



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** JULY 20, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE SERVICES (ISLER) *Pix*  
 DIVISION OF REGULATORY OVERSIGHT (HAWKINS) *BSSB*  
 DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *Wmp*

**RE:** DOCKET NO. 000353-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY CHONG O. KIM, INC. D/B/A QUICK TRIP FOOD MART AND REQUEST FOR WAIVER OF RULE 25-24.511(5), F.A.C.

**AGENDA:** 08/01/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** AUGUST 7, 2000 - STATUTORY DEADLINE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\000353.RCM

**CASE BACKGROUND**

By Order No. PSC-98-1505-FOF-TC, the Commission granted Pay Telephone Certificate No. 5966 to Chong O. Kim d/b/a Quick Trip Food Mart (Quick Trip Food Mart), effective December 5, 1998.

Quick Trip Food Mart's Regulatory Assessment Fees (RAFs) were due January 30, 1999. When full payment had not been received by the due date, a docket was opened to impose a fine for violation of Rule 25-4.0161, Florida Administrative Code, and Section 364.336, Florida Statutes, or cancel Quick Trip Food Mart's certificate.

By Order No. PSC-99-2383-PAA-TC, issued December 7, 1999, and consummated by Order No. PSC-00-0029-CO-TC, issued January 6, 2000, Quick Trip Food Mart was fined \$500 and assessed payment of the Regulatory Assessment Fee, along with statutory penalty and interest charges, for failure to comply with Rule No. 25-4.0161,

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Florida Administrative Code, and Section 364.336, Florida Statutes. The certificate was cancelled January 6, 2000, the date the Consummating Order was issued.

On March 24, 2000, the Commission received a check for the past due 1998 RAFs, along with accrued statutory penalty and interest charges, and a check for \$500 for the fine imposed by Order No. PSC-99-2383-PAA-TC. In addition, Mr. Kim submitted a second application for a pay telephone certificate, along with the \$100 application fee, and requested a waiver of Rule 25-24.511(5), Florida Administrative Code.

The Request for Waiver of the Rule was filed on April 5, 2000. The Notice of Request for Waiver of the Rule was submitted to the Secretary of State for publication in the Florida Administrative Weekly pursuant to Section 120.542, Florida Statutes. No comments were submitted during the comment period, which ended April 28, 2000.

Upon further review of the petition and in accordance with Section 120.542(7), Florida Statutes, staff contacted Quick Trip Food Mart's representative and advised him that additional information would need to be submitted in order to meet the requirements of Section 120.542, Florida Statutes. Subsequently, on May 9, 2000, Quick Trip Food Mart filed a complete Petition consistent with Section 120.542, Florida Statutes. Pursuant to Section 120.542(8), Florida Statutes, a decision must be rendered by August 7, 2000.

Upon review, staff is recommending that Quick Trip Food Mart's Petition for Waiver of Rule 25-24.511(5), Florida Administrative Code, be granted, and that Quick Trip Food Mart's application to provide pay telephone service within the State of Florida also be granted.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Chong O. Kim d/b/a Quick Trip Food Mart be granted a waiver of Rule 25-24.511(5), Florida Administrative Code, and be granted a new certificate to operate as a pay telephone provider in the State of Florida?

**RECOMMENDATION:** Yes. Staff believes Quick Trip Food Mart should be granted a waiver of Rule 25-24.511(5), Florida Administrative Code, and that its application for a new certificate to operate as a pay telephone provider in the State of Florida should also be approved. (Isler; Hawkins; K. Peña; B. Keating)

**STAFF ANALYSIS:** After Quick Trip Food Mart's certificate was cancelled, Quick Trip Food Mart contacted staff and advised that the 1998 RAF form was never received. Once Mr. Kim was informed of certification status, he immediately paid in full the 1998 RAFs, including accrued penalty and interest charges, and the \$500 fine imposed by Order No. PSC-99-2383-PAA-TC. Mr. Kim also submitted a pay telephone application, along with the \$100 application fee, for a new certificate, and requested a waiver of Rule 25-24.511(5), Florida Administrative Code.

Pursuant to Section 350.113(4), Florida Statutes, the regulatory assessment fee forms, for the period of January 1 through December 31, are mailed to companies 45 days prior to the date that payment of the fee is due. Staff has researched Commission records further and it appears that it is possible a 1998 RAF form and subsequent late notice, was not sent to Quick Trip Food Mart. Before staff processes applications, each applicant must sign and return an affidavit attesting that the Commission's rules and regulations had been read and understood. In addition, the RAF rule requires payment even if a company does not receive a RAF notice. Nevertheless, staff believes it is important for a RAF notice to be mailed the first year a company is in business. Staff emphasizes that Commission records are not clear that notice was ever mailed to Quick Trip Food Mart, nor is it clear that a delinquency notice was sent.

In its amended Petition, Quick Trip Food Mart states that the company did not receive the annual report form in the mail, and since it was due a full year after certification was granted, the company simply forgot that the RAFs were due, until after the due date. Quick Trip Food Mart contends that it did not intentionally fail to pay the RAFs. The company further contends that upon realizing that it had not paid the RAFs on time, it paid the past

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due RAFs, statutory penalty and interest charges, and the fine assessed by the Commission's Order. Quick Trip Food Mart adds that it acknowledges that it was in error by failing to file the regulatory assessment fee report and RAFs in a timely manner, but asks that the Commission consider the company's petition for waiver in view of the company's immediate attempts to bring itself into compliance upon realization of its error. Quick Trip Food Mart commits to future compliance.

Rule 25-24.511(5), Florida Administrative Code, states:

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.

Quick Trip Food Mart also explains that strict application of Rule 25-24.511(5), Florida Administrative Code, will create a substantial hardship not only for itself, but also for the general public. The company emphasizes, however, that removal of the pay telephone will primarily harm the company, because the pay telephone draws business into the store and substantially enhances the company's revenues. The company contends that removal of the pay telephone will greatly decrease its revenues, and thus, would cause substantial economic harm to Quick Trip Food Mart. Quick Trip Food Mart notes that the purpose of Rule 25-24.511(5), Florida Administrative Code, is to ensure that the rules regarding pay telephones are strictly enforced in order to promote continued compliance. Quick Trip Food Mart believes that the purpose of Rule 25-24.511(5), Florida Administrative Code, and Section 364.3375, Florida Statutes, will still be satisfied, because having to pay the additional \$500 fine has impressed upon Quick Trip Food Mart the importance of diligence and maintaining compliance with Commission rules. For all these reasons, Quick Trip asks that the Commission grant its request for a waiver, and its application for a new pay telephone certificate.

Staff recommends that the waiver requested in this docket be granted in this specific case. The waiver is being requested in accordance with the requirements of Section 120.542(2), Florida Statutes. The petitioner has demonstrated that granting the waiver will not impede the continued provision of pay telephone service to the using public as intended by Section 364.3375, Florida Statutes, and has shown that application of the rule will create a substantial hardship for Quick Trip Food Mart, because Quick Trip Food Mart will no longer be able to operate pay telephones in front of its store, which may greatly reduce the company's revenues.

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Furthermore, staff believes that Quick Trip Food Mart has demonstrated the intent to operate in conformance with the Commission's Rules and Orders by submitting the 1999 RAFs timely, the 1998 past due amount, along with accrued statutory penalties and interest charges, and remitting the \$500 fine imposed by Order No. PSC-99-2383-PAA-TC. In addition, Quick Trip Food Mart has proposed to pay future RAFs on a timely basis. Therefore, staff believes that it is in the public interest to grant Quick Trip Food Mart a waiver of Rule 25-24.511(5), in this specific case, and to grant the company's application for a pay telephone certificate.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, if the Commission approves or denies staff's recommendation on Issue 1, this docket should be closed, upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. (K. Peña; B. Keating)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order and this docket should be closed, upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.