

REVISED

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: FEBRUARY 10, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS, T. WILLIAMS) *DRB*
OFFICE OF THE GENERAL COUNSEL (BANKS, DODSON) *FPB* *fla* *AK*

RE: DOCKET NO. 020664-TI - COMPLIANCE INVESTIGATION OF
BIGREDWIRE FOR APPARENT VIOLATION OF RULE 25-24.470,
F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
REQUIRED, AND RULE 25-4.043, F.A.C., RESPONSE TO
COMMISSION STAFF INQUIRIES.

DOCKET NO. 021089-TI - APPLICATION FOR CERTIFICATE TO
PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY
BIGREDWIRE.COM, INC.

AGENDA: 02/18/03 - ISSUE 1: PROCEDURAL - INTERESTED PARTIES MAY
PARTICIPATE; ISSUE 2: PROPOSED AGENCY ACTION.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020664RS.RCM

CASE BACKGROUND

- March 27, 2002, through May 28, 2002 - As a result of staff's investigation into a consumer complaint, staff determined that bigredwire.com, Inc. (Bigredwire) was providing interexchange telecommunications in Florida without first obtaining an interexchange company (IXC) certificate of public convenience and necessity (certificate). Staff sent Bigredwire several e-mails, a certified letter, facsimile, and a letter by voice mail.

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messages in an attempt to contact the company. Bigredwire did not respond to staff's inquiries.

- July 9, 2002 - Staff opened Docket No. 020664-TI to address Bigredwire's apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and, Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- September 20, 2002 - In Docket No. 020664-TI, the Commission issued Order No. PSC-02-1285-PAA-TI in which it proposed to penalize Bigredwire a total of \$35,000, \$25,000 for failure to comply with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- October 9, 2002 - Staff received a phone call from Mr. Brad Weinstock of Bigredwire. Mr. Weinstock expressed his desire to resolve the rule violations cited in Docket No. 020664-TI.
- October 10, 2002 - Bigredwire submitted its first settlement proposal via facsimile in which the company proposed to settle this matter and the consumer complaint. However, staff determined that it was not consistent with previous settlement proposals.
- October 25, 2002 - In Docket No. 021089-TI, Bigredwire submitted its application for an IXC certificate. The company filed under the name of bigredwire.com, Inc.
- December 16, 2002 - Bigredwire sent a facsimile of its second revised settlement proposal, dated December 16, 2002, to resolve the apparent violations of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code. Staff requested that the company clarify its settlement proposal.
- January 14, 2003 - The Commission received the company's second revised settlement proposal, dated December 18, 2002, with the clarifications requested by staff. The company proposed to contribute \$7,500 to the General Revenue Fund in twelve monthly payments of \$100 each and a lump sum payment of \$6,300 at the end of the twelfth month.

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- February 4, 2003 - The Commission deferred this item at the Agenda Conference to allow the company an opportunity to submit an acceptable settlement proposal. The Commission expressed its concern about the payment schedule proposed by the company and its ultimate ability to make all of the payments. As an alternative, the Commission suggested that the payment schedule be modified so that the company make twelve equal monthly payments or a significantly larger initial payment. Subsequently, staff contacted Mr. Weinstock of Bigredwire to inform him of the Commission's action and explain the options available to the company.
- February 5, 2003 - The Commission received Bigredwire's third revised settlement proposal, dated February 5, 2003 (Attachment A).

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes. Further, staff's recommendations are consistent with previous Commission actions on similar issues in other dockets. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by bigredwire.com, Inc. (Bigredwire) to resolve the apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: No. The Commission should not accept the settlement offer because the payment period is unduly lengthy.
(Buys, Banks)

STAFF ANALYSIS: As outlined in the case background, the Commission proposed to penalize Bigredwire a total of \$35,000 for failing to comply with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

To resolve the apparent violations of Rule Nos. 25-4.043 and 25-24.470, Florida Administrative Code, in its third revised settlement proposal, dated February 5, 2003, Bigredwire offered the following:

- Make a voluntary contribution to the State General Revenue Fund in the amount of \$7,500 - \$5,000 for its failure to comply with Rule 25-24.470, Florida Administrative Code, and \$2,500 for its failure to comply with Rule 25-4.043, Florida Administrative Code. The contribution will be paid in 24 monthly installments in the amount of \$312.50 each.
- Submit an application for an IXC certificate by the close of business on October 25, 2002.
- Establish procedures to handle all Florida customer complaints in accordance with Commission rules and appoint specific personnel to respond to future staff inquiries and consumer complaints.
- Agree to comply with all Commission rules in the future.

The monetary amount of Bigredwire's settlement proposal is consistent with other settlement proposals the Commission has

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accepted in previous dockets for the same rule violations. However, at the February 4, 2003 Agenda Conference, the Commission expressed its preference for the monetary settlement to be paid in twelve (12) monthly installments. Staff informed Bigredwire of the Commission's concerns and advised the company accordingly. Notwithstanding, Bigredwire stated that it could not afford to make 12 monthly payments in the amount of \$625 and submitted a settlement proposal that includes 24 monthly payments in the amount of \$312.50 each.

Staff has been working with the company towards an acceptable settlement offer since October 2002. In discussions with staff on February 5, 2003, the company indicated that its latest settlement proposal is the best it can offer. Therefore, staff believes that further negotiations with the company would be unproductive. Accordingly, staff recommends that the Commission should not accept the company's settlement proposal since it appears to unduly extend the period for payment of the settlement.

ISSUE 2: Should the Commission grant bigredwire.com, Inc. (Bigredwire) a certificate to provide interexchange telecommunications services within the State of Florida in Docket No. 021089-TI?

RECOMMENDATION: No. (T. Williams, Dodson)

STAFF ANALYSIS: Bigredwire's application for a certificate to provide interexchange telecommunications services (Docket No. 021089-TI) is part of the company's proposed settlement offer to resolve the rule violations in Docket No. 020664-TI.

Section 364.337(3), Florida Statutes, states:

(3) The Commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Rule 25-24.471 (1), Florida Administrative Code, Application for Certificate, which implements Section 364.337(3), Florida Statutes, states in pertinent part:

An applicant desiring to apply for a certificate shall submit an application on Commission Form PSC/CMU 31 (12/96), which is incorporated into the rule by reference. . . .

Commission Form PSC/CMU 31 (12/96), requires a company to support its claim that it has sufficient financial capability to (1) provide the requested service in the geographic area proposed to be served, (2) maintain the requested service, and (3) meet its lease or ownership obligations. However, in discussions with staff regarding its settlement proposal, Bigredwire indicated that it does not have the financial capability to make monthly payments in the amount of \$625 to resolve the rule violations in Docket No. 020664-TI. If true, staff doubts that Bigredwire possesses the financial capability to provide adequate service to its Florida customers and should not be granted a certificate.

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Further, this recommendation is a change in practice for approving an applicant's certificate. Currently, an applicant signs an affidavit attesting to the company's financial capability to provide intrastate interexchange telecommunications services in Florida. However, in this case, staff believes that an affidavit is not acceptable.

In addition, staff is recommending that the Commission not accept Bigredwire's settlement proposal in Issue 1. One of the requirements for any entity to obtain a certificate is for that entity to resolve any outstanding rule violations, unpaid fees or penalties. Since Bigredwire has not yet satisfactorily resolved its outstanding rule violations, the company has not met the necessary requirements to obtain a certificate.

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ISSUE 3: Should Docket No. 020664-TI be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, Bigredwire should be required to either remit the penalties totaling \$35,000 established in Order No. PSC-02-1285-PAA-TI or request a hearing within 21 days of the issuance of the Order from this recommendation. If the company does not request a hearing, this Docket should be closed upon issuance of an Order consummating Order No. PSC-02-1285-PAA-TI. If the penalties have not been paid before the issuance of the Consummating Order, they should be forwarded to the Department of Financial Services for further collection efforts. If, however, the company timely requests a hearing, Docket No. 020664-TI should remain open pending further Commission proceedings.

If the Commission denies staff's recommendation in Issue 1 and accepts Bigredwire's revised settlement offer, this Docket should remain open pending remittance of the \$7500 settlement offer. Each payment should be paid to the Florida Public Service Commission to be forwarded to the Department of Financial Services, and should identify the docket number and company name. Upon receipt of the \$7500, this Docket should be closed administratively. If, however, the company fails to comply with the payment terms set forth in its revised settlement proposal, further proceedings should be initiated. **(Banks)**

STAFF ANALYSIS: While the Commission's Proposed Agency Action Order imposing penalties on Bigredwire, Order No. PSC-02-1285-PAA-TI, has not been consummated due to the settlement offer made by the company, Bigredwire did not file a proper protest of that PAA Order or request a hearing in accordance with Rule 25-22.029, Florida Administrative Code. However, since the company did timely submit a settlement offer and has engaged in good faith negotiations to reach a more acceptable resolution of this matter, staff believes that if the Commission approves staff's recommendation in Issue 1 and denies the company's revised settlement offer, it would be appropriate to allow the company additional time to either pay the penalties assessed or formally request a hearing. This is consistent with action the Commission has previously taken in addressing similar situations in Dockets Nos. 000236-TX and 000482-TC.

Therefore, staff recommends that if the Commission approves staff's recommendation in Issue 1, Bigredwire should be required to

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either remit the penalties totaling \$35,000 established in Order No. PSC-02-1285-PAA-TI or request a hearing within 21 days of the issuance of the Order from this recommendation. If the company does not request a hearing, this Docket should be closed upon issuance of an Order consummating Order No. PSC-02-1285-PAA-TI. If the penalties have not been paid before the issuance of the Consummating Order, they should be forwarded to the Department of Financial Services for further collection efforts. If, however, the company timely requests a hearing, Docket No. 020664-TI should remain open pending further Commission proceedings.

If the Commission denies staff's recommendation in Issue 1 and accepts Bigredwire's revised settlement offer, this Docket should remain open pending remittance of the \$7500 settlement offer. Each payment should be paid to the Florida Public Service Commission to be forwarded to the Department of Financial Services, and should identify the docket number and company name. Upon receipt of the \$7500, this Docket should be closed administratively. If, however, the company fails to comply with the payment terms set forth in its revised settlement proposal, further proceedings should be initiated.

ISSUE 4: Should Docket No. 021089-TI be closed?

RECOMMENDATION: Docket No. 021089-TI 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, and Bigredwire should cease and desist providing IXC services in Florida. **(Dodson)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 2 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, Docket No. 021089-TI should be closed administratively upon issuance of a Consummating Order.

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Attachment A

February 5, 2002

Director
Division of the Commission Clerk and Administrative Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 020664-TI
Order No. PSC-02-1285-PAA-TI
Issued: September 20, 2002
Third Revised Settlement Proposal

To Whom It May Concern:

On September 26, 2002, bigredwire.com, Inc. (hereinafter referred to as "bigredwire") received Notice of Proposed Agency Action Order Imposing Penalties from the Florida Public Service Commission on the above referenced Docket and Order Number.

The above referenced docket was opened to address bigredwire's alleged violation of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code.

bigredwire responds to the alleged violation of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code as follows:

Rule No. 25-24.470

bigredwire does not dispute the fact that it has not obtained a certificate of public convenience and necessity from the commission. Instead, bigredwire wishes to settle this rule violation in an amicable fashion by proposing make a payment in the amount of \$5,000 to the State of Florida General Revenue Fund and submission of an Application Form for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida by the close of business on October 25, 2002.

25 east mason street third floor santa barbara, ca 93101 usa t 805 560 8900 f 805 560 8901

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Attachment A

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Rule No. 25-4.043

bigredwire proposes to settle the alleged violation of Rule 25-4.043, Florida Administrative Code, by

- (1) providing the statement (see Attachment A) of the actions bigredwire has taken to remedy the problems causing its failure to respond to Commission staff inquiries;
- (2) providing the attached statement that the company will comply with all Commission rules in the future;
- (3) providing the attached statement that the company has established procedures and processes to handle all Florida customer complaints in accordance with Commission rules; and
- (4) offering to make a contribution to the State of Florida General Revenue Fund in the amount of \$2,500.

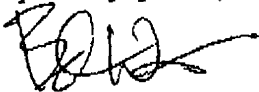
All correspondence pertaining to this matter should be addressed to:

bigredwire.com, Inc.
25 East Mason Street
Third Floor
Santa Barbara, CA 93101
Attn: Brad Weinstock, President
805 560 8900 x10
805 560 8901 facsimile
bweinstock@bigredwire.com

bigredwire's substantial interests will be seriously affected by the agency's current determination. We are a small company with limited resources. With our staff of 7 our mission is to provide a quality service and customer experience at prices that are among the lowest in the industry. We strive to create relationships with our customers based on value, quality, truth and fun. Penalties under the current determination will likely force us to cease and desist providing service in the State of Florida. In light of the foregoing and the Commission's denial of our proposed settlement offer dated 12/18/02, the penalties proposed above totaling \$7,500 shall be paid in 24 equal monthly installments of \$312.50.

Thank you in advance for your consideration in this matter.

Very truly yours,



Brad Weinstock
President

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Attachment A

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Attachment A

bigredwire has taken the following steps to remedy the problems causing its failure to respond to Commission staff inquiries:

bigredwire has dedicated Crystal Ramirez as point person for future staff inquiries. Ms. Ramirez can be reached via electronic mail at cramirez@bigredwire.com. Escalation of Commission staff inquiries shall be directed to Brad Weinstock at bweinstock@bigredwire.com or via telephone on 805 560 8900 x10.

bigredwire takes regulatory matters in all states it operates in including Florida seriously. It will comply with all Commission rules in the future.

bigredwire has established procedures and processes to handle all Florida customer complaints in accordance with Commission rules. Customer inquiries can be resolved via electronic mail at memberservice@bigredwire.com or via live chat on the bigredwire web-site. If a customer's complaint cannot be resolved through one of these means, they will be referred to Crystal Ramirez as the point person for Customer escalation. Slamming complaints and service inquiries can be made via bigredwire's toll free number (866) RED WIRE - (866) 733 9473.