



Federal Communications Commission

Enforcement Bureau
Investigations and Hearings Division
45 L Street, NE
Washington, DC 20554

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Jeff Shaffer
FiberSpark Inc.
950 Danby Rd., Suite 75
Ithaca, NY 14850

CITATION AND ORDER

File No. EB-IHD-24-00036674

Failure to File Mandatory Broadband Data

Adopted: August 22, 2024

Released: August 22, 2024

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

This is an official **CITATION AND ORDER** (Citation) issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), and sections 1.7001(b) and 1.7004 of the Commission's rules, to FiberSpark Inc. (Company or FiberSpark) for violations of the Federal Communications Commission's (FCC's or Commission's) rules requiring reporting of data relating to FiberSpark's broadband internet access service in the Broadband Data Collection (BDC) system. According to our records, FiberSpark violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing on two occasions to timely submit data about its service to the BDC system.¹ As explained below, continuing failure to comply with Commission rule sections 1.7001 and 1.7004 may subject FiberSpark to monetary forfeitures.²

The Broadband DATA Act requires the Commission to collect broadband service availability data twice per year for use in creating coverage maps,³ among other things. The Commission updates the National Broadband Map using availability data collected biannually, "as of" June 30 and December 31 of each year, and makes other updates on an ongoing basis as a result of challenge adjudications, verifications and audits, and other updates or corrections.⁴ All facilities-based providers of fixed or mobile broadband internet access service (Providers) are required by the Commission's rules to submit broadband service availability data in the BDC system twice during every calendar year; the first filing is

¹ 47 CFR §§ 1.7001(b), 1.7004.

² *Id.* § 1.7009(b). *See also id.* § 1.80(b)(11), Table 1 (specifying base forfeiture amounts of \$3,000 for each failure to file required forms or information, such as Form 477, and \$15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known).

³ 47 U.S.C. § 642(a)(1)(A).

⁴ *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7493-94 at para. 80 (2020); *see also* 47 U.S.C. § 642(c)(3).

due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).⁵

In addition to the information required by the Broadband DATA Act, the Commission also collects subscription data for broadband and voice services using FCC Form 477 (Form 477)⁶ which is also submitted through the BDC system.⁷ Form 477 filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.⁸

These data gatherings and submissions in the BDC system are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible.

Based on prior filings made by the Company, the Commission is aware that FiberSpark is a facilities-based provider of fixed broadband internet access service. To the extent that FiberSpark made facilities-based fixed broadband service available to any location as of December 31, 2022 or June 30, 2023, it had a legal obligation to file all required data as of those dates in the BDC system by no later than March 1, 2023 or September 15, 2023,⁹ respectively. FiberSpark failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

FiberSpark has received several notices regarding the requirement to file the Company's BDC availability and subscription data, as well as an official warning letter from the Commission's Enforcement Bureau.¹⁰ Specifically, the Commission's Office of Economics and Analytics (OEA) telephoned FiberSpark on June 8, 2023; and OEA emailed FiberSpark on March 23, 2023 and July 19, 2023 using the contact information that FiberSpark registered in the BDC system. Subsequently, the Commission's Enforcement Bureau sent FiberSpark a letter warning that failure to file the required

⁵ 47 CFR § 1.7004(b); *see also id.* § 1.7001(b).

⁶ *Id.* § 1.7001(b). *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

⁷ *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022).

⁸ *See id.*; 47 U.S.C. § 1302.

⁹ *Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, DA 23-640, 2023 WL 5090852 (BDTF Jul. 25, 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules following a processing error that affected data necessary for providers to produce their submissions).

¹⁰ *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022); Email from Office of Economics and Analytics (OEA), FCC, to FiberSpark (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to FiberSpark (Jul. 19, 2023, 3:04 PM) (notifying Company of its late and/or incomplete BDC filing); Letter from Patrick M. McGrath, FCC Enforcement Bureau, to FiberSpark (Jul. 11, 2023) (warning Company of potential violations of a Commission rule).

availability data in the BDC violates the Commission's rules. Despite receiving multiple notices to comply with the BDC data reporting requirements, FiberSpark has failed to file the broadband service availability data with the BDC system as required by sections 1.7001(b) and 1.7004 of the Commission's rules.

We issue this Citation pursuant to section 503(b)(5) of the 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.¹¹ Accordingly, FiberSpark is hereby on notice that it must comply with sections 1.7001(b) and 1.7004 of the Commission's rules or monetary forfeitures may be imposed for violating the Commission's rules.

Accordingly, pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules, we **ORDER FiberSpark to file the required data as of June 2023 in the BDC system within thirty (30) days from the release date of this Citation.** BDC data must be filed online at <https://bdc.fcc.gov/> and instructional resources can be found at <https://www.fcc.gov/BroadbandData/resources>. If FiberSpark believes that it was not required to file for the June 2023 filing period, or for any of the other periods enumerated above, because it did not provide broadband service at any location as of these dates or for any other reason, it must send an email within thirty (30) days of the issuance of this Citation to BroadbandDataInquiries@fcc.gov. The email must include the Company's name, service type, 10-digit FRN, and a detailed explanation as to why FiberSpark believes it does not need to file BDC data. We advise FiberSpark that it is a violation of section 1.17 of the Commission's rules for any person to make any false or misleading written or oral statement of fact to the Commission.¹²

If after receipt of this Citation and Order, FiberSpark continues to fail to submit its service data and Form 477 data to the BDC system in compliance with Commission rule sections 1.7001(b) and 1.7004 or otherwise violates the Commission's rules in any manner described in this letter, the Commission may impose monetary forfeitures not to exceed \$24,496 for each day of a continuing violation, up to a maximum of \$183,718.¹³ In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following the issuance of this Citation, and the multiple filing periods for which the Company failed to submit BDC availability and Form 477 data in compliance with the Commission's rules.¹⁴ The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation,

¹¹ See 47 U.S.C § 503(b)(5).

¹² 47 CFR § 1.17.

¹³ See 47 U.S.C. § 503(b)(2)(D); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases); see also 47 CFR § 1.80(b)(11), Table 1 (specifying base forfeiture amounts of \$3,000 for failure to file required forms or information, such as Form 477, and \$15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known).

¹⁴ 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 conduct for which the citation of the 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)).

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.¹⁵

FiberSpark 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, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to FiberSpark's place of business.¹⁶ The Commission Field Office nearest FiberSpark is located in New York, NY. If FiberSpark requests a teleconference or personal interview, contact the Enforcement Bureau at IHDTelecom@fcc.gov. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If FiberSpark 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 Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, and via email at IHDTelecom@fcc.gov. FiberSpark should reference the File Number of this Citation and Order in any response.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last-minute requests will be accepted but may be impossible to fill. Send an e-mail to: FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Sincerely,

Patrick M. McGrath
Chief
Investigations and Hearings Division
Enforcement Bureau

¹⁵ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11).

¹⁶ See 47 U.S.C. § 503(b)(5).