

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 000353-TC
ORDER NO. PSC-00-1479-PAA-TC
ISSUED: August 16, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR WAIVER OF RULE 25-24.511(5),
FLORIDA ADMINISTRATIVE CODE AND GRANTING CERTIFICATE TO
PROVIDE PAY TELEPHONE SERVICE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Chong O. Kim d/b/a Quick Trip Food Mart's (Quick Trip Food Mart) 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.

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 RAFs, along with statutory penalty and interest charges, for failure to comply with Rule No. 25-4.0161, Florida Administrative Code, and Section 364.336, Florida Statutes. The certificate was

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canceled January 6, 2000, the date the Consummating Order was issued.

After Quick Trip Food Mart's certificate was canceled, Quick Trip Food Mart contacted our staff and advised that the 1998 RAF form was never received. Once Quick Trip Food Mart was informed of its certification status, it 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. In addition, Quick Trip Food Mart 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.

Pursuant to Section 350.113(4), Florida Statutes, the RAFs 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. Before our 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, we believe it is important for a RAFs notice to be mailed the first year a company is in business. We note 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.

The Request for Waiver of the Rule was filed on March 24, 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, our 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.

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

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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.

Furthermore, we believe 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, we believe 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 to Quick Trip Food Mart Certificate No. 7571. If this Order becomes final and effective, it shall serve as Quick Trip Food Mart's certificate. It should, therefore, be retained by Quick Trip Food Mart as proof of certification.

Pay Telephone service providers are subject to Chapter 25-24, Florida Administrative Code, Part XI, Rules Governing Pay Telephone Service Provided by Other Than Local Exchange Telephone Companies. They are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code.

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAFs of \$50 if the certificate was active during any portion of the calendar year. A RAFs Return notice for the year 2000 will be mailed to Quick Trip Food Mart. Neither the cancellation of its certificate nor the failure to receive a RAFs Return notice for the year 2000 shall relieve Quick Trip Food Mart from its obligation to pay RAFs for the year 2000.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby grant Chong O. Kim d/b/a Quick Trip Food Mart a waiver of Rule 25-24.511(5), Florida Administrative Code. It is further

ORDERED that Chong O. Kim d/b/a Quick Trip Food Mart is granted Certificate No. 7571 to provide Pay Telephone service, subject to the terms and conditions specified in the body of this Order. It is further

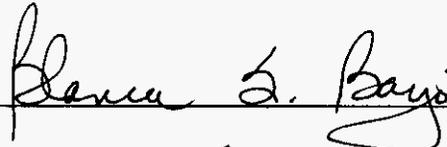
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ORDERED that this Order shall serve as Chong O. Kim d/b/a Quick Trip Food Mart's certificate and Chong O. Kim d/b/a Quick Trip Food Mart should retain this Order as proof of certification. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 16th day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 6, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.