

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: MARCH 6, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS, T.W.)
WILLIAMS) *PROB*
OFFICE OF THE GENERAL COUNSEL (F. BANKS, DODSON) *JKD BK*

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

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020664RS2.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, facsimiles, and left voice mail

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DOCKET NOS. 020664-TI and 020189-TI
DATE: March 6, 2003

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.

DATE: March 6, 2003

- 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 - Bigredwire submitted its third revised settlement proposal, dated February 5, 2003, in which it offered to make 24 equal monthly installments.
- February 10, 2003 - Staff filed its recommendation suggesting that the Commission reject the company's third revised settlement proposal.
- February 13, 2003, - After further discussions with staff, Bigredwire submitted its fourth revised settlement proposal, dated February 13, 2003 (Attachment A). In its settlement proposal, the company also requested that staff's February 10, 2003, recommendation be deferred from the February 18, 2003, Agenda Conference.
- February 14, 2003 - The Chairman approved deferral of this item from the February 18, 2003, Agenda Conference.

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 the previous Commission actions on similar issues in previous 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), including a contribution of \$7,500 to the State General Revenue Fund paid in 12 equal monthly installments of \$625 each, 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: Yes. The first installment should be received by the Commission within fourteen calendar days from the issuance date of the Commission's Order and should identify the docket number and company name. Each subsequent payment should be due within 30-day intervals following the first payment and should also identify the docket number and company name. The Commission should forward the payments to the Department of Financial Services for deposit in the General Revenue Fund. If the company fails to comply with the payment terms set forth in its settlement proposal, staff will initiate further proceedings. **(Buys, Banks)**

STAFF ANALYSIS: As outlined in the case background, the Commission penalized 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 violation of Rule Nos. 25-4.043 and 25-24.470, Florida Administrative Code, in its fourth revised settlement proposal, dated February 13, 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 twelve equal monthly installments of \$625.
- 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

DATE: March 6, 2003

appoint specific personnel to respond to future staff inquiries and consumer complaints.

- Agree to comply with all Commission rules in the future.

Bigredwire also stated in its settlement proposal that its interests will be seriously affected by the Commission's imposed penalties of \$35,000 and it would likely be forced to cease and desist providing service in Florida under the current penalty determination.

The monetary amount of Bigredwire's settlement proposal is consistent with other settlement proposals the Commission has accepted in previous dockets for the same rule violations. Also, the Commission has accepted scheduled payments for twelve months in the past. Further, the company has resolved the consumer complaint that initiated this matter, and in Docket No. 021089-TI, the company filed its application for an IXC certificate. Therefore, staff believes that Bigredwire has taken the necessary actions to correct the problems causing the apparent rule violations and the Commission should accept the company's settlement proposal.

DOCKET NOS. 020664-TI and 020189-TI
DATE: March 6, 2003

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: Yes. The Commission should grant Bigredwire

Certificate of Public Convenience and Necessity No. 8275,

to provide IXC services within the State of Florida in Docket No. 021089-TI. **(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.

Bigredwire has satisfactorily met all of the Commission's requirements for certification. In addition, a company official, Mr. Brad Weinstock, signed an affidavit attesting to the fact that it has the technical, financial, and managerial qualifications to provide intrastate telecommunications services in Florida, as required by Section 364.337 (3), Florida Statutes.

Accordingly, staff recommends that Bigredwire should be granted a certificate to provide IXC services within the State of Florida.

DOCKET NOS. 020664-TI and 020189-TI
DATE: March 6, 2003

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

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, Docket No. 020664-TI should remain open pending remittance of Bigredwire's contribution totaling \$7,500. The docket should be closed administratively upon receipt of the company's last installment of \$625. If the Commission denies staff's recommendation on Issue 1, Docket No. 020664-TI should remain open pending a resolution to the rule violations. **(Banks)**

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, the Order issued will be final and Docket No. 020664-TI should be closed administratively upon receipt of the company's contribution totaling \$7,500. If the Commission denies staff's recommendation on Issue 1, the docket should remain open pending a resolution to the rule violations.

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. **(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.

02/13/2003 05:41 0055608901

PAGE 02

February 13, 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
Fourth 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.

02/13/2003 05:41 8055608901

PAGE 03

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 12 equal monthly installments of \$625.

We also request that this matter be postponed from the Agenda Conference on February 18, 2003.

Thank you in advance for your consideration in this matter.

Very truly yours,



Brad Weinstock
President

02/13/2003 06:41 00555600901

PAGE 04

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.