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FLORIDA
PUBLIC SERVICE COMM.
DIV. OF TELECOMMUNICATIONS

Chong O. Kim
President
Chong O. Kim, Inc.
d/b/a/ Quick Trip Food Mart
576 South Edgewood Avenue
Jacksonville, Florida 32205
904-389-9743
Fax 904-389-9760

May 3, 2000

Ms. Jackie Gilchrist
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: RULE WAIVER

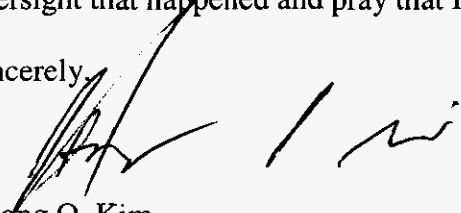
Dear Ms. Gilchrist:

Thank you for the opportunity to submit the enclosed Petition for Waiver of Rule regarding the pay telephone certificate 5966 which was involuntarily cancelled.

It is my understanding that this Rule Waiver must be filed no later than 5/12/00. I am self-submitting this waiver since attorney representation is cost prohibitive at this time. I hope that this is okay with The Commission.

If there is anything further I should be doing to try to get my certificate reinstated, please don't hesitate to contact me and let me know. I will comply in any way possible as this pay phone is very important to me. Once again, I apologize for the oversight that happened and pray that I can be reinstated.

Sincerely,


Chong O. Kim
President

- AFA _____
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Done 5/11/00

DOCUMENT NUMBER-DATE

05783 MAY-98

FPSC-RECORDS/REPORTING

2000 MAY -8 PM 1:10
DIVISION OF
ADMINISTRATION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Chong O. Kim, Inc.,
d/b/a Quick Trip Food Mart, for
Waiver from Florida Administrative
Code § Rule 25-24.511(5)

Docket No. 000353-TC
Filed: 3/24/00

PETITION FOR WAIVER OF RULE

COMES NOW, Chong O. Kim, Inc., d/b/a Quick Trip Food Mart ("Quick Trip Food Mart"), 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 a involuntarily cancelled certificate. In support of its Petition, Quick Trip Food Mart states as follows:

1. Petitioner's name and address are:

Chong O. Kim, Inc., d/b/a Quick Trip Food Mart
576 Edgewood Avenue
Jacksonville, FL 32205

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

Chong O. Kim
President
Quick Trip Food Mart
576 Edgewood Avenue
Jacksonville, FL 32205
Phone: 904-389-9743
Fax: 904-389-9760

I. BACKGROUND

3. Quick Trip Food Mart was certificated by the Commission to provide pay telephone service pursuant to Certificate Number 5966. 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 a 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. Quick Trip Food Mart has a pay telephone in front of its convenient store for the convenience and benefit of the general public. Pursuant to Rule 25-4.0161(1) Quick Trip Food Mart was supposed to file and remit an annual return and regulatory assessment fee timely and failed to do so. Pursuant to Rule 25-4.0161(7d) even though the US mail failed to deliver the reminder to follow this rule, Quick Trip Food Mart is still required to file this return. Pursuant to rule 25-24.511(5) the Commission

has cancelled Quick Trip Food Mart's privilege to keep the pay telephone certificate.

5. Quick Trip Food Mart is owned and operated by Chong O. Kim who originally filled out the application for a certificate to have a pay telephone. At the time of signing the application, Chong O. Kim fully understood all the rules and regulations concerning this pay telephone. All rules and regulations were always followed carefully and completely in all cases. Chong O. Kim knew and understood the requirement for an annual regulatory assessment fee at the time of signing the original application. However, petitioner did not receive the annual report form in the mail from the Commissions office like other certificate holders normally receive. Apparently the US Mail system failed to deliver the reminder to Quick Trip Food Mart. Because the annual report is due the following year after the original certificate is obtained, petitioner simply forgot this annual report was due. Even a prudent man exercising good judgment could possibly forget something they read about many months earlier. The annual report was erroneously and non intentionally overlooked due to the fact that no reminder came in the mail like other businesses in similar circumstances usually always receive. Due diligence and proper care was always taken in every other matter concerning the pay telephone. This was the first time an annual report was due for this certificate holder. It is the opinion of Quick Trip Food Mart that the law which states that...."failure to receive the form 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 is due for the first time and its due many months later. If it had been the second or third year and certificate holder was used to paying the annual assessment and

then the annual report didn't arrive in the mail, the rule would seem very reasonable. That is not the case for Quick Trip Food Mart. Even a prudent man cannot be expected to remember something he read in a legal contract months earlier. It is, therefore, the request of this petition that the Commission excuse Quick Trip Food Mart, as a first time filer from this rule, especially since Quick Trip Food Mart did comply immediately after being notified that the regulatory assessment fee was accidentally overlooked. Not only did Quick Trip Food Mart pay the assessment fee immediately, but other fines and penalties were immediately paid upon notification as well.

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 (and paid) 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. Quick Trip Food Mart believes it should have filed the regulatory assessment report and paid its fee timely and would have done so had he remembered what he read many months earlier in a legal document application that was pages and pages long or had he received a reminder that all other certificate holders receive in the mail. 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. Quick Trip Food Mart believes the fine of \$500.00 was sufficient to never allow this simple oversight to occur again. Quick Trip Food Mart commits to future complete compliance, especially the regulatory assessment report and Quick Trip Food Mart has

learned its lesson. In the event that the Commission finds in favor of petitioner, the lesson would never be forgotten again. Quick Trip Food Mart's owner, Chong O. Kim 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 person, but will handle the responsibility seriously, personally and completely in the future, should the Commission allow the reinstatement of Quick Trip Food Mart'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 Quick Trip Food Mart. 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, Quick Trip Food Mart 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 in front of the convenient store at Quick Trip Food Mart is there not only for the convenience and benefit of the general public, but substantially enhances the gross revenues of the business. The pay telephone draws in business for the convenient store in that customers frequenting the pay telephone often come in

and purchase items from the convenient store after having stopped in to use the telephone. The presence of the pay telephone is a crucial instrument in drawing customers inside the store. To be disallowed the privilege of keeping the pay telephone could cause substantial economic hardship to Quick Trip Food Mart in that the customer base would decrease causing a substantial decrease in gross revenues of the business. 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 losing the pay telephone could cause the business. 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 cancelling 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 to ever break a rule again. The underlying rules are to protect the general public and are in their best interest. However, in the case of Quick Trip Food Mart, there was only one rule broken and that was the timeliness of the annual report regulatory assessment fee. The annual assessment fee was accidentally overlooked during the first time it was ever due because the US mail failed to deliver a reminder and it was not a gross or intentional non compliance of the rules. All other rules were followed exactly and completely. The fine of \$500.00 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 \$500.00 fine was assessed and paid.

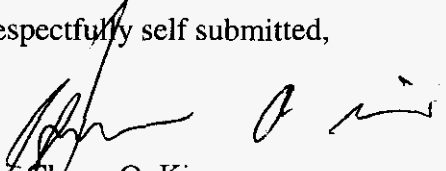
Therefore, the underlying purpose of rule 25-24.511(5) will still be upheld even if this petition is approved. The severity of the fine is sufficient in the case of Quick Trip Food Mart to make it impossible to ever miss filing the annual report again.

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, Quick Trip Food Mart respectfully requests that this Commission: (1) provide its legal interpretation of Rule 25-24.511(5) to be excessive for first time filers, 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. Chong O. Kim
President