

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

In the Matter of)	File No.: EB-08-TC-5708
)	
Think 12 Corporation d/b/a Hello Depot)	NAL/Acct. No.: 201032170826
)	
)	FRN: 0010729283
)	

MEMORANDUM OPINION & ORDER

Adopted: October 27, 2011

Released: October 28, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, issued pursuant to section 405 of the Communications Act of 1934, as amended (“Communications Act” or “Act”),¹ and section 1.106 of the Commission’s rules,² we deny a Petition for Reconsideration filed on March 28, 2011 by Think 12 Corporation d/b/a Hello Depot (“Think 12”).³ The object of the Petition for Reconsideration is a Forfeiture Order imposing a \$20,000 forfeiture for Think 12’s willful and repeated failure to file a timely Customer Proprietary Network Information (“CPNI”) compliance certification for the calendar year 2007,⁴ in violation of section 64.2009(e) of the Commission’s rules;⁵ the Commission’s *EPIC CPNI Order*;⁶ and, by extension, section 222 of the Act.⁷ For the reasons set forth below, the Petition for Reconsideration is denied.

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106. The Commission recently adopted certain amendments to section 1.106. *See Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Org.*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1606-08, paras. 26–32 (2011).

³ Think 12 Corporation d/b/a Hello Depot Petition for Reconsideration, filed Mar. 28, 2011 (“Petition for Reconsideration”).

⁴ *Think 12 Corporation d/b/a Hello Depot*, Order of Forfeiture, 26 FCC Rcd 2135 (Tel. Con. Div. Enf. Bur. 2011) (“*Forfeiture Order*”).

⁵ 47 U.S.C. § 64.2009(e).

⁶ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Info. and Other Customer Info., IP-Enabled Servs.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953-54, paras. 51, 53 (2007) (“*EPIC CPNI Order*”), *petition for review denied sub nom. Nat’l Cable & Telecomm. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

⁷ 47 U.S.C. § 222. The CPNI compliance certification filing requirement imposed by section 64.2009(e) of the Commission’s rules and the *EPIC CPNI Order* forms “an important part” of a carrier’s general obligations to protect CPNI under section 222 of the Act. *Forfeiture Order*, 26 FCC Rcd at 2137, para. 5.

II. BACKGROUND

2. Think 12 is a telecommunications carrier located in Itasca, Illinois that resells interexchange services. As a telecommunications carrier, Think 12 is subject to the requirements of section 222 of the Act and section 64.2009 of the Commission's rules (as amended by the *EPIC CPNI Order*),⁸ including the requirement that "on or before March 1" annually, Think 12 file a CPNI compliance certification with the Commission in EB Docket No. 06-36.⁹

3. On September 5, 2008, the Enforcement Bureau ("Bureau") issued a Letter of Inquiry ("LOI") to Think 12 asking whether, on or before March 1, 2008, Think 12 had filed a section 64.2009(e) compliance certification for the calendar year 2007, and if not, why not.¹⁰ Think 12 responded by submitting a CPNI compliance certification for calendar year 2007.¹¹ Think 12's late-filed certification was dated September 18, 2008.

4. On February 24, 2009, the Bureau released an *Omnibus Notice of Apparent Liability for Forfeiture* ("*Omnibus NAL*") imposing a forfeiture of \$20,000 against numerous carriers, including Think 12, for their apparent failure to comply with section 64.2009(e) of the Commission's rules, the Commission's *EPIC CPNI Order*, and section 222 of the Act.¹² The *Omnibus NAL* directed carriers either to pay the proposed forfeiture or to file a written response stating why the proposed forfeiture should be canceled or reduced.¹³ In its response, Think 12 stated that it was not aware of the CPNI certification filing requirement until it received the LOI.¹⁴ That statement, and Think 12's other arguments raised in response to the *Omnibus NAL*, were considered and rejected in the *Forfeiture Order*.¹⁵

5. Think 12's Petition for Reconsideration raises three issues. First, Think 12 argues that due to financial difficulties it is unable to pay the forfeiture amount.¹⁶ Next, Think 12 contends that it was in compliance with our CPNI rules and had a confidentiality policy for handling customers' information,

⁸ The *EPIC CPNI Order*, among other things, established a requirement that carriers, including interconnected VoIP providers, file with the Commission an annual CPNI certification of compliance. Prior to adoption of the *EPIC CPNI Order*, the Commission did not require carriers automatically to file such a certification with the Commission, but instead required them to maintain an annual CPNI compliance certificate in their files, and produce such certifications for inspection upon Commission request. *See EPIC CPNI Order*, 22 FCC Rcd at 6953-54, para. 52.

⁹ 47 C.F.R. § 64.2009(e); *accord EPIC CPNI Order*, 22 FCC Rcd at 6953, 6954, paras. 51, 53.

¹⁰ *See* Letter from Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Think 12 at 1 (Sept. 5, 2008).

¹¹ Think 12 submitted its 2007 CPNI compliance certification to the Bureau on September 22, 2008 (dated Sept. 18, 2008) after it received notice from the Commission of this investigation into Think 12's potential non-compliance with section 222 of the Act and section 64.2009(e) of the Commission's rules. *See* Think 12's "Annual 47 C.F.R. § 64.2009(e) CPNI Certification."

¹² *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299, 2299, para. 1 (Enf. Bur. 2009) ("*Omnibus NAL*").

¹³ *See Omnibus NAL*, 24 FCC Rcd at 2303, para. 13.

¹⁴ *See* Response to Omnibus Notice of Apparent Liability for Forfeiture, filed Mar. 25, 2009 ("Response to NAL").

¹⁵ *See Forfeiture Order*, 26 FCC Rcd at 2138-40, paras 8-10 (Think12 argued that it was unable to pay the forfeiture, had a history of compliance with the CPNI rules, and had not previously received any such complaints).

¹⁶ Petition for Reconsideration at 2-3.

even though it had failed to timely file the compliance certification.¹⁷ Finally, Think 12 explains that there is no history of prior complaints regarding misuse or mishandling of customer information.¹⁸

III. DISCUSSION

6. Petitions for reconsideration are granted only in limited circumstances. Absent “a material error or omission in the underlying order,” or unless a petitioner raises “additional facts not known or not existing until after the petitioner’s last opportunity to present such matters,” reconsideration is not warranted.¹⁹ “A petition for reconsideration that reiterates arguments . . . previously considered and rejected will be denied.”²⁰ Here, Think 12 has raised no new facts and relies on arguments that reveal no error or omission in the *Forfeiture Order*. We therefore deny the Petition for Reconsideration.

7. As an initial matter, we reaffirm our determination that Think 12’s ignorance of the *EPIC CPNI Order*’s amendment to section 64.2009(e) does not warrant reduction of the forfeiture.²¹ As we have repeatedly held, “administrative oversight,” “lack of knowledge,” or “erroneous beliefs” are not factors that warrant a forfeiture’s reduction.²²

8. Think 12’s assertions that it has a history of protecting CPNI do not warrant reconsideration of the *Forfeiture Order*.²³ Think 12 does not affirmatively represent that prior to the amendment of section 64.2009(e) of the Commission’s rules in the *EPIC CPNI Order*, Think 12 met its obligation to complete and independently maintain annual CPNI compliance certifications.²⁴ Indeed, Think 12 concedes that it “failed to notice and educate itself with respect to the specific rules and the filing requirements. . . .”²⁵ We also note that because “corrective action taken to come into compliance with Commission rules or policy is expected,” Think 12’s eventual filing of a 2007 CPNI compliance

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4-5.

¹⁹ *USA Teleport, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 6431, 6433, para. 8 (Enf. Bur. 2011) (“*USA Teleport*”); *Christian Family Network, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18369, 18371, para. 8 (Enf. Bur. 2008) (“*Christian Family Network*”); *accord Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 2259, 2260, para. 5 (Audio Div. Med. Bur. 2011) (“*Bible Broadcasting*”).

²⁰ *Christian Family Network*, 23 FCC Rcd at 18371, para. 8.

²¹ *See Forfeiture Order*, 25 FCC Rcd at 2137-38, para. 6. This is not a case in which forfeiture is imposed pursuant to a recent regulatory amendment that departed from prior policy or completely rewrote an existing rule. Prior to the *EPIC CPNI Order*, section 64.2009(e) of the Commission’s rules already required telecommunications carriers such as Think 12 to maintain and make publicly available annual certifications of their CPNI compliance. *See EPIC CPNI Order*, 22 FCC Rcd at 6953-54, para. 52. Here, Think 12 has failed to show that it complied with the CPNI compliance certification requirement of the former version of section 64.2009(e). In addition, as the record reflects, the *Omnibus NAL*’s proposal of a \$20,000 forfeiture, rather than the \$100,000 forfeiture proposed in earlier CPNI enforcement proceedings, already accounted for the fact that 2008 was the first year in which CPNI compliance certifications were required to be filed with the Commission. *See Omnibus NAL*, 24 FCC Rcd at 2302, paras. 7-8.

²² *STI Prepaid, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17836, 17845, para. 20 (Enf. Bur. 2010) (citing *Southern California Broadcasting*, 6 FCC Rcd at 4387).

²³ Petition for Reconsideration at 3-5.

²⁴ *See id.* at 3-4.

²⁵ *See id.* at 4.

certification, upon receiving the LOI, “does not nullify or mitigate” Think 12’s violation or the forfeiture we have imposed.²⁶

9. Finally, we decline to reconsider Think 12’s claim of financial hardship. We observed in the *Forfeiture Order* that Think 12 had submitted tax returns for years 2004, 2005, and 2006, and based on that information as well as other information in our file we concluded that Think 12 had not demonstrated an inability to pay the proposed forfeiture amount.²⁷ Although Bureau staff asked Think 12 to submit additional financial information to update that which it previously provided, the company did not avail itself of that opportunity. As a result, the only financial information in the record is that which we previously considered and rejected as inadequate to justify Think 12’s claim that it is unable to pay the penalty imposed in the *Forfeiture Order*.

10. “[T]he Commission enjoys ‘broad discretion in determining whether to impose sanctions in a given case.’”²⁸ For all of the reasons explained above, the forfeiture imposed against Think 12 is well within our discretion. There are no grounds for reconsideration of the *Forfeiture Order*.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission’s rules, Think 12 Corporation d/b/a Hello Depot’s Petition for Reconsideration **IS DENIED**.

12. It is **FURTHER ORDERED** that the *Forfeiture Order* **IS AFFIRMED** and that pursuant to section 503(b) of the Act, Think 12 Corporation d/b/a Hello Depot **SHALL FORFEIT** to the U.S. Government the sum of \$20,000.

13. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days of the release of this Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account No. and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C 2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 24A. Think 12 Corporation d/b/a Hello Depot shall also send electronic notification to johnny.drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to Chief Financial Officer – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, DC 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or e-mail ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

²⁶ *USA Teleport*, 26 FCC Rcd at 6435, para. 11; *Callais Cablevision, Inc.*, Forfeiture Order, 17 FCC Rcd 22626, 22629, para. 16 (2002) (quoting *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994)); see also *Global Teldata II, LLC*, 22 FCC Rcd 8710, 8719, para. 22 (2007) (“Post-investigation corrective measures are not sufficient to avoid enforcement action.”).

²⁷ *Forfeiture Order*, 26 FCC Rcd at 2139, para. 9.

²⁸ *Bible Broadcasting*, 26 FCC Rcd at 2262, para. 11 (quoting *Family Ministries, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 (2003)).

14. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Think 12 Corporation d/b/a Hello Depot at 650 East Devon Avenue, Suite 133, Itasca, IL 60143.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau