



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 27, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE AT (267) 756-1099

Mr. Douglas A. Fagan
Vice President of Operations
Vantage Communications
370 Scotch Rd.
Ewing, NJ 08628

Re: File No. EB-07-SE-456

Dear Mr. Fagan:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 503(b)(5), to Vantage Communications (“Vantage”) for failing to provide fully compliant 911 service in violation of Section 9.5(b) of the Commission’s Rules (“Rules”), 47 C.F.R. § 9.5(b). As explained below, future violations of the Commission’s rules in this regard may subject your company to monetary forfeitures.

On November 30, 2007, the Commission received a complaint alleging that Vantage, an interconnected Voice over Internet Protocol (“VoIP”) service provider,¹ was not routing all 911 calls to the appropriate Public Safety Answering Point (“PSAP”). Specifically, the complaint alleged that Vantage had entered into a purported waiver agreement with a company named Two Men and a Truck whereby both parties agreed that the Two Men and a Truck franchise located in Traverse, Michigan, would “not use the lines to call 911.” The complaint further alleged that Two Men and a Truck in Traverse City placed an actual 911 call which should have been routed to Grand Traverse County Central Dispatch through a selective router in Cadillac, Michigan, but was actually routed to Midland County Central Dispatch through a selective router located in Bay City, Michigan, which can not transfer 911 calls to Grand Traverse County Central Dispatch. This complaint was subsequently referred to the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) for investigation.

On May 21, 2008, the Division issued a letter of inquiry (“LOI”) to Vantage directing it to provide certain information concerning its provision of interconnected VoIP service.² In its response, Vantage admitted that, on March 30, 2006, it entered into a waiver agreement with the Traverse City,

¹ An interconnected VoIP service is a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet Protocol compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (“PSTN”) and to terminate calls to the PSTN. See 47 C.F.R. § 9.3; see also *IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, ¶ 24 (2005) (“*VoIP 911 Order*”).

²Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Vantage Communications (May 21, 2008) (“LOI”).

Michigan franchise of Two Men and a Truck whereby Vantage would not provide VoIP 911 service to Two Men and a Truck.³ Additionally, Vantage admits that it entered into such waiver agreements with two other VoIP service subscribers. Vantage states that, based on its understanding of the language of the E911 Order which required VoIP service providers to “specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service,”⁴ it “viewed a formal notice and acknowledgement of the lack of 911 service to this customer to be an appropriate method in which to encourage the customer to communicate properly with all users, as well as to document the notification of same.”⁵

Section 9.5(b) of the Rules provides that:

As of November 28, 2005:

- (1) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;
- (2) Interconnected VoIP service providers must transmit all 911 calls, as well as ANI and the caller’s Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller’s Registered Location and that has been designated for telecommunications carriers pursuant to Sec. 64.3001 of this chapter, provided that “all 911 calls” is defined as “any voice communication initiated by an interconnected VoIP user dialing 911;”
- (3) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and
- (4) The Registered Location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.⁶

While it is true that in paragraph 48 of the *VoIP 911 Order* the Commission required VoIP service providers to inform subscribers of the limitation of VoIP 911 service as compared with traditional wireline 911 service, we note that such notification was an interim measure intended to address the immediate need to inform VoIP service subscribers of the shortcomings of VoIP 911 service. To interpret the quoted language of paragraph 48 to permit subscribers to opt-out of 911 service would be directly contradictory to the Commission’s finding in paragraph 47 of the same Order, that “allowing customers of interconnected VoIP providers to opt-in to or, for that matter, opt-out of E911 service is fundamentally inconsistent with our obligation to ‘encourage and support efforts by states to deploy comprehensive end-

³ Letter from Douglas A. Fagan, Vice President, Operations & Customer Support, Vantage Communications, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Jacqueline Ellington, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (June 19, 2008) (“LOI Response”) at 5.

⁴ LOI response at 5 (*quoting VoIP 911 Order*, 20 FCC Rcd at 10272).

⁵ LOI Response at 5.

⁶ 47 C.F.R. § 9.5(b); *VoIP 911 Order*, 20 FCC Rcd at 10266 ¶ 37.

to-end emergency communications infrastructure and programs.”⁷ “Thus, interconnected VoIP providers must, as a condition of providing that service to a consumer, provide that consumer with E911 service as outlined [in the requirements above].”⁸ Moreover, in the accompanying footnote, the Commission stated, “[t]hus, interconnected VoIP providers must make E911 an included feature of their service, not an optional one.”⁹

As set forth above, Vantage admits that it entered into three waiver agreements whereby VoIP subscribers agreed to opt-out of 911 service. Accordingly, it appears that Vantage violated Section 9.5(b) of the Rules by failing to provide compliant 911 service.

Furthermore, we note that the complainant alleged that a 911 call placed by Two Men and a Truck from its Traverse City, Michigan location using Vantage’s interconnected VoIP service was routed to a third party, which forwarded the call to the appropriate emergency personnel. Vantage has stated in its LOI response that, approximately 15 months after initiating service to Two Men and a Truck, Vantage discovered that a carrier partner had recently “opened the serving rate center” for the Traverse City location so Vantage transitioned the site to the newly available carrier services, thereby providing accurate 911 delivery. It is unclear from the record whether Vantage is continuing to route 911 calls through a third party for the other two parties that had entered into the waiver agreements. Nevertheless, we caution Vantage that it may not fulfill its 911 obligations by routing 911 calls to third parties or non-PSAP “call centers” that subsequently forward or reroute 911 calls.

We caution you that any failure to provide fully compliant E911 service to your VoIP customers in the future would constitute a further violation of Section 9.5(b) of the Rules that may result in enforcement action, including monetary forfeitures.

Finally, as an interconnected VoIP provider, Vantage is also subject to all of the Commission’s other requirements pertaining to interconnected VoIP providers. These include, but are not limited to, Communications Assistance for Law Enforcement Act (“CALEA”) obligations;¹⁰ Customer Proprietary Network Information (“CPNI”) obligations;¹¹ Telecommunications Relay Services (“TRS”) obligations;¹² disability access obligations;¹³ local number portability requirements;¹⁴ communications outage reporting requirements;¹⁵ and obligations to contribute to the universal service fund;¹⁶ TRS;¹⁷ numbering administration;¹⁸ and local number portability funds.¹⁹ We caution Vantage that failure to comply with these requirements in the future will constitute a violation of Commission rules and may subject Vantage to enforcement action.

⁷ *VoIP 911 Order*, 20 FCC Rcd at 10272 (quoting 911 Act § 3(b), 47 U.S.C. § 615).

⁸ *VoIP 911 Order*, 20 FCC Rcd at 10272.

⁹ *Id.* at n. 152.

¹⁰ See 47 C.F.R. §§ 1.20000 – 1.20008.

¹¹ See 47 C.F.R. §§ 64.2001 – 64.2009.

¹² See 47 C.F.R. §§ 64.601 – 64.608.

¹³ See 47 C.F.R. §§ 6.1 – 6.23 and 7.1 – 7.23.

¹⁴ See 47 C.F.R. §§ 52.20 – 52.33

¹⁵ See 47 C.F.R. §§ 4.1 – 4.13.

¹⁶ See 47 C.F.R. § 54.706.

¹⁷ See 47 C.F.R. § 64.604.

¹⁸ See 47 C.F.R. § 52.17.

¹⁹ See 47 C.F.R. § 52.32.

If, after receipt of this citation, Vantage violates the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation up to \$112,500 for a single continuing violation.²⁰

If you choose to do so, you may respond to this citation within 10 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that Vantage is taking to ensure that it does not violate Section 9.5(b) of the Commission's rules in the future.

Vantage may request an interview at the closest FCC Field Office, which is located in New York, New York.²¹ Please contact Jacqueline Ellington at (202) 418-1160 to schedule this interview, which must take place within 10 days of this Citation. Vantage may also submit a written statement within 10 days of the date of this Citation to:

Jacqueline Ellington, Esq.
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-07-SE-456
Federal Communications Commission
445 12th Street, S.W., Rm. 3-A366
Washington, D.C. 20554

Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁰ See 47 C.F.R. § 1.80(b)(3).

²¹ 47 U.S.C. § 503(b)(5).