

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ViaTalk, LLC

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File No.: EB-TCD-21-00032632

CITATION AND ORDER

Failure to Ensure Access to Information

Failure to File Annual Compliance Certifications

Adopted: August 18, 2021

Released: August 18, 2021

By the Chief, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies ViaTalk, LLC (ViaTalk) that it failed to ensure that individuals with disabilities had access to information provided to other customers and failed to file annual compliance certifications with the Commission. We direct ViaTalk to take immediate steps to comply with the accessibility rules applicable to service providers subject to section 255, 716, or 718 of the Act, including filing its 2021 annual compliance certification within 30 days after the release of this Order.

2. *Notice of Duty to Comply with the Law:* We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against entities without FCC authorizations who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.¹ Accordingly, ViaTalk is hereby on notice that it must comply with section 255 of the Act² and sections 6.11(a) and 14.31(b) of the Commission’s rules.³ If ViaTalk fails to comply with these requirements, it may be liable for significant penalties and sanctions, including fines of up to \$100,000 per violation or per day of a continuing violation, not to exceed \$1,000,000 for any single act or failure to act.⁴ In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.⁵

II. BACKGROUND

3. Congress adopted laws to bring the benefits of communications to all Americans, including the millions of individuals with disabilities who face accessibility barriers in utilizing communications products and services. Sections 255 and 716 of the Act generally require equipment manufacturers and service providers to make their products and services accessible to and usable by

¹ See 47 U.S.C § 503(b)(5).

² 47 U.S.C. § 255.

³ 47 CFR §§ 6.11(a) and 14.31(b).

⁴ 47 U.S.C. § 503(b)(2)(F).

⁵ See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*”) (emphasis added).

individuals with disabilities.⁶ The Commission has established rules to implement the Act's accessibility provisions.

III. APPLICABLE LAW AND VIOLATIONS

4. Section 255(c) of the Act requires telecommunications service providers to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.⁷ The Commission held that Voice over Internet Protocol (VoIP) service providers must comply with section 255 of the Act⁸ and section 6.1(d) of the Commission's rules.⁹ Section 6.11(a) of the Commission's rules requires that service providers ensure that individuals with disabilities have access to information and documentation that the service provider provides to other customers, including product support communications.¹⁰

5. Section 14.31(b) of the Commission's rules requires an officer from each entity subject to sections 255, 716, or 718 of the Act to file an annual compliance certification with the Commission.¹¹ This annual compliance certification attests to the entity's accessibility efforts and requires the entity to identify the name and contact information of the person(s) the company has authorized to resolve complaints alleging violations of the Commission's accessibility rules and sections 255, 716, and 718 of the Act.¹²

6. ViaTalk provides interconnected VoIP service.¹³ As an interconnected VoIP service provider, ViaTalk is subject to section 255 of the Act and the Commission's implementing rules.¹⁴ The Commission received an informal complaint that, among other things, alleged that ViaTalk failed to comply with section 255 of the Act and the Commission's rules by failing to provide product support

⁶ 47 U.S.C. §§ 255 and 617.

⁷ 47 U.S.C. § 225(c).

⁸ IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283, para. 16 (2007) (VoIP Access Order (requiring interconnected VoIP providers to comply with disability access requirements in Section 255 of the Act and the Commission's corresponding rules).

⁹ 47 CFR § 6.1(d) (applying Part 6 obligations to interconnected VoIP as the term is defined in section 9.3). Section 9.3 of the Commission's rules provides that an interconnected Voice over Internet Protocol (VoIP) service is a service that: (i) enables real-time, two-way voice communications; (ii) requires a broadband connection from the user's location; (iii) requires internet protocol-compatible customer premises equipment (CPE); and (iv) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. 47 CFR § 9.3.

¹⁰ 47 CFR § 6.11(a).

¹¹ 47 CFR § 14.31(b).

¹² 47 CFR § 14.31(b).

¹³ ViaTalk is a division of HostRocket.Com, Inc. that provides phone service that uses the VoIP (voice over internet) telephony protocol for both residential and commercial customers. ViaTalk, Corporate Information, https://www.viatalk.com/broadband_phone_corporate_info.htm (last visited July 8, 2021). See also June 7 LOI Response; see also ViaTalk 4 – 000001. ViaTalk began offering VT Unlimited, in addition to other VoIP plans, on October 28, 2005.

¹⁴ Pursuant to Section 716(f) interconnected VoIP service offered on October 7, 2010 will continue to be subject to section 255 requirements and not the substantive accessibility requirements set forth in Section 716 of the CVAA. See 47 U.S.C. § 617(f); see also 2011 CVAA Implementation Order, 26 FCC Rcd at 14571, para. 36 (confirming that Section 255, and not Section 716, applies to telecommunications and interconnected VoIP services and equipment offered as of October 7, 2010).

information to an individual with a disability. The Commission determined that ViaTalk failed to ensure that individuals with disabilities were provided access to information that ViaTalk provided to other customers.¹⁵ The Commission also found that it was readily achievable for ViaTalk to provide access to the information as requested. In addition, in the course of investigating the informal complaint, the Bureau determined that ViaTalk has failed to file an annual compliance certification as required by section 14.31(b) of the Commission's rules since 2012, except in 2020 when it received an inquiry from Commission staff.¹⁶

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

7. ViaTalk may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, or (2) a teleconference interview.

8. If ViaTalk requests a teleconference or personal interview, contact Karen Johnson at karen.johnson@fcc.gov. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If ViaTalk prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

9. All written communications must be mailed to Sharon Lee, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and must include the Case No. referenced in the caption. The written statement shall also be emailed to Sharon Lee at Sharon.lee@fcc.gov and to Karen Johnson at karen.johnson@fcc.gov.

10. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, ViaTalk should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. ViaTalk should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. ViaTalk should send an e-mail to FCC504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

11. We advise ViaTalk that it is a violation of section 1.17 of the Commission's rules¹⁷ for any person that has received a citation or letter of inquiry from the Commission, or is otherwise subject to a Commission or staff investigation, to make any false or misleading written or oral statement of fact to the Commission. Specifically, no such person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is

¹⁵ *In the Matter of ViaTalk, LLC*, Order, FCC 21-96 (Aug. 18, 2021).

¹⁶ ViaTalk was required to file its first annual compliance report by April 1, 2013. *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, *Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, *Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-145, Report and Order and Further Noticed of Proposed Rulemaking, 26 FCC Rcd 14557, 14571, 14650, 14669, paras. 36, 219, 262 (2011) (*2011 CVAA Implementation Order*). Staff of the Commission's Consumer and Governmental Affairs Bureau (CGB) contacted ViaTalk about the annual filing after receiving a request for dispute assistance from the individual who subsequently filed an informal complaint with the Enforcement Bureau. ViaTalk filed the 2020 annual compliance certification after CGB's inquiry.

¹⁷ 47 CFR § 1.17.

necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

12. Further, 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.¹⁸

13. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures.

14. Finally, we warn ViaTalk that, under the Privacy Act of 1974,¹⁹ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure ViaTalk's compliance with the Act and the Commission's rules.²⁰

V. FUTURE VIOLATIONS

15. If, after receipt of this Citation, ViaTalk again violates section 255 of the Act and/or sections 6.11(a) or 14.31(b) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed \$119,055 for each such violation or each day of a continuing violation, and up to \$1,190,546 for any single act or failure to act.²¹ In determining the amount of any such forfeiture, the Commission may consider enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²² Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.

VI. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,²³ ViaTalk must cease and desist from failing to provide access to information provided to other customers and from failing to file annual compliance certifications with the Commission, in violation of section 255 of the Act and section 6.11(a) and 14.31(b) of the Commission's rules. **IT IS FURTHER ORDERED** that, ViaTalk must file its 2021 annual compliance certification with the Commission no later than 30 days after the release date of this Order.

17. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to John Reyes, Vice President, ViaTalk, LLC,

¹⁸ 18 U.S.C. § 1001.

¹⁹ 5 U.S.C. § 552a(e)(3).

²⁰ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

²¹ See 47 U.S.C. § 503(b)(2)(F); 47 CFR § 1.80(b)(3). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(11).

²² See 47 CFR § 1.80(b)(10).

²³ 47 U.S.C. § 154(i), (j).

21 Corporate Drive, Suite 203, Clifton Park, NY 12065 and via email to John Reyes, Vice President,
ViaTalk LLC at john.reyes@hostrocket.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau