



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-

RECEIVED - FPSC
AUG 22 AM 10:42
COMMISSION CLERK

DATE: AUGUST 22, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) *DB*
OFFICE OF THE GENERAL COUNSEL (BANKS) *TPB JK*

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.

AGENDA: 09/03/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

CASE BACKGROUND

- March 27, 2002 - The Commission received a complaint from a Florida consumer (customer) regarding the unauthorized switch of his local long distance provider to a company known as bigredwire.com (Bigredwire). Bigredwire has not obtained a Certificate of Public Convenience and Necessity (certificate).
- April 11, 2002 - Staff determined that Qwest is the underlying service provider for Bigredwire, and at staff's request, Qwest provided staff with the contact information for Bigredwire (Attachment A). Qwest obtained the contact information from Mr. Brad Weinstock of Bigredwire.

DOCUMENT NUMBER 021
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FPSC-COMMISSION CLERK

- April 12, 2002 - Staff sent an email to Mr. Brad Weinstock at bweinstock@hermes.bigredwire.com requesting that the company investigate the customer complaint and provide staff with a reply by April 26, 2002 (Attachment B). Staff also requested that Bigredwire submit an application for a certificate no later than May 3, 2002.
- May 10, 2002 - Staff called Mr. Weinstock at (805) 560-8900 and left him a voice mail message requesting that Mr. Weinstock return staff's call.
- May 23, 2002 - Staff sent Bigredwire a certified letter addressed to Mr. Brad Weinstock via U.S. Postal Service requesting a written reply to the customer's complaint and the certification issue (Attachment C). The company's reply was due on June 10, 2002.
- May 28, 2002 - Staff sent a facsimile of its May 23, 2002, letter to Bigredwire at (805) 560-8901.
- June 3, 2002 - Staff received the U.S. Postal Service "green card" receipt (Attachment D) indicating that staff's May 23, 2002, letter was received by Bigredwire on May 29, 2002.
- July 9, 2002 - Staff opened this docket to address Bigredwire's apparent violation of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes. Further, staff's recommended penalty is consistent with penalties imposed upon other interexchange companies by the Commission in previous dockets for the same apparent rule violations. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$25,000 penalty on Bigredwire for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should impose a \$25,000 penalty on Bigredwire for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Bigredwire fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Convenience and Necessity. **(Banks, Buys)**

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states in pertinent part:

(1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. . . .

During its investigation into a slamming complaint received by a Florida consumer against Bigredwire, staff determined that the company has not obtained a certificate. Staff believes that Bigredwire is providing intrastate IXC telephone service in Florida based on the customer complaint and the information on the company's website, www.bigredwire.com. The complainant, a Broward County resident, claims to be a former customer of Bigredwire for all long distance telecommunications service, including IntraLATA

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(local toll). The customer indicated in his complaint that Bigredwire was utilizing Qwest as its underlying carrier. In addition, the company's website indicates that bigredwire utilizes first tier carriers to provide service - not the internet. Further, Bigredwire's membership agreement (Attachment E) posted on its website states:

. . . by joining Bigredwire you are selecting us or our assignee as your provider for international, long distance (inter-lata), and local long distance (intra-lata) calls.

The provision of local long distance is an intrastate telecommunications service that Bigredwire is apparently providing to customers in Florida. Bigredwire solicits its service through the Internet on its website and bills its customers through credit card deductions. Commission records show that Bigredwire has not obtained a certificate. Staff sent Bigredwire notice of this fact via certified letter, facsimile, and email. Bigredwire has not replied to staff's inquiries, nor has the company submitted its application for a certificate.

Staff believes that Bigredwire's apparent violation of Rule 25-24.470, Florida Administrative Code, is "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Bigredwire's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law'

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will not excuse any person, either civilly or criminally." *Barlow v. United States*, 32 U.S. 404, 411 (1833).

Accordingly, staff recommends that the Commission should impose a \$25,000 penalty on Bigredwire for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Bigredwire fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Convenience and Necessity.

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ISSUE 2: Should the Commission impose a \$10,000 penalty on Bigredwire for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

STAFF RECOMMENDATION: Yes. The Commission should impose a \$10,000 penalty on Bigredwire for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. **(Banks, Buys)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff sent Bigredwire three separate inquiries regarding a customer's slamming complaint and the company's certification, and attempted to call the company. Staff used the contact information provided by Qwest which it obtained from Mr. Brad Weinstock at Bigredwire. Qwest is apparently the underlying carrier selling network time to Bigredwire.

On April 12, 2002, staff sent an email to Mr. Weinstock - a reply was due on April 26, 2002.

On May 10, 2002, staff called Mr. Weinstock but was unable to speak with him and left a message for Mr. Weinstock to return the call - no return call was received.

On May 23, 2002, staff sent Bigredwire a certified letter via U.S. Postal Service addressed to Mr. Weinstock. A written reply was due on June 10, 2002. The U.S. Postal Service "green card" receipt indicates that an agent of Bigredwire received the certified letter on May 29, 2002.

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On May 28, 2002, staff sent a facsimile of its May 23, 2002, letter to Mr. Weinstock. The transmission verification report (Attachment F) indicates that the facsimile was successfully transmitted to 805-560-8901.

As of August 14, 2002, neither Bigredwire nor Mr. Weinstock have responded to staff's inquiries. Staff believes that Bigredwire and Mr. Weinstock are aware of staff's inquiries and that the company has been given sufficient opportunity to reply.

Staff believes that Bigredwire's apparent violation of Rule 25-4.043, Florida Administrative Code, is "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Bigredwire's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Accordingly, staff recommends that the Commission should impose a \$10,000 penalty on Bigredwire for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final 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. This docket should then be closed administratively upon either receipt of the payment of the penalties, or upon referral of the penalties to the Office of the Comptroller for collection if the penalties are not paid within fourteen calendar days after issuance of the Consummating Order.
(Banks)

STAFF ANALYSIS: The Order issued from this recommendation will become final 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. This docket should then be closed administratively upon either receipt of the payment of the penalties, or upon referral of the penalties to the Office of the Comptroller for collection if the penalties are not paid within fourteen calendar days after issuance of the Consummating Order.

From: Jarrell, Dale [Dale.Jarrell@qwest.com]
Sent: Thursday, April 11, 2002 1:09 PM
To: Kuhnnow, Carol
Subject: FW: Regulatory Contact--Big Red Wire.com

Carol,

Here is what I have pieced together on Big Red Wire.com...

The regulatory contact is Brad Weinstock, he can be reached at (805) 560-8900 Ext. 934. His fax is (805) 560-8901 and his e-mail is bweinstock@hermes.bigredwire.com <mailto:bweinstock@hermes.bigredwire.com> .

If you need anything else let me know and I will see what I can do....

Dale

-----Original Message-----

From: Brad Weinstock [mailto:bweinstock@hermes.bigredwire.com]
Sent: Thursday, April 11, 2002 1:31 PM
To: Jarrell, Dale
Subject: Re: Regulatory Contact--Big Red Wire.com

my extension is 934. our fax # is 805 560 8901.

----- Original Message -----

From: Jarrell, <mailto:Dale.Jarrell@qwest.com> Dale
To: 'Brad Weinstock' <mailto:bweinstock@hermes.bigredwire.com>
Sent: Thursday, April 11, 2002 10:04 AM
Subject: RE: Regulatory Contact--Big Red Wire.com

Brad,

Can you also give me a direct line for you and possible a fax line for the PSC?

Thanks,

Dale

-----Original Message-----

From: Brad Weinstock [mailto:bweinstock@hermes.bigredwire.com]
Sent: Thursday, April 11, 2002 1:27 PM
To: Jarrell, Dale
Subject: Re: Regulatory Contact--Big Red Wire.com

hi dale. use me as the regulatory contact. my phone # is 805 560 8900 x934.

----- Original Message -----

From: Jarrell, Dale <mailto:Dale.Jarrell@qwest.com>
To: 'Bweinstock@bigredwire.com' <mailto:'Bweinstock@bigredwire.com'>
Cc: Kuhnnow, Carol <mailto:carol.kuhnnow@qwest.com>
Sent: Thursday, April 11, 2002 10:00 AM
Subject: FW: Regulatory Contact--Big Red Wire.com

Mr. Weinstock:

Can you please provide me with a regulatory contact that I can pass along to the FL-PSC.

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Attachment A

Thank you.

Dale Jarrell
Government Affairs
Qwest Communications Corp.
(703) 363-3836
(888) 925-4564
(703) 363-4404 fax
9-200-3836

-----Original Message-----

From: Jarrell, Dale
Sent: Tuesday, April 09, 2002 2:09 PM
To:
Cc: Kuhnow, Carol
Subject: Regulatory Contact--Big Red Wire.com
Importance: High

Mr. Weinstock:

I have received a request from the Florida Public Service Commission for a contact at your company who handles your regulatory affairs. The FL-PSC has received a slamming complaint from one of their consumers related to your company, but they do not show that Big Red Wire.com has a certificate to conduct business in the state of Florida. Can you please provide a contact person, phone number and address that I can pass along to the FL-PSC.

Thank you,

Dale Jarrell
Government Affairs
Qwest Communications Corp.
(703) 363-3836
(888) 925-4564
(703) 363-4404 fax
9-200-3836

From: Dale Buys
Sent: Friday, April 12, 2002 11:00 AM
To: Brad Weinstock (E-mail)
Subject: FPSC Consumer Complaint No. 445725T

Importance: High
Sensitivity: Private

Mr. Weinstock:

The Florida Public Service Commission received a slamming complaint from Mr. Jeff Hill (see copy following text of email message) regarding the unauthorized switch of his local toll service and subsequent charges applied to his credit card. Please investigate Mr. Hill's complaint and provide me with a report detailing the results of your investigation no later than April 26, 2002. In your report, please include proof - either a letter of agency, or a recording of a third party verification - that Mr. Hill authorized your company to switch his local toll service to bigredwire.

Also, based on the information provided in Mr. Hill's complaint, it appears that bigredwire is providing intrastate telecommunications service in Florida, and thus, requires a certificate from the Florida Public Service Commission. According to our records, bigredwire has not obtained a certificate under that name. Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. . . .

Mr. Weinstock, please submit an application for a certificate to the Division of the Commission Clerk and Administrative Services no later than May 3, 2002. You can obtain an application form and all the pertinent information, including a copy of the Commission's rules, from our website, www.psc.state.fl.us. Please note that registering with the Florida Department of State, Division of Corporations is a prerequisite. Should you have any questions, please call me at (850) 413-6536.

Sincerely,
Dale R. Buys
Regulatory Analyst
Division of Competitive Services and Enforcement

COMPLAINT REQUEST NO. 445725T
NAME: JEFF HILL
PHONE: (954)-441-1929
DATE RECEIVED: 03/27/2002

Please review the "incorporated" Internet correspondence, located between the quotation marks on this form, in which the customer reports the following:
"Dear Sirs:

I would like to file a formal complaint against my (previous) long distance telephone provider, Bigredwire. I first enrolled with Bigredwire for all long distance service (interstate, intrastate and intralata) in April of 2001. Sometime on or shortly after September 20, 2001, we switched our INTRALATA service to BellSouth to take advantage of their flat-rate (\$0.25 per call, unlimited duration) local toll plan.

On about October 26, 2001, Bigredwire changed their carrier from Global Crossing to Qwest. At that time, as part of the changeover, they switched

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Attachment B

From: MAILER-DAEMON@MAIL.PSC.STATE.FL.US
Sent: Friday, April 12, 2002 11:00 AM
To: DBuys@PSC.STATE.FL.US
Subject: Delivery Status: FPSC Consumer Complaint No. 445725T

ATT01583.TXT

FPSC Consumer
Complaint No 44

Your message has been queued for remote delivery to the
following mailbox:
bweinstock@hermes.bigredwire.com

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

May 23, 2002

VIA FACSIMILE AND CERTIFIED MAIL
805-560-8901

Mr. Brad Weinstock
bigredwire
201 Harbor Way
Santa Barbara, CA 93109

Re: Reply to consumer complaint request no. 445725T and application for a certificate.

Dear Mr. Weinstock:

We received a slamming complaint from Mr. Jeff Hill regarding the unauthorized switch of his local toll service and subsequent charges applied to his credit card. I sent you an email regarding his complaint on April 12, 2002, and I left you a voice mail message on May 10, 2002. As of today, I have not received a response from you regarding Mr. Hill's complaint. Rule 25-22.032(5)(a), Florida Administrative Code (F.A.C.), requires your company to provide me with a response to Mr. Hill's complaint within fifteen (15) working days. The rule also requires that the response explain your company's actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. Your response must also describe all attempts to resolve Mr. Hill's complaint.

In addition, as mentioned in my email, it appears that your company is providing intrastate interexchange telephone service in Florida, and thus, requires a certificate from the Commission. I requested that your company submit its application to the Commission no later than May 3, 2002. As of today, our records indicate that no such application has been submitted. Rule 25-24.470, F.A.C., Code, Certificate of Public Convenience and Necessity Required, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. . . .

Mr. Weinstock, please provide me with (1) a written response to Mr. Hill's complaint in accordance with Rule 25-22.032, F.A.C, including an explanation as to why your company has not

Mr. Brad Weinstock
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previously responded in a timely manner, and (2) a written explanation as to why your company has not submitted an application to the Commission as requested. Please ensure that I receive your written responses no later than June 10, 2002.

I have enclosed a copy of Mr. Hill's complaint and the first page of my email for your convenience. You can obtain an application form and all the pertinent information, including a copy of the Commission's rules, from our website, www.psc.state.fl.us. Should you have any questions or concerns, please contact me.

Sincerely,



Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

Voice: 850-413-6536
Fax: 850-413-6537
Email: dbuys@psc.state.fl.us

Enclosures (2)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) <i>Mr. Brad Weinstock</i>	B. Date of Delivery <i>MAY 29 2002</i>
1. Article Addressed to:	C. Signature <i>Mr. Brad Weinstock</i>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
	D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Mr. Brad Weinstock
bigredwire
201 Harbor Way
Santa Barbara, CA 93109

- Express Mail
 - Return Receipt for Merchandise
 - C.O.D.
- (Extra Fee) Yes

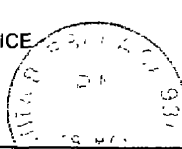
2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

UNITED STATES POSTAL SERVICE

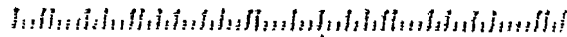


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

Florida Public Service Commission
Mr. Dale Buys
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

COMPETITIVE SERVICES
2002 JUN -3 AM 10:36

3399+0850



<member agreement>

as a bigredwire member we will provide you with long distance service at the prices currently published on this site.

please be aware that by joining bigredwire you are selecting us or our assignee as your provider for international, long distance (inter-lata), and local long distance (intra-lata) calls. the connection and disconnection of telecom services is subject to delays beyond bigredwire's control but you agree that without exception, you are responsible for charges for all calls made from your telephone and carried by bigredwire. a call detail record in bigredwire's possession is evidence that bigredwire has carried a call.

you are also responsible for membership dues, which are assessed every 30 day period in which you have placed a call (regardless of whether you are still an active member on the day of assessment).

you authorize bigredwire to charge your credit card in accordance with the policies posted on this site; we <guarantee> the safe and responsible use of your credit card. if your card is declined we will charge you \$8. if you have a dispute regarding a charge made to your card we will resolve it in a fair and equitable manner. if you endeavor to reverse credit card payments made to bigredwire our card safety and privacy guarantees will no longer apply, and you will be held responsible for all amounts due plus legal and investigative costs. the legal jurisdiction of this agreement is santa barbara, california.

we pride ourselves on quality but we will not be responsible for any consequential loss or damage which may result from any problem with our service.

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Attachment F

TRANSMISSION VERIFICATION REPORT

TIME : 05/28/2002 03:43
NAME :
FAX :
TEL :

DATE, TIME	05/28 03:35
FAX NO./NAME	18055608901
DURATION	00:07:06
PAGE(S)	1E
RESULT	OK
MODE	STANDARD ECM