

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
FreeEats.com, Inc.
File No.: EB-TCD-13-00007717

CITATION AND ORDER

FAILURE TO COMPLY WITH AN FCC ORDER

Adopted: March 24, 2015

Released: March 24, 2015

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies FreeEats.com, Inc. (FreeEats or Company) that it has violated federal law by failing to comply with an order to produce documents and answers to an FCC Letter of Inquiry. We therefore direct FreeEats to take immediate steps to comply by submitting all outstanding responses and responsive documents as required by the Letter of Inquiry sent to the Company on December 4, 2014. If FreeEats fails to comply with the law, it may be liable for significant fines, including fines of up to \$16,000 per day that the Company fails to fully respond to the Letter of Inquiry, and other sanctions.

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 non-regulatees 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. Accordingly, FreeEats is hereby on notice that it must comply with the FCC's order to produce responses and documents as required by the terms of the Letter of Inquiry sent to the Company on December 4, 2014. If FreeEats subsequently engages in any conduct of the type this Citation describes — and specifically failing to respond to the FCC's inquiries — FreeEats may be subject to civil penalties, including but not limited to, substantial monetary forfeitures or other penalties. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.

3. Notice of Duty to Provide Information: Pursuant to Sections 4(i), 4(j), and 403 of the Act, we direct FreeEats to respond in writing, within 30 calendar days after the release date of this Citation, to the questions and requests for documents set out in paragraph 10, below.

1 See 47 U.S.C § 503(b)(5).

2 47 U.S.C. §§ 154(i), 154(j), 403.

3 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).

4 47 U.S.C. §§ 154(i), 154(j), 403.

II. BACKGROUND

4. The Bureau's Telecommunications Consumers Division (Division) is investigating the Company for its compliance with federal laws and FCC regulations concerning the use of automatic dialing equipment and the federal Do-Not-Call regulations, specifically, Section 227(b) of the Communications Act and Section 64.1200 of the FCC's rules.⁵ On December 4, 2014, the Division sent a Letter of Inquiry by certified mail and email to FreeEats initiating its investigation.⁶ Ronald Jacobs, attorney for FreeEats, responded via telephone on December 8, 2014. Mr. Jacobs acknowledged receipt of the LOI. He explained that he called to discuss the investigation and to request permission to file the LOI response in multiple productions. Division staff granted the request to respond in multiple productions, at which time counsel for FreeEats stated that he would contact the Division again to work out a production schedule. Counsel for FreeEats, however, did not subsequently contact the Division.

5. On January 30, 2015, Division staff called Ronald Jacobs to remind FreeEats that the response to the LOI was more than three weeks overdue and to inquire about the status of the Company's responses and production of documents. Mr. Jacobs admitted that the Company's response was overdue. Mr. Jacobs stated that the Company would provide an initial production of responses and documents the week of February 2, 2015, and that it would follow the initial production with a second production the week of February 9, 2015. FreeEats did not respond, however, until February 20, 2015, when it submitted a partial narrative response.⁷ The February 20 Response answered only the first 24 out of 35 LOI questions, omitting response to all of the Division's document requests.

6. On February 27, 2015, Division staff contacted counsel for FreeEats via email about the Company's failure to submit a complete and timely response to the LOI.⁸ The Division granted a one week extension, to March 6, 2015, in which to fully respond to the LOI. FreeEats subsequently provided a second partial response on March 5, 2015,⁹ and a third partial response on March 9, 2015,¹⁰ after the

⁵ Section 227(b)(1)(A) of the Communications Act and Section 64.1200(a)(1) of the Commission's rules specify that unless a call is made for emergency purposes or with the prior express consent of the called party, it is unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States, to initiate calls using an automatic telephone dialing system or an artificial or prerecorded voice: 1) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency); 2) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or 3) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call. See 47 U.S.C. § 227(b)(1)(A)(i)—(iii); 47 C.F.R. § 64.1200(a)(1)(i)—(iii). By making prerecorded message calls on behalf of itself or third parties (its clients), FreeEats necessarily "initiates" calls for the purposes of Section 64.1200 of the FCC's rules. See *Joint Petition Filed by DISH Network, LLC, for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules*, Declaratory Ruling, FCC 13-54, 2013 WL 1934349, at para. 26 (May 9, 2013) ("a person or entity 'initiates' a telephone call when it takes the steps necessary to physically place a telephone call."); see also *Dialing Services, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5537 (2014).

⁶ Letter from Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to FreeEats, Inc., dba ccAdvertising (December 4, 2014) (on file in EB-TCD-13-00007717) (LOI).

⁷ Letter from Ronald M. Jacobs, Venable LLP, Counsel for FreeEats.com, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (February 20, 2015) (on file in EB-TCD-13-00007717) (February 20 Response).

⁸ See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Ronald M. Jacobs, Venable LLP, Counsel for FreeEats.com, Inc., (February 27, 2015, 4:44 PM EST) (on file in EB-TCD-13-00007717).

⁹ See E-mail from Ronald M. Jacobs, Venable LLP, Counsel for FreeEats.com, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (March 5, 2015, 4:35 PM EST) (on file in EB-TCD-13-00007717) (March 5 Response).

extended deadline. The March 5 Response and March 9 Response contained some of the pending documents and responses owed to the Commission, but not all of them.¹¹ As of the date of this Citation, the Company has not provided all of the documents and responses required by the LOI.

III. APPLICABLE LAW AND VIOLATIONS

7. Sections 4(i), 4(j), and 403 of the Communications Act¹² afford the Commission broad authority to investigate potential violations of the Act. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions.”¹³ Section 4(j) states that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”¹⁴ Section 403 grants the Commission “full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this [Act], or concerning which any question may arise under any of the provisions of this [Act], or relating to the enforcement of any of the provisions of this [Act].”¹⁵ Further, Section 403 gives “[t]he Commission . . . the power to make and enforce any order or orders” relating to its inquiries into compliance with the Act.¹⁶

8. Pursuant to this authority, as described in the Background, above, the Division sent an LOI to FreeEats. The LOI directed the Company to provide certain information and documents in connection with the Division’s investigation into the Company’s compliance with Section 227(b) of the Act and Section 64.1200 of the FCC’s rules.¹⁷ The Company has failed to provide all of the documents it is required to produce under the LOI. A party may not ignore the directives in a Commission order issued by the Bureau pursuant to delegated authority in an LOI.¹⁸ FreeEats’ violation is particularly egregious, first because “[m]isconduct of this type exhibits contempt for the Commission’s authority and threatens to compromise the Commission’s ability to adequately investigate violations of its rules,”¹⁹ and second because of the wide latitude of additional time the Division gave the Company to respond.²⁰

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¹⁰ See E-mail from Ronald M. Jacobs, Venable LLP, Counsel for FreeEats.com, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (March 9, 2015, 7:41 PM EDT) (on file in EB-TCD-13-00007717) (March 9 Response).

¹¹ See E-mail from Ronald M. Jacobs, Venable LLP, Counsel for FreeEats.com, Inc., to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (March 19, 2015, 11:21 AM EDT) (on file in EB-TCD-13-00007717) (stating that the Company had not finished the process of gathering documents for production as of March 19, 2015).

¹² 47 U.S.C. §§ 154(i), 154(j), 403.

¹³ 47 U.S.C. § 154(i).

¹⁴ 47 U.S.C. § 154(j).

¹⁵ 47 U.S.C. § 403.

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 227(b)(1)(A)(i)-(iii); 47 C.F.R. § 64.1200(a)(1)(i)-(iii).

¹⁸ See 47 U.S.C. § 503(b)(1)(B). See also *Technical Commc’n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018 (Enf. Bur. 2013) (TCN NAL); *Net One Int’l Net One, LLC Farrahtel Int’l, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. 2011); *LDC Commc’ns, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 300 (Enf. Bur. 2012); *SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2000).

¹⁹ See TCN NAL, 28 FCC Rcd at 1020; *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081 (Enf. Bur. 2010) (*Fox Television Stations*).

²⁰ See paras. 4-6, above; see also *Fox Television Stations*, 25 FCC Rcd at 7081 (“**Prompt** and full responses to Bureau inquiry letters are **essential** to the Commission’s enforcement function.”) (emphasis added).

9. Accordingly, we find that FreeEats has violated a Commission order by failing to provide the information and documents required by the LOI and by the extended filing date of March 6, 2015.

IV. REQUEST FOR INFORMATION

10. We direct FreeEats to respond to the following inquiries and provide the requested documents within 30 days from the release date of this Citation:

- i. Provide all of the information and documents called for in Questions 25 through 35 of the LOI that have not already been produced.
- ii. Provide an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Company with personal knowledge of the representations provided in the Company's February 20 Response, March 5 Response, and March 9 Response, verifying the truth and accuracy of the information therein and that all of the information requested by the LOI that are in the Company's possession, custody, control or knowledge have been produced.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

11. FreeEats may respond to this Citation and challenge the factual and legal findings herein within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Headquarters or Field Office nearest to FreeEats' place of business. The Commission Office nearest FreeEats is FCC Headquarters, located in Washington, DC.

7. If FreeEats requests a teleconference or personal interview, contact Kristi Thompson, Deputy Division Chief, EB-TCD, at (202) 418-1318. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If FreeEats 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.

8. All written communications should be sent to the address below.

Kristi Thompson, Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 4-C220
Washington, DC 20554
Re: EB-TCD-13-00007717

9. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, FreeEats 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. FreeEats should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. FreeEats 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).

10. We advise FreeEats that it is a violation of Section 1.17 of the Rules²¹ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no 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 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.

11. 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.²²

12. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

13. Finally, we warn FreeEats that, under the Privacy Act of 1974,²³ 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 FreeEats' compliance with the Act and Rules.

VI. FUTURE VIOLATIONS

14. If, after receipt of this Citation, FreeEats again violates the Act 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 of up to \$16,000 for each such violation or each day of a continuing violation, up to a statutory maximum of \$112,500 for any single continuing violation.²⁴ The Commission may further adjust the forfeiture reflecting 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.²⁵ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.²⁶

²¹ 47 C.F.R. § 1.17.

²² 18 U.S.C. § 1001.

²³ 5 U.S.C. § 552a(e)(3).

²⁴ 47 U.S.C. § 503(b)(2)(D). Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation or each day of a continuing violation, up to a maximum of \$75,000 for a single continuing violation in cases, as here, where the violation does not involve a Commission licensee or common carriers, among others. *See* 47 U.S.C. § 503(b)(2)(D). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(D) to \$16,000 for each violation or each day of a continuing violation, up to a maximum of \$112,500 for any single continuing violation. *See* 47 C.F.R. § 1.80(b). *See also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maxima applicable in this case).

²⁵ *See* 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

²⁶ *See supra* paragraph 2.

VII. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,²⁷ FreeEats.com, Inc. must comply with Commission orders to provide information and documents as required by the Commission's Letters of Inquiry.

16. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,²⁸ FreeEats.com, Inc. must provide the written information requested in paragraph 10, above. FreeEats.com, Inc. must support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of FreeEats.com, Inc. with personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with Section 1.16 of the Rules and be substantially in the form set forth therein.²⁹ The FCC must receive the response within 30 calendar days of the release date of this Citation and 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 Mr. Gabriel Joseph, President, FreeEats.com, Inc., 14001C St. Germain Drive, Suite 353, Centreville, VA 20121, and to Ronald M. Jacobs, Esq., Venable LLP, 575 7th St. NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Richard A. Hindman
Division Chief
Telecommunications Consumers Division
Enforcement Bureau

²⁷ 47 U.S.C. §§ 154(i), 154(j).

²⁸ 47 U.S.C. §§ 154(i), 154(j), 403.

²⁹ 47 C.F.R. § 1.16.