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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Equity Pay Telephone Co., Inc. Docket No. 010686-TC  
Waiver from Florida Administrative Code § Rule 25-24.511(5) Filed: May 10, 2002

CK 137494

\$400.00

**PETITION FOR WAIVER OF RULE**

COMES NOW, Equity Pay Telephone Co., Inc. ("Equity Pay"), pursuant to Rules 25-4.0161(1), 25-4.0161(7d), 25-24.511(5) Florida Administrative Code, and Sections 120.542(2), Florida Statutes, and files this Petition For Waiver with the Florida Public Service Commission ("Commission") of rule 25.24.511(5) disallowing the reinstatement of an involuntarily cancelled certificate. In support of its Petition, Equity Pay states as follows:

MC  
\*This is balance of \$50000 Fine. pd. \$10000 back in November on Deposit #141.

1. Petitioner's name and address are:

Equity Pay Telephone Co., Inc.  
5747 Highway 17N  
Guyton, GA 31312

TF971

**DEPOSIT**  
**D217**

**DATE**  
**MAY 23 2002**

2. All notices, Orders or documents regarding this Petition should be directed to:

Robert T. Furlong  
President  
Equity Pay Telephone Co., Inc.  
5747 Highway 17N  
Guyton, GA 31312  
Phone: 912-754-7220  
Fax: 912-754-1205

? Isler  
CCA

02 MAY 21 AM 10:00  
DISTRIBUTION CENTER

DOCUMENT NUMBER: DATE  
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## I. BACKGROUND

3. Equity Pay was certified by the Commission to provide pay telephone service pursuant to Certificate Number 5073. Rules 25-4.0161(1), 25-4.0161(7d), 25-24.511(5) and 120.542(2) written under the authority of Florida Statutes is the subject of this Petition and provides in pertinent part:

25-4.0161 (1) "As applicable and as provided in s. 350.113, F.S., and s. 364-336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment fee, and each company shall pay a minimum of \$50.00."

25-4.0161 (7d) The return forms may be obtained from the Commission's Division of Administration. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.

25-24.511 (5) Only one certificate per applicant will be granted. A new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

120.542(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness ...

4. Equity Pay has a multiple pay telephones in Florida. Pursuant to Rule 25-4.0161(1) Equity Pay was supposed to file and remit an annual return and regulatory assessment fee timely and failed to do so. Equity Pay did file such return, pay the minimum fee and offer a Settlement in Compromise, however, the required letter of explanation was not received in the U.S. Mail by Florida. Pursuant to Rule 25-4.0161(7d) even though the U.S. mail failed to deliver this notice, Equity Pay is and did file this return. Pursuant to rule 25-24.511(5) the Commission has cancelled Equity Pay's privilege to keep the pay telephone certificate.

5. Equity Pay is owned and operated by Robert T. Furlong who originally filled out the application for a certificate to have pay telephones. At the time of signing the application, Robert T. Furlong fully understood all the rules and regulations concerning this pay telephone. All rules and regulations were always followed carefully and completely in all cases. Robert T. Furlong

knew and understood the requirement for an annual regulatory assessment fee at the time of signing the original application. For the 2000 RAF report, Petitioner retained a third party to complete such form. Apparently the accounting firm believed that Equity Pay and Mr. Furlong had already completed the form as he did in prior years and Mr. Furlong believed the accounting firm had filed the RAF for the 2000 year as retained to do so. Neither party determined the error until such Certificate was cancelled. Even a prudent man exercising good judgment could possibly make such error. The subsequent notices were erroneously and non intentionally overlooked due to the fact that each party believed the other was responsible for such matter. Due diligence and proper care was always taken in every other matter concerning the pay telephone, including all previous year filings were filed timely. This was the first time the accounting firm was retained and filed an annual report for this certificate holder. It is the opinion of Equity Pay that the law which states that... "failure to receive the form or "Offer in Compromise" (in this case) in the mail does not excuse the company from its obligation to timely remit the regulatory assessment fees and annual report form" is an unreasonable statement when the assessment and Settlement is prepared by a responsible third party. Immediately after being notified that the regulatory assessment fee was accidentally overlooked, Equity Pay and the Accounting firm immediately contacted Paul Isler and made appropriate measures and paid all fines and penalties immediately.

6. When a company fails to timely file a regulatory assessment fee return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. In this certificate holders case, the Commission did both. A penalty of \$500.00 was assessed, the Petitioner's accountants spoke to Paula Isler and Jessica Elliot, Esq. of the Florida Public Service Commission, mailed the form, paid such fee but was mailed the Settlement Offer, however such Settlement letter was never received by Florida in the U.S. Mail, AND the Commission cancelled the company's certificate privilege. The subject of this Petition is only to request that the Commission waiver its cancellation penalty, not to waiver the fines assessed which were already paid. Equity Pay believes it should have filed the regulatory assessment report and paid its fee timely and would have done so had he filed the RAF himself internally and not retained a third party to do so. However, the penalty of cancellation of the privilege to hold the certificate is a bit extreme for a simple oversight. All other requirements were substantially performed in every other

respect. Equity Pay believes the fine of \$100.00 was sufficient to never allow this simple oversight to occur again. Equity Pay commits to future complete compliance, especially the regulatory assessment report and Equity Pay has learned its lesson. In the event that the Commission finds in favor of petitioner, the lesson would never be forgotten again. Equity Pay's owner, Robert T Furlong will personally see to it that the return is paid timely and submitted timely in the future and will not even turn over the responsibility to a manager or any other third party or person, but will handle the responsibility seriously, personally and completely in the future, should the Commission allow the reinstatement of Equity Pay's certificate.

## II. WAIVER REQUEST

7. Pursuant to 120.542(2), a waiver is hereby being sought on two grounds. First and foremost that cancellation of this certificate is an unfair and excessive application of this rule given the particular circumstances of this case and second that cancellation of this certificate could cause substantial economic hardship to Equity Pay. If this Commission finds the circumstances of this case warrants a waiver and that the underlying purpose of the rule is still being upheld by reducing the severity of the penalty, Equity Pay respectfully requests a waiver of Rule 25-24.511(5) requiring that a new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

### A. Substantial Hardship

8. The pay telephone's owned and operated by Equity Pay in Florida are its main source of revenue for the business. The pay telephone business is not as profitable as prior years and cellular phone users have been increasing thus hurting the coin telephone industry. Every coin telephone is critical to the ongoing business and concern of Equity Pay. Therefore, pursuant to 120.542(2), it is the subject of this petition to request that a waiver be approved based partially on the substantial economic hardship incurred by the Company. As stated earlier, the request that a waiver be approved is also based on the fact that the underlying rule has been satisfied by the severity of the penalty being limited to the fine only and not to canceling the certificate privilege also.

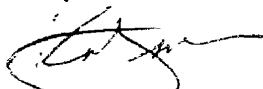
**SATISFACTION OF UNDERLYING RULE**

9. The purpose of rule 25-24.511(5) is to ensure that gross and intentional non compliance of all rules regarding pay telephones are severely punished to the point of making it impossible ever to break a rule again. The underlying rules are to protect the general public and are in their best interest. However, in the case of Equity Pay, there was only one rule broken and that was the timeliness of the annual report regulatory assessment fee for only one year in its history and such year was the responsibility of a third party. The annual assessment fee was accidentally overlooked during the first time a third party was retained to prepare such form and because the US Mail failed to deliver a the Settlement Offer, but not the actual payment of such Offer, it was not a gross or intentional non compliance of the rules. All other rules were followed exactly and completely. The fine of \$100 00 as Settlement Offer was severe enough to make it impossible to ever break the rule again. All regulatory assessment fees would be paid timely in the future since a \$100 00 fine was assessed and paid. Therefore, the underlying purpose of rule 25-24.511(5) will still be upheld even if this petition is approved. The severity of the fine is sufficient in the case of Equity Pay to make it impossible to ever miss filing the annual report again. Therefore in this particular circumstance, imposing rule 25-24.511(5) would be an unfair and excessive punishment for the simple oversight that happened.

**III. CONCLUSION**

WHEREFORE, Equity Pay respectfully requests that this Commission: (1) provide its legal interpretation of Rule 25-24.511(5) to be excessive for responsible third party errors, particularly considering the extenuating circumstances revolving around this case, and (2) allow the reinstatement of the certificate privilege, provided that no further rules are ever broken again

Respectfully self submitted



Mr. Robert T. Furlong  
President