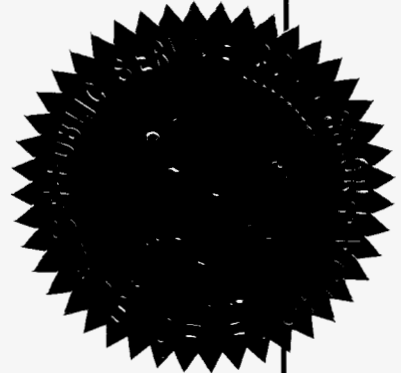


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110027-TI

COMPLIANCE INVESTIGATION OF OPTIC
INTERNET PROTOCOL, INC. FOR APPARENT
VIOLATION OF RULE 25-4.118, F.A.C.,
LOCAL, LOCAL TOLL, OR TOLL PROVIDER
SELECTION.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 5

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, February 22, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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P R O C E E D I N G S

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3 **CHAIRMAN GRAHAM:** Let's move on to Item
4 Number 5.

5 **MS. WATTS:** Melinda Watts for Commission
6 Staff.

7 Commissioners, Item 5 is Staff's
8 recommendation in Docket Number 110027-TI on the
9 compliance investigation of Optic Internet Protocol,
10 Inc., for 146 apparent violations of Rule 25-4.118,
11 *Florida Administrative Code*. Staff is available for
12 any questions.

13 **CHAIRMAN GRAHAM:** Okay. We'll go back
14 here to the board. Commissioner Brown.

15 **COMMISSIONER BROWN:** I just wanted to have
16 a brief discussion on this case. I agree with
17 Staff's recommendation, but I do want to highlight a
18 few things for us here that were not in the
19 recommendation but were elucidated in my briefings
20 with Staff that I thought were important for the
21 fellow, my fellow Commissioners.

22 Although the penalty is quite steep, I
23 believe it's justified for the following reasons. I
24 think that Optic's continuing violation after it had
25 indicated it would suspend activities in Florida as

1 of July 1st, 2010, I thought that was quite
2 egregious. Additionally, Optic's unresponsiveness,
3 unresponsiveness and forthcomingness with Staff
4 during their ongoing discussions occurred
5 frequently.

6 Additionally, I believe a handout was
7 provided to all the Commissioners that Staff
8 provided to me during our briefings showing the,
9 again, the egregious behavior of the slamming
10 activities. And, again, all these reasons, I think
11 that the steep penalty is quite justified in this
12 given instance. And I thank Staff for their
13 diligence in, in pursuing discussions and trying to
14 get a resolution of the, of the, again, the behavior
15 of the 146 slamming incidences since 2008.

16 **CHAIRMAN GRAHAM:** Thank you, Commissioner
17 Brown.

18 Commissioner Brisé.

19 **COMMISSIONER BRISÉ:** Thank you, Mr.
20 Chairman.

21 To Staff, I just wanted you to go over
22 what happens with the penalty, the \$1.4 million that
23 will be fined. And is there any chance that we will
24 see those dollars and under what circumstances would
25 we see those dollars?

1 **MR. KENNEDY:** The -- what will happen
2 next, after, assuming you approve Staff's
3 recommendation, an order will go out. The company
4 will have 21 days to protest that order and request
5 a hearing. At that time they can come back to us
6 and want to settle this matter and make a monetary
7 offer and any other, you know, anything they want to
8 do to resolve this matter. For example, they might
9 voluntarily cease to solicit customers and market,
10 you know, market customers for two years, things
11 like that. Because we've had past experience where
12 we can come up with something for settlement.

13 The odds of you receiving that
14 \$1.4 million I'd say are slim. If they do not
15 respond to the order, that penalty just remains
16 there, we cancel their registration, and they go
17 away. We would order the underlying carrier or let
18 them know to disconnect services because they're no
19 longer authorized, have your authority to operate in
20 Florida.

21 So the odds I think are slim, frankly, to
22 be truthful about it, but we, we may be surprised.
23 They may come back and want to settle this, and at
24 that point we would see how much they're willing to
25 offer and bring it back to you. I'm not sure we

1 would support what they offer or not. I can't
2 really say at this time.

3 **COMMISSIONER BRISÉ:** And this particular
4 company would not be able to offer services in the
5 State of Florida until that fine is, is taken care
6 of.

7 **MR. KENNEDY:** If, if they are canceled,
8 let's say they don't respond and two years from now
9 they come back with the same company name, same
10 officer, at that point we would bring it to you to
11 recommend denial unless they wanted to look
12 backwards and resolve this issue. That's been our
13 standard practice.

14 **COMMISSIONER BRISÉ:** Well, in looking at
15 the makeup of the company, that it's one person and
16 based upon the information in the Staff
17 recommendation that that person is in essence doing
18 all the work and they farmed out some, some
19 functions, I get the sense that they are probably a
20 front for another entity, and I'm just guessing
21 here.

22 What can we do to ensure that a company,
23 the company that is actually doing the work doesn't
24 take the same opportunity under another front to, to
25 do this type of thing? What can we as a Commission

1 do to protect our customers from that perspective?

2 **MR. KENNEDY:** I frankly have no idea of
3 what a particular company may be behind the scenes.
4 I tend to agree with you, it seems that way.

5 What we could do in the future is -- we
6 would never know. I mean, you could, you could
7 register a new corporation with a brother-in-law's
8 name and come back. And if they're operating
9 honestly, I don't, you know, they'd probably pass
10 muster and we'd never know about it. The only time
11 we'd know about it is if they start doing something
12 wrong again.

13 Now could we ever link them all together?
14 That's very difficult to do. But if we had any
15 supporting information to link them, then we could
16 go after both possibly. But if a company is not
17 regulated by you behind the scenes, I don't know
18 what we can do about it. Play it by ear, I hate to
19 say it that way, but that's all I know to do.

20 **COMMISSIONER BRISÉ:** And even if we wanted
21 to pursue them, we wouldn't be the agency that, that
22 would do that for --

23 **MR. KENNEDY:** If it's, if they're not the
24 provider of the telecommunications services, I don't
25 know how we could. Maybe that's a legal question I

1 could let our attorney answer.

2 **CHAIRMAN GRAHAM:** That was in the form of
3 a question.

4 **MS. EVANS:** I'll defer to my supervisor.

5 **MR. TEITZMAN:** That would be me. I think
6 what Mr. Kennedy -- I only have a short answer. I
7 think what Mr. Kennedy was saying is exactly right.
8 If it's a company that's outside of our
9 jurisdiction, it would be up to another agency to
10 pursue, for example, if it was some kind of criminal
11 act or something.

12 **COMMISSIONER BRISÉ:** Thank you.

13 **CHAIRMAN GRAHAM:** Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you,
15 Mr. Chair.

16 I'd like to thank Commissioner Brown on
17 summarizing some of the points that I've come to the
18 same conclusions in my Staff briefings as well, and
19 I just have a couple of questions for Mr. Kennedy.
20 Previously in our previous item we approved a \$1,000
21 penalty, and although they're different scenarios,
22 they're somewhat similar. Can you explain the
23 differences and the justification for Staff's
24 recommendation of a penalty that's ten times greater
25 than what we just approved?

1 **MR. KENNEDY:** Yes, sir. It's
2 historically -- I'll go back to the history first.
3 It's been if we have a docket where there's a
4 penalty imposed where we have no settlement
5 discussions upfront, it's been our standard practice
6 to recommend a \$10,000 penalty. That came about in
7 1997. The penalties back then were lower, if I
8 recall correctly. We have a matrix. They were
9 2,000 for the first offense back then and 4,000 for
10 a second offense. At one of the Agenda Conferences
11 many years ago the Commission instructed Staff to
12 raise that to \$10,000 per complaint. Now this is
13 just the starting point. It's the initial proposed
14 penalty per complaint.

15 On the other docket with the \$1,000
16 settlement, that being exactly what it is with all
17 the, all the circumstances I described previously,
18 how cooperative, what they've done to resolve it,
19 and that's how they mitigate having to pay 10,000.

20 Historically, about the most -- we had one
21 company, I believe, that had two complaints that may
22 have paid \$20,000 just to get it off the plate. But
23 the highest I remember on a settlement was \$4,000
24 per complaint; one company paid \$400,000, but that
25 was many years ago. These are the first slamming

1 complaints dockets we've had since 2004.

2 **COMMISSIONER BALBIS:** And I'm glad you
3 brought up that point. One of the things that
4 concerns me is in our discussions you had indicated
5 that we've seen a tapering off of the slamming
6 activities, which, you know, I think is good, and
7 hopefully we're not seeing a resurgence and that our
8 actions taken today will again remind everyone that
9 we take slamming seriously and that it's a serious
10 problem or was a serious problem and we want to make
11 sure we keep it in check. So with that, I don't
12 have any other comments or questions.

13 **CHAIRMAN GRAHAM:** Thank you, Commissioner
14 Balbis.

15 Commissioner Brown.

16 **COMMISSIONER BROWN:** I just have one last
17 question that Commissioner Brisé kind of brought to
18 the attention.

19 In order to -- in furtherance, I guess, of
20 disseminating our, our opinion here and our order,
21 assuming that we approve Staff's recommendation, I
22 would like Staff to submit our order to the sister
23 states that this, Optics is doing business in. We
24 know that they're doing business in California, we
25 know they're doing business in Alabama. I would

1 like as a courtesy copy to provide them with our
2 order so that they know that the slamming is not
3 tolerable in Florida and that this company will no
4 longer be doing business in our state unless they
5 pay the penalty.

6 **MR. KENNEDY:** We can do that.

7 **COMMISSIONER BROWN:** Thank you so much.

8 **CHAIRMAN GRAHAM:** Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr.

10 Chairman.

11 And it has all been said very eloquently.
12 I know that when I looked at all of these items one
13 of the first things that jumped out, as has been
14 highlighted, is the difference in the amount of the
15 penalty for the two cases and recognize, as we have
16 all said, that the individual and unique
17 circumstances of every case certainly dictate the
18 approach that we will take as regulators and the
19 importance as regulators of using our penalty
20 authority in a consistent manner as dictated by the
21 individual circumstances.

22 In this instance what really jumped out to
23 me is what appears to be the degree of willfulness.
24 And I'd point out again in the prior item the
25 actions taken by the company in a timely manner to

1 try to address the concerns of the individual
2 companies, and that certainly does not appear to be
3 the case here, and many other differences as well.

4 So with that, Mr. Chairman, if it's
5 appropriate, I would make a motion that we approve
6 the Staff recommendation, and also recognize the
7 direction that Commissioner Brown gave to our Staff.

8 **CHAIRMAN GRAHAM:** It's been moved and
9 seconded Staff recommendation on Item Number 5. Any
10 further discussion? Seeing none, all in favor, say
11 aye.

12 (Vote taken.)

13 Those opposed? By your action, you've
14 approved Item Number 5. Thank you very much.

15 (Agenda item concluded.)

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STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 24th day of February, 2011.

Linda Boles
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