

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

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

**ORDER OF FORFEITURE**

**Adopted: February 25, 2011**

**Released: February 25, 2011**

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In this Order of Forfeiture,<sup>1</sup> we assess a monetary forfeiture of twenty thousand dollars (\$20,000) against Think 12 Corporation d/b/a Hello Depot (“Think 12”) for willfully or repeatedly violating section 222 of the Communications Act of 1934, as amended (the “Communications Act” or “Act”),<sup>2</sup> section 64.2009(e) of the Commission’s rules,<sup>3</sup> and the Commission’s *EPIC CPNI Order*<sup>4</sup> by failing to timely file an annual compliance certification with the Enforcement Bureau (“Bureau”) for calendar year 2007 on or before March 1, 2008.

2. Think 12 is a telecommunications carrier located in Itasca, Illinois providing resold 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. Section 222 imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers’ proprietary information.<sup>5</sup> Protection of CPNI is a fundamental obligation of all telecommunications carriers as

<sup>1</sup> 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Communications Act of 1934, as amended, to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act ....” For a violation to be willful, it need not be intentional. *See Application for Review of Southern California Broadcasting Co. Licensee, Radio Station KIEV (AM) Glendale, California*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991) (“*Southern California Broadcasting*”), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>2</sup> 47 U.S.C. § 222.

<sup>3</sup> 47 C.F.R. § 64.2009(e).

<sup>4</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953, ¶ 51 (2007) (“*EPIC CPNI Order*”); *aff’d sub nom. Nat’l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996, (D.C. Cir. 2009).

<sup>5</sup> Section 222 of the Communications Act, 47 U.S.C § 222, provides that: “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, (continued....)”

provided by section 222 of the Act. The Commission required carriers to establish and maintain a system designed to ensure that carriers adequately protected their subscribers' CPNI.<sup>6</sup> The Commission strengthened its privacy rules with the release of the *EPIC CPNI Order*, requiring that all companies subject to the CPNI rules file annually, on or before March 1, a certification with the Commission pursuant to amended rule 47 C.F.R. § 64.2009(e).<sup>7</sup>

3. After receiving information that Think 12 had not timely filed its CPNI certification for calendar year 2007, the Bureau sent a Letter of Inquiry ("LOI") to Think 12 on September 2, 2008. In the LOI the Bureau asked Think 12 to provide copies and evidence of its timely filed CPNI compliance certification for 2007, which was due by March 1, 2008, or an explanation as to why no certification was filed. In response to the Bureau's inquiry, Think 12 submitted its CPNI compliance certification for 2007.<sup>8</sup> The Bureau concluded that Think 12 failed to submit satisfactory evidence of its timely filing of the annual CPNI compliance certification. On February 24, 2009, the Bureau released the *Omnibus NAL* against numerous companies, including Think 12, proposing a monetary forfeiture of \$20,000 for the apparent failure to comply with section 64.2009(e) of the Commission's rules and the Commission's *EPIC CPNI Order*, and ordered Think 12 to either pay the proposed forfeiture or file a written response within 30 days of the release date stating why the proposed forfeiture should be reduced or canceled.<sup>9</sup> Think 12 filed a response to the *Omnibus NAL* on March 25, 2009.<sup>10</sup> The response confirmed that Think 12 had violated the Commission's rules by failing to timely file its 2007 CPNI compliance certification.<sup>11</sup>

## II. DISCUSSION

4. Section 64.2009(e) of the Commission's rules requires telecommunications carriers such as Think 12 to file annually before March 1<sup>st</sup> a CPNI compliance certification signed by an officer of the

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equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier."

<sup>6</sup> 47 C.F.R. § 64.2009(e) is one such requirement.

<sup>7</sup> *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 51; 47 C.F.R. § 64.2009(e). Specifically, pursuant to section 64.2009(e): A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year. See also Enforcement Advisory No. 2011-02, DA 11-159 (Jan. 28, 2011); Enforcement Advisory No. 2010-01, DA 10-91 (Jan. 15, 2010).

<sup>8</sup> Think 12 submitted its 2007 CPNI compliance certification on September 22, 2008 to the Bureau after it received notice from the Commission of this investigation of Think 12's potential non-compliance with section 222 of the Act and section 64.2009 of the Commission's rules. See Think 12's "Annual 47 C.F.R. § 64.2009(e) CPNI Certification," dated Sept. 18, 2008. The actual filing date appears to be March 2, 2009.

<sup>9</sup> *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enf. Bur. 2009) ("*Omnibus NAL*").

<sup>10</sup> See "Response to Omnibus Notice of Apparent Liability for Forfeiture," Mar. 25, 2009 ("Response to NAL").

<sup>11</sup> In the Declaration submitted with the Response to NAL, Jeom Heui Lee, President of Think 12, states "Think 12 was not aware it was required to file a CPNI certification statement for 2007 by March 1, 2008, until it received a letter from the Commission in September 2008." Declaration at 1.

carrier.<sup>12</sup> By its own admission, Think 12 failed to comply with this Commission rule and is subject to forfeiture. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture against a common carrier of up to \$150,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>13</sup> The Commission may assess this penalty if it determines that the carrier's noncompliance is "willful or repeated."<sup>14</sup> For a violation to be willful, it need not be intentional.<sup>15</sup> In exercising our forfeiture authority, we are required to take into account "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 such other matters as justice may require."<sup>16</sup> In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.<sup>17</sup>

5. The Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for the failure to timely file an annual CPNI certification. The \$3,000 base forfeiture amount suggested in the Commission's Forfeiture Policy Statement for failure to file documents generally is inadequate when applied to failure to file CPNI certifications. In the *Omnibus NAL*, the Commission took into account the statutory factors for determining a forfeiture amount, the gravity of the offense, FCC precedent involving violations of our CPNI rules, and the fact that protection of a subscriber's CPNI is an important carrier obligation and the certification filing is an important part of that obligation in protecting subscriber CPNI.<sup>18</sup> Taking these factors into account, the Commission proposed a forfeiture amount in the *Omnibus NAL* of \$20,000 which is significantly lower than the maximum allowable forfeiture under section 503(b) and is also much lower than the \$100,000 forfeitures assessed against carriers in prior Commission actions involving violations of our CPNI rules.<sup>19</sup> Further, we have examined Think 12's response to the NAL, pursuant to the statutory factors, our rules, and the Forfeiture Policy Statement and find that no further downward adjustment from the \$20,000 forfeiture amount is warranted.

6. As a preliminary matter, Think 12's failure to timely file its annual 2007 CPNI

<sup>12</sup> 47 C.F.R. § 64.2009(e); see also *EPIC CPNI Order*, 22 FCC Rcd at 6953-54, ¶¶ 51-53.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80 of the Commission's Rules*, Order, 12 FCC Rcd 1038 (1997) (inflation adjustment to \$100,000/\$1,100,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (inflation adjustment to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (inflation adjustment to \$150,000/\$1,500,000). See also FCC Enforcement Advisory, DA 11-159 (Jan. 28, 2011). At the time the *Omnibus NAL* was released the maximum forfeiture was \$130,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission. See *Omnibus NAL*, 24 FCC Rcd at 2301, ¶ 5.

<sup>14</sup> See 47 U.S.C. § 503(b)(1)(B).

<sup>15</sup> See *Southern California Broadcasting*, 6 FCC Rcd at 4387-88, ¶ 5.

<sup>16</sup> See 47 U.S.C. § 503(b)(2)(E); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17100-17101, ¶ 27 (1997) ("Forfeiture Policy Statement"); *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>17</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, ¶ 22.

<sup>18</sup> *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 51 (The annual certification filing is "an appropriate measure and will ensure that carriers regularly focus their attention on their duty to safeguard CPN. Additionally, [the annual certification] will remind carriers of the Commission's oversight and high priority regarding carrier performance in this area. Further, with this filing, the commission will be better able to monitor the industry's response to CPNI privacy issues and to take any necessary steps to ensure that carriers are managing customer CPNI securely.").

<sup>19</sup> See *Omnibus NAL*, 24 FCC Rcd at 2299-2303, ¶¶ 5-8. The prior actions involved violations of the Commission's CPNI rules in effect in 2006. See *id.* at 2302, ¶ 7.

certification is not disputed. By its own admission, Think 12 failed to file its CPNI certification by the March 1<sup>st</sup> filing deadline.<sup>20</sup> Think 12 submitted the required certification only after the Commission notified it that it was investigating Think 12's compliance with our rules and that it might be subject to enforcement action, including forfeitures. The fact that Think 12 may have been unaware that it was required to file an annual CPNI certification and then filed it after it was notified by the Commission, or that it had a personnel turnover which caused it not to file,<sup>21</sup> does not rise to the level of a mitigating factor warranting a downward adjustment. Claiming ignorance of one's responsibility under the law is not a mitigating factor.<sup>22</sup>

7. In addition, Think 12 failed to show past compliance with the Commission's CPNI certification requirements. Prior to the annual certification filing requirement, carriers were required to have a CPNI compliance plan and keep an annual CPNI compliance certificate in their files (*i.e.*, carriers were required to annually certify but were not required to file the certification with the Commission).<sup>23</sup> In lieu of an annual filing requirement, carriers were required to produce their annual certifications for inspection upon Commission request.<sup>24</sup> Think 12 has failed to show that it was in compliance with the earlier certification requirement.<sup>25</sup> Thus, the Commission cannot consider past CPNI compliance as a mitigating factor.

8. We also disagree with Think 12 characterization of its violation of our CPNI rules as being "merely procedural" and thus warranting downward adjustment.<sup>26</sup> The annual certification filing obligation is specifically intended to "ensure that carriers regularly focus their attention on their duty to safeguard CPNI" and allow the Commission to "monitor the industry's response to CPNI privacy issues

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<sup>20</sup> Response to NAL at 14 ("Respondent was unaware of its CPNI filing requirements until it received the Commission's letter in September 2008, and to which it promptly filed and in good faith on September 19, 2008."); Declaration at 1 ("Think 12 was not aware it was required to file a CPNI certification statement for 2007 by March 1, 2008, until it received a letter from the Commission in September 2008.").

<sup>21</sup> See *supra* n. 20; see also Response to NAL at 14 ("Respondent employed a person responsible for handling regulatory matters. However, that individual was not longer employed by Respondent and there was no transition of the regulatory responsibilities to an existing employee.").

<sup>22</sup> See *Southern California Broadcasting*, 6 FCC Rcd at 4387, ¶ 3; *Kenneth Paul Harris, Sr., Proposed Assignee, Station KSRW (FM) Childress, Texas*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935, ¶ 7 (Enf. Bur. 2000). This case is different than where the rule was recently modified and the violation was due to a licensee's lack of actual knowledge of the rule change. Prior to adoption of the annual CPNI certification filing requirement, our CPNI rules already required telecommunications carriers such as Think 12 to have a CPNI compliance program and to have an officer of the company certify annually that the company was in compliance with our CPNI rules. See *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 52. As discussed in paragraph 7, Think 12 failed to show it had complied with the certification filings under the old rules let alone the new filing requirement. Thus, any lack of knowledge in the instant case does not warrant a downward adjustment.

<sup>23</sup> *Omnibus NAL*, 24 FCC Rcd at 2302, ¶ 7. This prior rule is discussed in the *EPIC CPNI Order*: "each telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules and to make that certification available to the public." *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 52 (citation omitted).

<sup>24</sup> *Omnibus NAL*, 24 FCC Rcd at 2302, ¶ 7.

<sup>25</sup> The 2007 CPNI compliance certification Think 12 submitted to the Bureau on September 22, 2008 was dated Sept. 18, 2008.

<sup>26</sup> Response to NAL at 14. ("Respondent has complied with the Commission's objectives regarding the protection of CPNI information. Accordingly, Respondent's error, if any, is merely procedural.")

and to take any necessary steps to ensure that carriers are managing customer CPNI securely.”<sup>27</sup> Given its purpose, the annual certification filing is clearly more than mere procedure. In addition, as we discussed above, Think 12 has failed to show that it maintained an annual, but unfiled, CPNI compliance certification. Thus, even if we were to consider a downward adjustment based on a late-filed annual certification, no such downward adjustment is warranted in this case because Think 12 has failed to show that it has a history of compliance with our CPNI rules.

9. With respect to inability to pay or hardship adjustment, we stated in the *Omnibus NAL*:

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>28</sup>

In response, Think 12 provided tax returns for years 2004, 2005, and 2006.<sup>29</sup> Relying on the most recent reliable financial information provided by Think 12<sup>30</sup> and considering the range that the Commission has previously found reasonable in determining inability to pay,<sup>31</sup> we conclude that Think 12 has not demonstrated an inability to pay the proposed forfeiture amount of \$20,000.<sup>32</sup>

10. Finally, we find Think 12’s statement that it “has never been the subject of a prior NAL or forfeiture order” without merit and not warranting a downward adjustment.<sup>33</sup> This statement, while literally correct, fails to properly disclose that Think 12 has a history of non-compliance with the Commission’s rules.<sup>34</sup> Section 503(b)(2)(E) requires us to consider an entity’s past violations in determining a forfeiture penalty: “the Commission or its designee *shall* take into account ... with respect

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<sup>27</sup> *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 51.

<sup>28</sup> *Omnibus NAL*, 24 FCC Rcd at 2304, ¶ 16.

<sup>29</sup> Subsequently, staff requested more recent tax returns; counsel for Think 12 provided approximated gross revenues for 2007 and 2008 in an email. See email from Susan Colman to Mika Savir (Feb. 17, 2011).

<sup>30</sup> The Commission has the discretion to determine the most reliable financial information to use in determining ability to pay. See *Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Apparent Liability for Forfeiture, Order of Forfeiture, 15 FCC Rcd 24385, 24388, ¶ 11 (2000) (“*Local Long Distance*”), *recon. denied*, 16 FCC Rcd 10016 (2001).

<sup>31</sup> See, e.g., *Local Long Distance*, 15 FCC Rcd at 24388, ¶ 11 (The Commission reduced the forfeiture amount from \$1,120,000 to \$750,000.) See also *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641, ¶ 7 (2000).

<sup>32</sup> See *Long Distance Direct, Inc.*, Apparent Liability for Forfeiture, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3305-06, ¶¶ 22-23 (2000).

<sup>33</sup> Response to NAL at 14.

<sup>34</sup> See, e.g., *Think 12 Corporation d/b/a Hello Depot*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 22 FCC Rcd 3536 (CGB 2007); *Think 12 Corporation d/b/a Hello Depot*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 21 FCC Rcd 7067 (CGB 2006); *Think 12 Corporation d/b/a Hello Depot*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 21 FCC Rcd 1903 (CGB 2006); *Think 12 Corporation d/b/a Hello Depot*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 20 FCC Rcd 15396 (CGB 2005).



to the violator, *any history of prior offenses*....<sup>35</sup> Think 12's history of non-compliance with our rules does not support its argument for a downward adjustment.<sup>36</sup>

### III. CONCLUSION

11. In the *Omnibus NAL*, the Bureau considered several factors including the amount of forfeiture necessary to have the intended deterrent effect. The Bureau concluded that the goal of deterring future non-compliance would be met by issuing forfeitures consistent with the proposed amount. We take noncompliance with our CPNI rules very seriously. This forfeiture order should advise Think 12 and other carriers that the protection of a subscriber's CPNI and the annual CPNI compliance certification filing requirements are important carrier obligations.

### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Think 12 Corporation d/b/a Hello Depot **SHALL FORFEIT** to the United States government the sum of \$20,000 for willfully or repeatedly violating the Act and the Commission's rules.

13. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the rules within thirty (30) days of the release of this Forfeiture 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 will also send electronic notification on the date said payment is made to [johnny.drake@fcc.gov](mailto:johnny.drake@fcc.gov). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

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<sup>35</sup> 47 U.S.C. § 503(b)(2)(E)(emphasis added).

<sup>36</sup> Think 12's other arguments and broad assertions that the *Omnibus NAL* is unconstitutional, violates the Administrative Procedures Act, and somehow strips Think 12 of a presumption of "innocence" by attempting to unlawfully shift burdens of proof to Think 12, are without merit. They ignore the simple fact that Think 12 admits that it violated the Commission's CPNI certification rule – the very rule at issue in the *Omnibus NAL* – and thus, pursuant to section 503(b) of the Communications Act, it is subject to forfeiture.

14. **IT IS FURTHER ORDERED** that a copy of this *Order for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the company's attorney at Technology Law Group, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, D.C. 20015.

FEDERAL COMMUNICATIONS COMMISSION

Richard A. Hindman  
Chief  
Telecommunications Consumers Division  
Enforcement Bureau