

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

In the Matter of)
Cellco Partnership D/B/A Verizon Wireless) File No. EB-TCD-21-00033100
Informal Complaint Regarding)
Access to Telecommunications Services)

ORDER

Adopted: June 9, 2022

Released: June 9, 2022

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we consider an informal complaint filed pursuant to section 14.34 of the Federal Communications Commission’s rules (Rules), alleging that Cellco Partnership d/b/a Verizon Wireless (Verizon or Company) failed to comply with section 255 of the Communications Act of 1934, as amended (the Act), and part 7 of the Rules.¹

2. Verizon failed to meet its burden of proof and thus did not establish that its Premium Visual Voicemail service is accessible or that accessibility is not readily achievable.² We therefore grant the complaint.

II. BACKGROUND

A. Legal Background

3. Section 255 of the Act promotes accessibility to telecommunications services for individuals with disabilities.³ Part 7 of the Rules implements section 255 of the Act by requiring manufacturers and service providers to make telecommunications services and equipment accessible to persons with disabilities, if “readily achievable.”⁴ In 2010, Congress amended the Act by passing the Twenty-First Century Video Accessibility Act (CVAA).⁵ In addition to expanding access requirements

¹ 47 U.S.C. § 255; 47 CFR § 7.1 et seq.

² 47 CFR § 14.36(a), (b).

³ 47 U.S.C. § 255.

⁴ 47 CFR § 7.5(b)(1). See In the Matter of 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, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6461, para. 106 (1999) (Section 255 Report and Order).

⁵ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.) (CVAA). The law was enacted on October 8, 2010. See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010, to make technical corrections to the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act. Hereinafter, all references to the CVAA will be to the CVAA as codified in the Communications Act of 1934, as amended, unless otherwise indicated.

for advanced communications services, the CVAA included new requirements to support enforcement of accessibility obligations.⁶ Section 717 of the Act required the Commission to adopt rules that facilitate the filing and disposition of formal and informal complaints alleging non-compliance with sections 255 and 716.⁷ The Commission implemented these enforcement requirements in part 14 of the Rules.⁸

4. Consumers can file a Request for Dispute Assistance (RDA) with the Commission if they believe a manufacturer or service provider is violating section 255, 716, or 718, or the applicable Commission rules.⁹ Commission staff will forward the RDA to the relevant manufacturer or service provider, and assist the parties in reaching a settlement.¹⁰ If the matter is not resolved within thirty days, the requester may file an informal complaint with the Commission.¹¹ Pursuant to section 14.37 of the Rules, the Commission will investigate the allegations in any informal complaint. If the parties do not settle, then the Commission has 180 days after the complaint is filed to issue an order determining whether the manufacturer or service provider violated the relevant statutory provision or Rule and specifying the basis for the determination.¹² If the Commission determines that there has been a violation, it may in such order, or in a subsequent order, (1) direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance within a reasonable period of time, and (2) take other enforcement action that the Commission deems appropriate.¹³ Section 14.37(c) of the Rules provides an opportunity for the manufacturer or service provider to comment on the proposed remedial action before such action becomes final.¹⁴ The Commission recognized that it had “considerable discretion to tailor sanctions or remedies to the individual circumstances of a particular violation”¹⁵

5. In establishing the informal complaint rules, the Commission adopted a simple mechanism for individuals to submit accessibility complaints.¹⁶ The Commission imposed minimum requirements for filing informal complaints,¹⁷ and did not require complainants to provide documentation or analysis of the accessibility issues in the complaint.¹⁸ Section 14.34(b) sets forth the requisite elements

⁶ 47 U.S.C. § 717.

⁷ 47 U.S.C. § 618(a). Section 716 of the Act governs accessibility requirements for Advance Communications Services (ACS). See 47 USC § 617. The complaint at issue in this case alleged violation of section 255 of the Act based on the complainant’s inability to access Verizon’s Premium Visual Voicemail service. Because the complaint did not allege any violations related to an ACS, this order contains no further discussion of section 716 of the Act.

⁸ *Section 255 Report and Order*, 16 FCC Rcd at 6467-68, paras. 121-123. See also 47 CFR § 14.30 *et seq.*

⁹ 47 CFR § 14.32(a).

¹⁰ 47 CFR § 14.32(c), (d).

¹¹ 47 CFR § 14.32(e).

¹² 47 CFR § 14.37.

¹³ *Id.*

¹⁴ 47 CFR § 14.37(c).

¹⁵ *Section 255 Report and Order*, 16 FCC Rcd at 6464, para. 115.

¹⁶ *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, 14660-72, paras. 241-268 (2011) (*2011 CVAA Implementation Order*).

¹⁷ *2011 CVAA Implementation Order*, 26 FCC Rcd at 14661, para. 245.

¹⁸ “To require that a complaint include evidentiary documentation or analysis demonstrating a violation has occurred would place the complainant in the untenable position of being expected to conduct a complex achievability analysis (continued....)”

of an informal complaint. At a minimum, the complaint must contain (1) contact information for both the complainant and the manufacturer or service provider; (2) a statement of facts explaining why the complainant contends that the defendant manufacturer or provider is in violation of sections 255, 716, or 718, and the relief requested; (3) the date or dates on which the complainant either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service about which the complaint is being made; (4) a certification that the complainant submitted a Request for Dispute Assistance (RDA) at least thirty days before it filed the complaint; (5) the complainant's preferred method of response to the complaint; and (6) any other information that is required by the Commission's accessibility complaint form.¹⁹

6. Once the complaint establishes a *prima facie* case by including the elements identified in section 14.34(b), the burden of proof shifts to the manufacturer or service provider to prove that the product or service is accessible, or if not accessible, that accessibility is not readily achievable.²⁰ In establishing this requirement, the Commission determined that manufacturers and service providers are in the best position to provide Commission staff with the documentation necessary to demonstrate compliance.²¹ Manufacturers and service providers are required to create records of their efforts to implement the CVAA's accessibility and usability requirements and maintain those records for at least two years after the service or product is no longer offered.²² The Rules require manufacturers and service providers to submit records documenting their efforts to make a product accessible and usable to support its claims of compliance or demonstrating that it was not readily achievable to make a product accessible.²³ Conclusory and unsupported claims are insufficient to carry this burden of proof; a manufacturer or service provider must be able to demonstrate its efforts through its records.²⁴ Further, when a manufacturer or service provider raises a defense that it was not readily achievable to make its product or service accessible, the Company must provide all documents supporting this conclusion.²⁵

B. Factual Background

7. Verizon, a telecommunications service provider, offers Premium Visual Voicemail as a service that transcribes into text the first 45 seconds of audio voicemail messages.²⁶ On December 14, 2021, Mr. Juan "Sophia" De Anda (Mr. De Anda) filed an informal complaint (Complaint) with the Commission's Enforcement Bureau, alleging violations of section 255 of the Act and part 7 of the Rules. In his Complaint, Mr. De Anda described his hearing impairment, explained that he needed the Premium Visual Voicemail service to have accessible voicemail, and summarized his experience with Premium

without the benefit of the data necessary for such an analysis simply in order to initiate the informal complaint process." *2011 CVAA Implementation Order*, 26 FCC Rcd at 14664-65, para. 252.

¹⁹ 47 CFR § 14.34(b).

²⁰ 47 CFR § 14.36(a).

²¹ 47 CFR § 14.31(a). *See 2011 CVAA Implementation Order*, 26 FCC Rcd at 14664-65, para. 252. ("It is the covered entity that will have the information necessary to conduct such an analysis, not the complainant.")

²² 47 CFR § 14.31(a).

²³ "To carry its burden of proof, a manufacturer or service provider must produce documents demonstrating its due diligence in exploring accessibility and achievability . . . throughout the design, development, testing, and deployment stages of a product or service." 47 CFR § 14.36.

²⁴ 47 CFR § 14.36(a).

²⁵ 47 CFR § 14.36(b)(2).

²⁶ Answer to Informal Complaint from Cellco Partnership D/B/A Verizon Wireless at 8 (Jan. 18, 2022) (on file in EB-TCD-21-00033100) (Answer). The informal complaint uses the terms "voicemail," "Visual Voicemail," "Voice Mail Premium," and "Premium Visual Voicemail" interchangeably. In this order, the term "Premium Visual Voicemail" is used to refer to Verizon's service that the informal complaint alleged was not accessible.

Visual Voicemail and attempts to resolve the issue with Verizon.²⁷ He requested that the Commission direct Verizon to fix its Premium Visual Voicemail service so that it worked on all Samsung phones.²⁸

8. Mr. De Anda stated that in December 2019, he purchased a Samsung Galaxy S-10 5G phone for \$1,300 at Best Buy, and paid \$2.99 per month for Verizon's Premium Visual Voicemail service to read voicemails sent to him.²⁹ Mr. De Anda claimed that Premium Visual Voicemail service stopped working on his phone after a few months.³⁰ Mr. De Anda asserted that he contacted Verizon numerous times in an attempt to resolve the problem. Verizon eventually provided Mr. De Anda with a refurbished Galaxy S-10 phone. However, even with the refurbished phone, Mr. De Anda continued to get an error message whenever he tried to use the Premium Visual Voicemail service.³¹ After working with Mr. De Anda to try to resolve the problem, Verizon advised him that the problem was with the phone rather than Verizon's service. Nonetheless, Verizon issued Mr. De Anda a credit for the 14-month period that he was unable to use the Premium Visual Voicemail service.³² On August 31, 2021, Mr. De Anda filed an RDA with the Commission's Consumer and Governmental Affairs Bureau.³³ Mr. De Anda and Verizon were unable to reach a mutually acceptable resolution during the RDA process.

9. In Verizon's answer (Answer) to the Complaint, the Company made three alternative arguments. First, Verizon maintained that Mr. De Anda failed to make a *prima facie* case, as required under section 14.36.³⁴ According to Verizon, Mr. De Anda's Complaint did not allege that the Premium Visual Voicemail service was not accessible or usable, or that Verizon's documentation and technical support were not accessible.³⁵ Thus, Verizon maintained, it was not "relevant or necessary" for the Company to review the accessibility or design aspects of the service "that lie outside of the specific allegations here" because, in Verizon's view, the Complaint failed to establish a *prima facie* violation.³⁶

10. Verizon's second argument was that its Premium Visual Voicemail service was accessible. Verizon argued that Mr. De Anda "only alleges a discrete issue with De Anda's own device and service," and maintained that his issue "was not attributable to a problem with Verizon's network or system."³⁷ Verizon supported its claim that Mr. De Anda's problem was isolated to his device by pointing out, among other things, that Premium Visual Voicemail service worked for millions of other Verizon customers.³⁸

²⁷ Informal Complaint filed with the Enforcement Bureau by Mr. Juan "Sophia" De Anda on December 14, 2021, at 1 (on file in EB-TCD-21-000333100) (Complaint) ("I am hearing impaired and rely on visual (text versions) voicemail so that I can read the voicemails that people leave me.")

²⁸ *Id.* at 2. ("Relief Requested: I would like Verizon to fix their Visual Voicemail system so that it works on all Samsung phones, including my phone.")

²⁹ *Id.* at 1.

³⁰ *Id.*

³¹ *Id.*

³² Preliminary Response to Informal Complaint from Ian Dillner, counsel for Verizon Wireless, to Phillip Priesman, Telecommunications Consumers Division, FCC Enforcement Bureau at De_Anda_0000138 (e-mail dated Nov. 11, 2021 from Verizon to Mr. De Anda) (Dec. 21, 2021) (on file in EB-TCD-21-00033100) (Preliminary Response).

³³ 47 CFR § 14.32, 14.34(b)(5); *see also* Request for Dispute Assistance Form (filed August 31, 2021).

³⁴ Answer at 9, n.27 (Jan. 18, 2022) (on file in EB-TCD-21-00033100) (Answer). *See also* Answer at 14.

³⁵ *Id.*

³⁶ *Id.* at n.27.

³⁷ *Id.* at 9.

³⁸ *Id.*

11. Finally, Verizon argued that, even if Mr. De Anda established a *prima facie* case, and even if Verizon's Premium Visual Voicemail service was not accessible, then accessibility was not readily achievable without further cooperation from the complainant.³⁹ Verizon stated that it had "developed a series of steps that could be taken, working with the customer, to address both of these likely causes" of Mr. De Anda's issue.⁴⁰ Verizon stated that, after a certain point, Mr. De Anda no longer wanted to work with Verizon on this matter; and thus, the Company was unable to keep trying to resolve this issue through the steps it had identified.⁴¹

III. DISCUSSION

12. We first address Verizon's claim that Mr. De Anda's Complaint did not make a *prima facie* case. Verizon alleged that the Complaint did not make a *prima facie* case because the Complaint (1) failed to provide a complete statement of the facts "explaining the circumstances surrounding the complaint;"⁴² (2) did not allege that Premium Visual Voicemail service was not accessible or usable; and (3) did not state or include any supporting documentation demonstrating that Verizon was in violation of sections 255, 716, or 718 of the Act, nor the Rules.

13. Section 14.34(b) of the Rules establishes the information that must be included in an informal complaint.⁴³ The Complaint contained all of the required information. In the Complaint, Mr. De Anda stated that he had a right to "accessible voicemail under section 255 and 47 CFR Part 7."⁴⁴ He also stated that "a few months after" he bought the Samsung device, "visual voicemail stopped working," and that "visual voicemail does not work" on the refurbished phone that Verizon provided.⁴⁵ Mr. De Anda provided a detailed description of the circumstances that led to his allegations that Verizon's Premium Visual Voicemail service was not accessible, in violation of section 255 of the Act. The Complaint described when the problem started, Mr. De Anda's efforts to get the issue resolved, Verizon's conclusion that the source of the problem was Mr. De Anda's device, and that he was unable to resolve the problem to his satisfaction through the RDA process. In its Answer, Verizon stated its understanding that the problem had been resolved.⁴⁶ Mr. De Anda, however, stated that he continued to be unable to use the Premium Visual Voicemail service.⁴⁷

14. Verizon also failed to explain its argument that a complainant is legally required to provide information or documentation beyond what is specified in Section 14.34(b) in order establish a *prima facie* case, nor did Verizon attempt to explain why such a result would be consistent with sections 14.34 and 14.36 of the Rules. Neither the Commission's rules or relevant orders required Mr. De Anda to support his complaint with additional documentation or to make additional arguments to establish a *prima facie* case. Therefore, we find that the Complaint included all of the necessary information required under

³⁹ *Id.* at 14.

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 6-7. Mr. De Anda filed his Complaint with the Commission in December, 2021, after spending more than a year trying to resolve this matter with Verizon. *See* Complaint at 1.

⁴² For example, Verizon claimed Mr. De Anda was able to resolve his issue by working with Samsung. *See* Answer at 6-7. However, we note that in his response to Verizon's Answer, Mr. De Anda denied that his problem was resolved by Samsung. *See* E-mail from Juan De Anda to Phillip Priesman, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 19, 2022, 10:02 EDT) (De Anda Response).

⁴³ 47 CFR § 14.34(b). *See also* discussion at para. 5, *supra*.

⁴⁴ Complaint at 1-2.

⁴⁵ *Id.*

⁴⁶ Answer at 4.

⁴⁷ DeAnda Response at 1.

section 14.34(b) of the Rules.⁴⁸ As a result, we find that Mr. De Anda established a *prima facie* case that Verizon's Premium Visual Voicemail was not accessible.

15. Once Mr. De Anda established a *prima facie* case, the burden of proof shifted to Verizon to demonstrate that its Premium Visual Voicemail service was accessible, or if not accessible, that it was not readily achievable to make the service accessible.⁴⁹ Verizon first argued that the Premium Visual Voicemail services were accessible and usable.⁵⁰ Alternatively, the Company argued that if the Premium Visual Voicemail service was found not to be accessible, it was not readily achievable to make the service accessible without the cooperation of Mr. De Anda.⁵¹

16. To support its argument that Premium Visual Voicemail service is accessible, Verizon claimed that the service worked on millions of other customers' devices, that Mr. De Anda's problem was a discrete issue with his Samsung device, and that the problem was not attributable to Verizon's networks and services. The Company provided no evidence to substantiate its conclusory statements that its service was accessible, despite bearing the burden of proof.⁵²

17. Verizon's arguments have additional flaws. First, although Verizon claimed that "millions of other customers" were able to use the Premium Visual Voicemail service, the Company did not support this claim by providing any data on the number of users, types of devices used, or when such customers used the service. Nor did Verizon offer insight or data into whether the customers who purportedly used its Premium Visual Voicemail service were persons with disabilities. Second, the Rules do not require a complainant to assert or demonstrate that the service is inaccessible to anyone other than the complainant.⁵³ Third, the Company provided no evidence demonstrating that Premium Visual Voicemail service had been tested on all Samsung devices, or on other manufacturers' devices, and was accessible.⁵⁴ Fourth, Verizon did not provide any evidence demonstrating that the Company had analyzed Mr. De Anda's service or isolated the cause of any service issues. Finally, Verizon argued that Mr. De Anda's problem did not stem from a problem with its networks or systems, but even if that were true, that does not demonstrate that the Company met its obligation to make the Premium Visual Voicemail service accessible; there could be accessibility issues independent of the networks or systems. For example, if evidence were to show that Premium Visual Voicemail service customers could not access the service when using a virtual private network (VPN), then we might nonetheless find that the service is inaccessible, regardless of whether there are problems with Verizon's networks or systems.

⁴⁸ 2011 CVAA Implementation Order, 26 FCC Rcd at 14668-69, paras. 245-46. ("We find the public interest would be served by adopting the minimum requirements identified by the Commission in the Accessibility NPRM for informal complaints. . . . Further, we believe that these requirements create a simple mechanism for parties to bring legitimate accessibility complaints before the Commission while deterring potential complainants from filing frivolous, incomplete, or inaccurate complaints.")

⁴⁹ See *id.* at para. 258 ("Defendants must file complete answers, including supporting records and documentation, with the Commission within the 20-day time period specified by the Commission."); 47 CFR § 14.36(a).

⁵⁰ Answer at 9, n.27.

⁵¹ Answer at 14.

⁵² Verizon stated that, "Because the complaint does not establish a *prima facie* violation, it is not relevant or necessary for Verizon to review the accessibility design or other aspects of the service that lie outside of the specific allegations here. . . ." Answer at 9, n.27.

⁵³ Verizon did not offer any support for its assumption that the service had to have been inaccessible to people other than Mr. De Anda.

⁵⁴ In fact, Verizon provided Mr. De Anda a refurbished device, and its Premium Visual Voicemail service still did not work.

18. Verizon raised the defense that accessibility was not readily achievable, but it did not provide the requisite information and evidence to support this defense.⁵⁵ Verizon did not, for example, provide any documents supporting its conclusion that it was not achievable to make Premium Visual Voicemail service accessible without Mr. De Anda's further cooperation.⁵⁶ Verizon had numerous opportunities to provide evidence to support its claims and defenses, but it failed to do so.⁵⁷

19. We find that (1) Mr. De Anda established a *prima facie* case by meeting the informal complaint requirements set forth in Section 14.34 of the Rules; and (2) Verizon failed to comply with its obligations under Section 14.36 (a)-(b) of the Rules to meet its burden of proof.⁵⁸ As a result of failing to meet its burden of proof, Verizon failed to demonstrate its compliance with section 255 of the Act and section 7.5(b) of the Rules. Thus, the Complaint is granted.

20. If the Commission, or the Bureau acting on delegated authority, determines that there has been a violation, it may in such order, *or in a subsequent order*, (1) direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance within a reasonable period of time; and (2) take other enforcement action that the Commission deems appropriate.⁵⁹ We find that it is appropriate to defer issuing a proposed remedy to a subsequent order.

IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to sections 255 and 717 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 255, 618, and sections 7.5(b) and 14.37 of the Commission's rules, 47 C.F.R. §§ 7.5(b), 14.37, the Complaint filed against Cellco Partnership D/B/A Verizon Wireless LLC **IS GRANTED** to the extent described herein.

22. **IT IS FURTHER ORDERED** that this Order is effective upon release.

23. **IT IS FURTHER ORDERED** that a copy of this Order be served sent by first class mail and certified mail, return receipt requested, to Mr. Ian Dillner, Associate General Counsel, Cellco Partnership D/B/A Verizon Wireless, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005, and via e-mail at ian.dillner@verizon.com.

FEDERAL COMMUNICATIONS COMMISSION

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Acting Chief
Enforcement Bureau

⁵⁵ 47 CFR § 14.36(b)(2).

⁵⁶ 47 CFR § 14.36(b)(2)(iv).

⁵⁷ In addition to its Answer, Verizon submitted a preliminary response to the Complaint, and initial and supplemental responses to the Commission's Letter of Inquiry (Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Cellco Partnership D/B/A Verizon Wireless (Feb. 2, 2022) (on file in EB-TCD-21-00033100 and EB-TCD-21-00033200). *See* Preliminary Response; e-mail from David Haga, Associate General Counsel, Verizon, to Phillip Priesman, Telecommunications Consumers Division, FCC Enforcement Bureau, et al. (Feb. 17, 2022, 19:23 EDT) (on file in EB-TCD-21-00033100); e-mail from David Haga, Associate General Counsel, Verizon, to Phillip Priesman, Telecommunications Consumers Division, FCC Enforcement Bureau, et al. (Feb. 21, 2022; 14:56 EDT) (on file in EB-TCD-21-00033100).

⁵⁸ 47 CFR § 14.36.

⁵⁹ 47 CFR § 14.37(b) (emphasis added).