

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of bigredwire.com, Inc. 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. 020664-TI
ORDER NO. PSC-03-0470-AS-TI
ISSUED: April 7, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

I. CASE BACKGROUND

As a result of our staff's investigation into a consumer complaint during the period of March 27, 2002, through May 28, 2002, our 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 messages in an attempt to contact the company. Bigredwire did not respond to staff's inquiries.

On July 9, 2002, our staff opened this docket 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORDER NO. PSC-03-0470-AS-TI

DOCKET NO. 020664-TI

PAGE 2

In Order No. PSC-02-1285-PAA-TI, issued September 20, 2002, we 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.

On October 9, 2002, our staff received a phone call from Mr. Brad Weinstock of Bigredwire. Mr. Weinstock expressed the company's desire to resolve the rule violations cited.

Bigredwire submitted its first settlement proposal via facsimile in which the company proposed to settle this matter and the consumer complaint on October 10, 2002. However, our staff determined that it was not consistent with previous settlement proposals. On October 25, 2002 Bigredwire submitted its application for an IXC certificate. The company filed under the name of bigredwire.com, Inc. in Docket No. 021089-TI.

On 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. Our staff requested that the company clarify its settlement proposal. We received the company's second revised settlement proposal, dated December 18, 2002, on January 14, 2003, with the clarifications requested by our 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.

At the February 4, 2003, Agenda Conference, we deferred this item to allow the company an opportunity to submit an acceptable settlement proposal. We expressed our concern about the payment schedule proposed by the company and its ultimate ability to make all of the payments. As an alternative, we suggested that the payment schedule be modified so that the company make twelve equal monthly payments or a significantly larger initial payment. Subsequently, our staff contacted Mr. Weinstock of Bigredwire to inform him of our action and explain the options available to the company.

On February 5, 2003, Bigredwire submitted its third revised settlement proposal, dated February 5, 2003, in which it offered to make 24 equal monthly installment. On February 10, 2003, our staff filed its recommendation suggesting that we reject the company's third revised settlement proposal.

After further discussions with staff, Bigredwire submitted its fourth revised settlement proposal, dated February 13, 2003 (Attachment A) and received on the same date. In its settlement proposal, the company also requested that our staff's February 10, 2003, recommendation be deferred from the February 18, 2003, Agenda Conference. On February 14, 2003, the Chairman approved deferral of this item from the February 18, 2003, Agenda Conference.

We are vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes.

II. ANALYSIS

As outlined in the case background, we 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 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 our 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 we have accepted in previous dockets for the same rule violations. Also, we have 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. We note that the PAA Order granting Bigredwire's IXC certificate has been issued by separate order in Docket No. 021089-TI. Therefore, we find that Bigredwire has taken the necessary actions to correct the problems causing the apparent rule violations and we hereby approve the company's settlement proposal.

The company shall remit the first installment to the Commission within fourteen calendar days from the issuance date of this Order and should identify the docket number and company name. Each subsequent payment shall be due within 30-day intervals following the first payment and shall also identify the docket number and company name. The company's payments shall be forwarded to the Department of Financial Services for deposit in the General Revenue Fund. Thereafter, this docket shall be closed administratively upon receipt of the company's contribution totaling \$7,500.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that bigredwire.com, Inc.'s settlement proposal is hereby approved as set forth in this Order. It is further

ORDER NO. PSC-03-0470-AS-TI

DOCKET NO. 020664-TI


PAGE 5

ORDERED that bigredwire.com, Inc. shall remit the first installment payment within 14 days from the date of this Order and each subsequent payment shall be due within 30-day intervals following the first payment. It is further

ORDERED that bigredwire.com, Inc.'s payments shall be forwarded to the Department of Financial Services for deposit in the General Revenue Fund. It is further

ORDERED that this docket shall be closed administratively upon receipt of the company's contribution totaling \$7,500.

By ORDER of the Florida Public Service Commission this 7th day of April, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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ORDER NO. PSC-03-0470-AS-TI

DOCKET NO. 020664-TI

PAGE 6

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.