FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 21, 2010

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
AND FACSIMILE ((678) 559-0432)

Boris Jerkunica
Chief Executive Officer
Vocalocity, Inc.
600 Virginia Avenue, NE
Atlanta, GA 30306

RE: File No. EB-08-IH-1151

Dear Mr. Jerkunica:

This letter 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) for failure to make certain regulatory filings and associated payments in violation of sections 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195 of the Commission's rules.[1] As explained below, future violations of the Commission's rules and requirements in this regard may subject your company to monetary forfeitures.

By letter of inquiry ("LOI") dated May 21, 2008, the Investigations and Hearings Division of the Commission's Enforcement Bureau ("the Division") initiated an investigation into whether Vocalocity, Inc. ("Vocalocity") violated the Commission's rules and orders requiring interconnected voice over Internet protocol ("VoIP") providers to make certain regulatory filings and associated payments.[2] Vocalocity responded to the LOI on or about July 11, 2008.[3] After reviewing the various responses to the LOI, the Division issued a supplemental letter of inquiry on August 20, 2008,[4] to which Vocalocity responded on August 29, 2008.[5] In its responses to the LOI and supplemental LOI, Vocalocity indicated that it offers its VoIP service over the public switched telephone network and/or the internet, and that it registered with the Commission on April 1, 2008 pursuant to Section 64.1195 of the Commission's rules.[6] Vocalocity further stated that it was "in the process of getting all 499-Q's up to date and current."[7]

[1] 47 C.F.R. §§ 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195.

[2] *See* Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Boris Jerkunica, CEO, Vocalocity, dated May 21, 2008.

[3] *See* Excel spreadsheet response provided by Vocalocity, Inc. on or about July 11, 2008 and attachments thereto ("LOI Response").

[4] *See* Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Boris Jerkunica, CEO, Vocalocity, dated August 20, 2008 ("Supplemental LOI").

[5] *See* Vocalocity August 29, 2008 response to Supplemental LOI ("Supp. LOI Response").

[6] *See* LOI Response; Supp. LOI Response. Vocalocity further explicitly admits that it is an interconnected VoIP provider. *See* Vocalocity, Inc. 2008 FCC Form 499-A, attached to the LOI Response.

[7] *See* LOI Response; Supp. LOI Response.

Finally, Vocalocity admitted that it had not contributed to the Universal Service Fund (USF) or the Telecommunications Relay Service (TRS) Fund or to the shared costs of numbering administration and local number portability until after the Division initiated this investigation.[8]

Section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[9] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based upon their interstate and international end-user telecommunications revenues.[10] The Commission also requires certain providers of interstate telecommunications, including providers of interconnected VoIP services, to contribute to the USF.[11] In extending USF contribution requirements to providers of interconnected VoIP services, the Commission also required every interconnected VoIP provider that had not already registered with the Commission to do so through submission of FCC Form 499-A, in order to facilitate enforcement of the obligations imposed in the *2006 Contribution Methodology Order*.[12] The Commission requires USF contributors, including interconnected VoIP providers, to provide certain revenue information on the FCC Form 499-A and the FCC Form 499-Q ("Telecommunications Reporting Worksheet" or "Worksheet") on a periodic basis.[13] The Universal Service Administrative Company ("USAC") currently administers the USF.[14] USAC bills carriers, including Vocalocity, each month based

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[8] *See* LOI Response; Supp. LOI Response.

[9] 47 U.S.C. § 254(d).

[10] 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier's projected, rather than historical, revenues. *Id. See also Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969-74, ¶¶ 29-39 (2002) ("*Interim Contribution Order*").

[11] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) ("*2006 Contribution Methodology Order*"), *petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC*, 489 F.3d 1232, 2007 WL 1574611 (D.C. Cir. 2007); *Federal-State Joint Board on Universal Service; IP-Enabled Services*, Final Rule, 71 FR 38781 (2006).

[12] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7549, ¶ 61.

[13] 47 C.F.R. § 54.711. Carriers file the Quarterly Worksheet, the FCC Form 499-Q, to show projected revenues. Carriers must submit their Quarterly Worksheets no later than February 1, May 1, August 1, and November 1 of each year. *See* Quarterly Worksheet *Form* at 1. Carriers must submit their annual Worksheets no later than April 1 of each year. *See* Annual Worksheet Form at 1.

[14] 47 C.F.R. § 54.701(a).

on their projected quarterly revenues and the USF contribution is due by the date shown on the invoice.[15] The failure of a carrier such as Vocalocity to abide by its federal filing obligation thus has a direct impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program.[16] Consequently, a carrier's failure to file required Worksheets in a timely manner frustrates the very purpose for which Congress enacted section 254(d) – to ensure that every interstate carrier "contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[17] Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's Universal Service program.

Title IV of the Americans with Disabilities Act of 1990, codified at 47 U.S.C. § 225, directs the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech impaired individuals in the United States.[18] The Commission established the Telecommunications Relay Service ("TRS") Fund, currently administered by the National Exchange Carrier Association ("NECA"), to reimburse TRS providers for the costs of providing interstate TRS.[19] Pursuant to section 64.604 of the Commission's rules, every carrier providing interstate telecommunications services must contribute to the TRS fund.[20] The Commission extended the requirement to contribute to the interstate TRS Fund to interconnected VoIP providers such as Vocalocity "consistent with [the Commission's] obligation to ensure the availability of TRS 'to the extent possible and in the most efficient manner' to persons with hearing or speech disabilities."[21] This requirement became effective October 5, 2007,[22] and NECA began issuing invoices to interconnected VoIP providers in March 2008 for their 2007 TRS contribution based on 2006 4th quarter revenue.

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[15] 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.") *See, e.g.*, "Proposed Second Quarter 2006 Contribution Factor," Public Notice, 21 FCC Rcd 2379 (Wireline Comp. Bur. 2006) ("Contribution payments are due on the date shown on the administrator invoice.").

[16] Sixty days prior to the start of each quarter, USAC is required to provide the Commission with a projection of the high cost, low income, schools and libraries, and rural health care funding requirements for the following quarter. *See* www.universalservice.org/overview/filings. Based on USAC's projection of the needs of the USF, and revenue projections from the registered carriers subject to universal service requirements, the Commission establishes a specific percentage of interstate and international end-user revenues that each subject telecommunications provider must contribute toward the USF. This percentage is called the contribution factor. The contribution factor, and, consequently, the amount owed to the USF by each affected telecommunications company, changes each quarter, depending on the needs of the USF and carrier-provided revenue projections. *See* www.fcc.gov/wcb/universal_service/quarter. Thus, in cases where a carrier, such as Vocalocity, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution base from which universal assessments are derived, and the economic burden of contributing falls disproportionately on carriers that have satisfied their reporting obligations.

[17] 47 U.S.C. § 254(d).

[18] Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Act).

[19] *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993) (*TRS III Order*).

[20] *See* 47 C.F.R. § 64.604(c)(5)(iii).

[21] *See IP-Enabled Services*, Report and Order, 22 FCC Rcd 11275, 11294 ¶ 36 (2007).

[22] *IP-Enabled* Services, Final Rule, 72 FR 43546 (2007), quoting 47 U.S.C. § 225(b)(1).

In addition, section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[23] Section 251(e)(2) of the Act provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[24] In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.[25] The Commission also adopted section 52.32 of its rules, which requires that telecommunications carriers contribute to the shared costs of long-term number portability as provided in the Commission's rules.[26] Effective March 24, 2008, the Commission extended the North American Numbering Plan ("NANP") administration and local number portability ("LNP") contribution requirements to interconnected VoIP providers such as Vocalocity.[27] Welch LLP ("Welch"), the NANP administrator, began invoicing interconnected VoIP providers in June 2008. Neustar, Inc. ("Neustar"), the LNP administrator, began invoicing interconnected VoIP providers in March 2008.

We conclude that Vocalocity did not comply with the Commission's rules and orders requiring interconnected VoIP providers to make certain regulatory filings and associated payments. As a provider of interconnected VoIP services, Vocalocity was required to register with the Commission, file annual and quarterly Telecommunications Reporting Worksheets, contribute to the USF and the TRS fund, and contribute to the shared costs of numbering administration and local number portability. The record in our inquiry demonstrates that while Vocalocity began operating as an interconnected VoIP provider in 2005,[28] it did not register with the Commission until April 1, 2008,[29] two years after the Commission extended USF requirements to interconnected VoIP providers and approximately three months after USAC advised Vocalocity of its obligation to register and contribute to the USF.[30] Additionally, Vocalocity filed its FCC Form 499-Q due on August 1, 2008 a full one month late.

Based upon its April 1, 2008 filing, Vocalocity received an invoice from USAC in July 2008, which USAC confirms Vocalocity paid on time. However, Vocalocity should have been contributing to the USF based upon the projected fourth quarter 2006 revenues it was required to report on a Form 499-Q that should have been filed by August 1, 2006.[31] USAC further confirms that Vocalocity failed to timely

[23] 47 U.S.C. § 251(e)(1).

[24] 47 U.S.C. § 251(e)(2).

[25] 47 C.F.R. § 52.17(a).

[26] 47 C.F.R. § 52.32. Unlike universal service, TRS and the cost recovery mechanism for the North American Numbering Plan, there is no "fund" for Local Number Portability. Neustar, which acts as the Local Number Portability Administrator, recovers the costs of implementing the Act's requirements for local number portability from telecommunications carriers. *See, e.g.,* http://www.npac.com/home/lnpoverview.shtml; http://www.neustar.biz/interoperability/lnp.cfm (providing general information concerning LNP administration).

[27] *See Matter of Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, Final Regulatory Flexibility Analysis Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19532 ¶ 1 (2007); *Matter of IP-Enabled Services, Telephone Number Portability, Numbering Resource Optimization*, Final Rule, 73 FR 9463 (2008).

[28] *See* LOI Response.

[29] *See* Supp. LOI Response.

[30] *See* Letter from Tarig Rahamtalla, USAC, to Boris Jerkunica, Vocalocity, dated December 31, 2007.

[31] *See* 2006 Contribution Methodology Order, 21 FCC Rcd at 7548, ¶ 60. Because Vocalocity did not register with USAC until April 1, 2008 and thus never filed the 499-Q as required by August 1, 2006, USAC never billed Vocalocity for its USF obligations. Regardless, Vocalocity was responsible for meeting its obligations even without

remit any payment toward its USF obligation as represented on invoices due by September 15, 2008, October 15, 2008, November 14, 2008 and December 15, 2008, and that Vocalocity contributed less than the amount represented on the invoices for payment due on January 15, 2009, February 13, 2009, March 13, 2009, August 14, 2009, September 15, 2009, and October 15, 2009. NECA confirms that it sent an invoice to Vocalocity for its TRS obligations on July 6, 2008, with payment due by July 28, 2008. NECA further confirms that Vocalocity paid the July 6, 2008 invoice on October 15, 2008, more than two months late. Welch confirms that it sent Vocalocity an invoice for payment of NANP fees dated June 12, 2008, with payment due July 12, 2008. Welch further confirms that Vocalocity paid the NANP invoice approximately three months late. Finally, Neustar confirms that it sent Vocalocity invoices for payment of LNP fees from July 2008 through April 2010, with payments due 45 days from the dates of the invoices. Neustar further confirms that Vocalocity paid the LNP invoices from Neustar for July 2008, May 2009, July and September 2009 at least a full month late and failed to pay the invoice for February 2010.

We therefore conclude that Vocalocity apparently violated sections 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195 of the Commission's rules[32] by failing to file a registration statement and then meet the related filing and payment obligations that are triggered by that filing.

If, after receipt of this citation, Vocalocity 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. [33]

You may respond to this citation within 30 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, (2) a written statement, or (3) a teleconference interview with the Commission's Investigations & Hearings Division in Washington, D.C. Your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing regulatory filings and associated payments, as described above.

Please contact Mindy Littell at (202) 418-0789 to arrange a teleconference interview or an interview at the closest field office, if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Mindy Littell
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W., Rm. 4-C330
Washington, D.C. 20554

Reference EB-08-IH-1151 when corresponding with the Commission.

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

having received an invoice from USAC. The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from the NANP administrator. *See* 47 U.S.C. § 254(d); 47 C.F.R. § 54.706. *See also Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896, ¶ 5, note 22 (2003)

[32] 47 C.F.R. §§ 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195.

[33] *See* 47 C.F.R. § 1.80(b)(3).

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,

Hillary S. DeNigro
Chief, Investigations & Hearings Division
Enforcement Bureau