems” used to transmit an artificial or prerecorded voice exemplify its limited grant of authority. The specific standards in (d)(3) require certain information such as identifying the caller and providing a call back number or the time within which to release a line after called party hangs up.

While INCOMPAS and the Alliance are encouraged by the potential of AI technologies to detect and alert consumers to fraudulent robocalls and robotexts, the Commission has not provided a sound basis in the *Notice* for the proposition that the TCPA addresses new AI technologies, particularly those that were not in existence at the time the Act was enacted. The Commission has previously sought to expand the requirements of the TCPA, for example, by adopting a new one-to-one consent requirement for autodialed telemarketing texts, however, that action was established under the legal framework of the *Chevron* decision.²⁰ That basis for the

¹⁹ *Notice* at para. 32 (citing 47 U.S.C. § 227(d)(3)).

²⁰ See *Targeting and Eliminating Unlawful Text Messages*, et al., CG Docket No. 21-402, et al., Second Report and Order, Second Further Notice of Proposed Rulemaking in CG Docket Nos.

expansion of the TCPA is at risk following the Supreme Court’s recent *Loper Bright* decision which will require courts to determine what a statute “compels” as opposed to simply determining whether an agency’s interpretation is “reasonable.”²¹ INCOMPAS and the Alliance suggest that the legislative history of the TCPA, while providing the FCC with some flexibility, does not provide the clear evidence of a grant of congressional deference as now required under *Loper Bright*. Congress, when enacting the TCPA, could not have intended the statute to cover additional disclosure requirements for artificial intelligence technology, which did not exist at the time, and without *Chevron* deference the agency lacks a basis for expanding the scope of the Act as it did when it expanded the scope to include text messaging.

VI. CONCLUSION

For the reasons stated herein, INCOMPAS and the Alliance urge the Commission to consider the recommendations in its comments as it examines the issues raised in the *Notice*.

02-278 and 21-402, and Waiver Order in CG Docket No. 17-59, 89 FR 5177 (pub. Jan. 26, 2024).

²¹ *Loper Bright Enterprises v. Raimondo*, Nos. 22-451, 22-1219 (U.S. June 28, 2024), available at https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

Respectfully submitted,

INCOMPAS

/s/ Christopher L. Shipley

Christopher L. Shipley
Executive Director of Public Policy
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5745
cshipley@incompas.org

CLOUD COMMUNICATIONS ALLIANCE

/s/ Michael H. Pryor

Michael H. Pryor
Counsel to the Cloud Communications Alliance
Brownstein Hyatt Farber Schreck LLP
1155 F Street, N.W.
Suite 1200
Washington, DC 20004
(202) 383-4706

October 10, 2024