Litigation Attorney Aaron Tifft for The Journal Record: AI Update for Communication Consent Language

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Businesses should act now to include an AI disclosure in their call and text message consent agreements. The Federal Communications Commission (FCC) has recently proposed new regulations that could significantly increase liability for businesses that utilize calls and texts for customer communications.

Under the proposed rules, businesses must obtain prior express written consent not only to contact customers but also to use AI-generated content in those communications. This consent must be clear and conspicuous, making customers fully aware that AI, rather than a human, may be generating the voice in a call or text in a message. Current consent from customers to receive "automated" calls and texts would not be sufficient for this new rule.

The ambiguity in the proposed rule could be a significant challenge for businesses that use standard technology for customer communications. The rule defines an AI-Generated communication as using "computational technology . . . to process natural language" in sending a text message or making a call. With the increasing use of AI, this rule could soon apply to a large majority of call and text messaging systems used for customer communications.

Businesses that fail to update their consent language and disclosure practices risk substantial legal exposure. The proposed regulations would impose stiff penalties for non-compliance, with potential damages of up to $1,500 per call or text message without proper consent.

It is critical for businesses to act now to ensure their consent language explicitly addresses AI-generated calls, texts, and content. Updating this language is a small, cost-effective measure compared to the liability risks of non-compliance.

In addition to updating consent language, businesses should also review their communication technology to ensure they can implement AI-generated call disclosures when needed. Further, businesses should monitor the application of these proposed rules. The FCC suggests that it may apply this new rule retroactively,

requiring business with prior valid consent to obtain a new consent for “AI-Generated” calls or texts.

By proactively modifying consent and disclosure processes, businesses can protect themselves from costly litigation while continuing to leverage the power of AI for efficient customer communication. As AI-driven technologies evolve, staying ahead of these regulatory changes will be essential for long-term compliance in consumer communications.

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