

Decision 09-04-009 April 16, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Bigredwire.com, Inc. for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.

Application 07-10-003  
(Filed October 3, 2007)

**DECISION GRANTING JOINT PARTIES' MOTION FOR COMMISSION ADOPTION OF SETTLEMENT AGREEMENT AND APPROVING SETTLEMENT AGREEMENT**

**1. Summary**

This decision grants the joint motion of Bigredwire.com, Inc. (BRW) and the Commission's Consumer Protection and Safety Division (CPSD) for Commission adoption of a Settlement Agreement in this proceeding (Settlement Agreement) and approves the Settlement Agreement without modification.

The key provisions of the Settlement Agreement are:

- BRW admits the violations of state law and Commission Rules and orders alleged in CPSD's protest, and agrees that the Settlement Agreement is fair and reasonable;
- BRW shall pay a fine of \$20,000 to the State General Fund, based on its unlawful operations in this state without a certificate of public convenience and necessity (CPCN) during 2000-2001 and from September 23, 2004 to the present, its failure to pay required fees and surcharges and to file required reports with the Commission from 2000-2008, and its violation of Rule 1.1 by failing to disclose this Commission's revocation of the company's CPCN in 2004

and the sanctions previously imposed by the Florida Public Service Commission. No interest shall accrue on the fine unless BRW defaults on its required payments;

- BRW shall pay all fees and surcharges owed to this Commission for 2008 referencing such payment with their former utility ID# 6484 by no later than August 10, 2008, with no interest, so long as timely payments are made;
- BRW shall pay all fees and surcharges owed to this Commission for the years 2000 through 2007, plus simple interest at the rate of 10% year, which amounts to \$41,264.80, in installment payments. As of the payment commencement date, interest shall continue to accrue on the unpaid balance at the rate of 10% per year calculated as compound interest;
- BRW shall file the required reports for 2008 and shall timely file all required reports with the Commission in the future, so long as BRW is operating in this state;
- In order to remedy its violation of Rule 1.1, BRW shall file a new application for registration which discloses the prior revocation of its CPCN by this Commission in Resolution T-16875 in September 2004 and the regulatory sanctions imposed by the Florida Public Service Commission, within 30 days of the effective date of this order;
- CPSD will withdraw its protest to this application within five days of the effective date of this order, but shall continue to monitor BRW's compliance with the Settlement Agreement; and
- CPSD shall take no further enforcement actions against BRW based on the violations stated in the Settlement Agreement, unless BRW breaches the Settlement Agreement or this order.

Based on the above, we find that this Settlement Agreement meets the criteria for adoption stated in Rule 12.1(d),<sup>1 2</sup> and that approval of the Settlement Agreement is in the public interest. However, in order to protect the public interest, we require BRW to disclose this order in any future application filed with this Commission for registration or for a CPCN.

We adopt the Settlement Agreement with these changes. We also deny CPSD's request to withdraw its protest, because we believe that the protest should remain part of the record. However, we note that, upon approval of the Settlement Agreement, CPSD does not object to BRW's application for registration.

We deny the motions for leave to file the Joint Stipulation of Undisputed Facts (Stipulation) and the proposed Settlement Agreement under seal, except as related to Paragraphs 21 through 28 of the Stipulation, which state BRW's California Revenues for the years 2000 through 2008. BRW shall file a new redacted version of the Joint Stipulation, consistent with this order, accompanied by a motion for leave to file the Joint Stipulation under seal, within 30 days.

This proceeding is closed.

## **2. Background and Procedural History**

BRW, a Delaware corporation operating in all states except for Alaska and Hawaii, filed an application for registration as an interexchange carrier with

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<sup>1</sup> All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

<sup>2</sup> Rule 12.1(d) states: The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

authorization to provide resold services statewide on October 10, 2007. BRW stated in its application that the company had never been sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

The CPSD filed a protest on November 9, 2007, on the following grounds:

- Unlawful Provision of Telecommunications Services in California after Revocation of Applicant's Prior CPCN - CPSD alleged that BRW has been unlawfully providing telecommunications services in California without operating authority from the Commission since September 23, 2004, when the Commission revoked BRW's prior CPCN pursuant to Resolution T-16875. The Commission revoked BRW's CPCN based on BRW's failure to file required reports and to pay surcharges as required by Commission decisions and the Commission's wireless registration process. CPSD further alleged that on October 16, 2007, PowerNet Global (PNG) reported that Applicant had signed a wholesale agreement to provide long distance lines with PNG on June 22, 2005 and at that time had 1121 active lines in California. However, Applicant did not re-apply for operating authority in this state until the filing of this application in October 2007.
- Violations of Rule 1.1 - CPSD alleged that Applicant attempted to mislead the Commission by falsely certifying in the application that it had not been sanctioned by a state regulatory agency for failure to comply with any regulatory statute, rule, or order, when, in 2004, this Commission had revoked BRW's CPCN pursuant to Resolution T-16875, based on the company's noncompliance with regulatory requirements. CPSD also alleged that BRW failed to disclose that in 2003, the company had settled a case involving rule violations with the Florida Public Service Commission by making a payment of \$7500 to the State of Florida General Fund. According to CPSD's protest, BRW entered into this settlement with the Florida Public Service Commission

because of alleged violations of Florida Public Service Commission Rule 25-24.470 (Requirement to have a CPCN) and Rule 25-4.043 (Response to Commission staff inquiries).

After the filing of CPSD's protest, this application was reassigned from Director John Leutza to Commissioner Timothy Alan Simon and Administrative Law Judge (ALJ) Myra J. Prestidge.

A prehearing conference was held on February 21, 2008. ALJ Prestidge ordered the parties to meet and confer in an effort to resolve the disputed factual and legal issues in this case. On May 16, 2008, CPSD filed the Stipulation and a motion for leave to file the stipulation under seal. On June 27, 2008, the parties filed a joint motion to adopt proposed Settlement Agreement and to file a confidential version of the Settlement Agreement under seal. On March 10, 2009, the assigned Commissioner and ALJ held a hearing to ask questions on the Settlement.

## **2.1. Statement of the Facts**

BRW and CPSD have stipulated to the following relevant facts:

- BRW is a telephone corporation, as defined in Section 234<sup>3</sup> and operates as a switchless reseller of inter-LATA and, to the extent authorized by Decision (D.) 94-09-065, intra LATA services in California.
- On January 30, 2001, in D.01-01-058, the Commission granted BRW a CPCN which authorized the company to provide resold interexchange services in this state. However, BRW had already been operating in California without authorization since January 1, 2000.

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<sup>3</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

- On September 23, 2004, in Resolution T-16875, the Commission revoked BRW's CPCN utility ID #6484 based on the company's noncompliance with regulatory requirements, including the failure to file required reports and to remit mandatory surcharges to the Commission.
- On October 3, 2007, BRW filed Application 07-10-003 for registration as a telecommunications provider with the Commission and stated in its application that it had never been sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order.
- BRW contends that its non-disclosure of the Commission's previous revocation of its CPCN and its sanctions by the Florida Public Service Commission was inadvertent. BRW claims that it believed that the California State Board of Equalization's emergency user's surcharge was the only applicable California tax that the company was required to pay, and that BRW was unaware of the Commission's previous revocation of its CPCN until being advised of the revocation by one of its vendors, PNG, in September 2007. BRW also contends that it did not believe that it had been sanctioned by the Florida Public Service Commission because the company had settled any alleged violations with the Florida Public Service Commission.
- BRW has operated continuously as a switchless reseller of long distance services in the State of Florida from April 2000 to the present.
- On September 20, 2002, the Florida Public Service Commission issued Order No. PSC-02-1285-PAA-TI, which proposed to penalize BRW a total of \$35,000, including \$25,000 for failure to comply with Florida Administrative Code Rule 25-24.470 (CPCN required), and \$10,000 for failure to comply with FAC Rule 25-4.043 (Response to Commission staff inquiries).

- BRW responded to the above Florida Public Service Commission order with three settlement proposals, which were rejected by the Florida Public Service Commission. The Florida Public Service Commission ultimately agreed to BRW's fourth settlement proposal on February 13, 2003. The terms of the settlement required BRW to pay a penalty in the amount of \$7,500 to the Florida General Revenue Fund. Under this settlement, BRW also agreed to take or had taken the following actions to remedy the alleged violations and to prevent future problems:
  - a. Dedication of a BRW employee as the point person for future inquiries from the Florida Public Service Commission staff and the referral of escalated inquiries from the Florida Public Service Commission staff to BRW's President, Mr. Brad Weinstock.
  - b. Future compliance with all Florida Public Service Commission rules.
  - c. The establishment of procedures and processes to handle all Florida customer complaints in accordance with the rules of the Florida Public Service Commission.
- On August 20, 2007, by Order No. PSC 07-0666-PAA-TI, the Florida Public Service Commission proposed to cancel BRW's IXC tariff and registration based on the company's failure to pay required Regulatory Assessment Fees, unless BRW paid \$500 as a penalty and to cover the cost of collection, and remitted any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, to the Florida Public Service Commission.
- During its investigation of this application, CPSD discovered documents from the Florida Public Service Commission which state that BRW did not respond to the above order and did not pay the penalty or the 2005 Regulatory Assessment Fees.

- On September 14, 2007, the Florida Public Service Commission cancelled BRW's tariff and IXC registration, effective September 14, 2007.
- BRW claims that the cancellation of its tariff and IXC registration by the Florida Public Service Commission was an administrative error, and that BRW has paid all fees due to the Florida Public Service Commission.
- BRW has cooperated with CPSD in its investigation of the current application pending before this Commission.

### **3. The Settlement Agreement**

The principal terms of the Settlement Agreement between BRW and CPSD are as follows:

#### **3.1. Admissions by BRW**

- 1) Operations in California Without Proper Authorization. BRW admits that it operated in California without proper authority from the Commission during the periods from January 1, 2000 through January 31, 2001 and September 23, 2004 through the present, in violation of Sections 702 and 1013(a).
- 2) Failure to Remit Required Fees and Surcharges to this Commission. BRW admits that during the entire period of its operation in California, the company never remitted any of the required fees or surcharges to the Commission, in violation of Sections 405 and 702.
- 3) Amount of Fees and Surcharges Owed for Previous Years. BRW admits that it owes outstanding fees and surcharges for the period from January 1, 2000 through December 31, 2007. The amount of unpaid fees and surcharges, plus simple interest accrued at the rate of 10% per year for this period, is \$41,264.80.

- 4) Surcharges and Fees Owed for 2008. BRW admits that it also owes the Commission its outstanding fees and surcharges for the period from January 1, 2008 to the present.
- 5) Failure to File Required Reports. BRW admits that during the entire period of its operations in California, the company has never filed required reports with the Commission, in violation of Sections 405 and 702.
- 6) Violation of Rule 1.1. BRW admits that it violated, even if inadvertently, Rule 1.1, based on the company's failure to disclose this Commission's revocation of its CPCN in 2004 and the above-described sanctions by the Florida Public Service Commission in this application.

### **3.2. Payment of Outstanding Fees, Surcharges, Interest, and Fine by BRW**

- 1) Payment of Fees and Surcharges for 2008. On or before August 10, 2008, BRW shall remit to the Commission all outstanding surcharges and fees due to this Commission for the period from January 1, 2008 through July 31, 2008. No interest shall accrue on this amount so long as the Commission receives payment in full from BRW on or within five days after this due date. If BRW defaults on this payment, interest shall accrue on any unpaid balance at the rate of 10% per year calculated as compound interest, commencing on the default date. BRW shall be deemed to be in default if full payment is not received by five days after the due date. BRW has complied with this provision of the Settlement Agreement.
- 2) Payment of Fees and Surcharges for Years 2000-2007. BRW shall pay to the Commission \$41,264.80, which consists of the balance owed for unpaid fees for 2000 through 2007 plus simple interest calculated at the rate of 10% per year. Within 30 days of Commission approval of the Settlement Agreement, BRW shall make the first payment to the Commission of \$10,000, which shall be applied toward the outstanding balance for overdue surcharges and fees. BRW shall pay the remaining balance of \$31,264.80 in 21 equal monthly installments of \$1629.05, commencing within

60 days of approval of the Settlement Agreement by the Commission. As of the payment commencement date, interest shall continue to accrue on any remaining unpaid balance at the rate of 10% per year calculated as compound interest.

- 3) Manner of Making Installment Payments. BRW's installment payments shall be made by separate checks to the different Public Purpose Programs along with a completed copy of the Combined California Public Utilities Commission (CPUC) Telephone Surcharge Transmittal Form "Special Transactions," as specified in the Settlement Agreement.
- 4) Payment of Fine by BRW. BRW has agreed to pay a fine of \$20,000 to the California State General Fund in settlement of violations stated in the Settlement Agreement. Payment of the fine shall commence within 60 days of the Commission's approval of the Settlement Agreement. BRW shall make 21 monthly installment payments. The first payment shall be in the amount of \$952.38, and subsequent payments shall be in the amount of \$952.40. No interest shall accrue on the fine amount unless BRW defaults on its payment obligations. BRW shall be deemed in default if the full installment payment is not received by the Commission within five days of the due date. If BRW defaults on any of these installment payments, CPSD may impose a late fee of 10% of the unpaid installment amount for each and every month that BRW has defaulted on payment.
- 5) Final Settlement and Release. Upon BRW's payment of all fees, surcharges, interest, and fines as stated above, this Settlement Agreement releases BRW and constitutes a final settlement of any and all costs, direct or indirect, known or unknown, accruing to or incurred by the Commission during the course of investigation and review in this proceeding.

### **3.3. Filing of Required Reports by BRW**

BRW shall timely file all required reports for 2008 and for all future years in which BRW continues to provide services in California within this Commission's jurisdiction.

### **3.4. Filing of Amended Application**

Within 30 days of the Commission's approval of the Settlement Agreement, BRW shall file an amended application, which discloses this Commission's previous revocation of BRW's CPCN and the sanctions previously imposed by the Florida Public Service Commission.

### **3.5. Withdrawal of Protest by CPSD**

CPSD proposes to withdraw its protest within five days of the effective date of this order.

### **3.6. Monitoring of BRW by CPSD**

- 1) Quarterly Reports by BRW Regarding Payments Made. BRW shall inform CPSD every three months of all payments made in satisfaction of the terms of the Settlement Agreement by providing CPSD with an electronic spreadsheet, which reports all payments made and payment dates, until all balances recited in the Settlement Agreement are paid in full.
- 2) Bank Statements. Upon CPSD's request, BRW shall provide CPSD with copies of its bank statements.

### **3.7. Enforcement of Settlement Agreement**

- 1) Each Material Breach is a Separate Violation. Every material breach of the Settlement Agreement is a separate violation, and the Commission may take all necessary action to enforce its orders.
- 2) Commission Jurisdiction. The parties agree that the Commission has primary jurisdiction over the interpretation,

enforcement, or remedies pertaining to the Settlement Agreement. No party may bring an action related to the Settlement Agreement in any local, state, or federal court or administrative agency, without having first exhausted its administrative remedies at the Commission.

- 3) Settlement Agreement is Binding on Parties and Successors. The Settlement Agreement is binding on all parties and their successors.
- 4) Effect of Settlement Agreement on Enforcement by CPSD or Commission Action Based on BRW's Violations. After the issuance date of the Commission decision adopting the Settlement Agreement, CPSD will initiate no enforcement action and seek no administrative or other penalties against BRW based on the evidence of violations recited in the Settlement Agreement, unless BRW breaches the Settlement Agreement or violates the Commission order approving it. This provision shall not prohibit the Commission from considering the violations described in the Settlement Agreement, including the Rule 1.1 violation, if its finds that Application committed violations of Rule 1.1, other Commission Rules and regulations, or Public Utilities Code provisions related to BRW's operations.
- 5) Support of Settlement Agreement by the Parties. The parties agree that they will not take other action that would be inconsistent in any manner with fully supporting the Settlement Agreement. The parties agree to furnish additional information, documents, and/or testimony as the Commission or CPSD may request to implement the Settlement Agreement.
- 6) The Settlement Agreement Is Not a Binding Admission or Concession in Other Proceedings. The parties agree that neither the Joint Statement of Undisputed Facts nor anything else contained in the Settlement Agreement constitutes a binding admission or concession in any other proceeding.

7) Knowing and Voluntary Entry into Settlement Agreement.

The parties agree that each of them is entering into the Settlement Agreement freely and voluntarily, and has had its respective attorney or other authorized person review the terms of the Settlement Agreement. Each party states that it has read and fully understands its rights, privileges, and duties under the Settlement Agreement. The parties stipulate that the Settlement Agreement is fair and is not the result of any fraud, duress, or undue influence by any other party.

#### 4. Discussion

In this case, we must evaluate whether the Settlement Agreement between BRW and CPSD meets Commission requirements for approval. Under Rule 12.1(d), the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is:

- Reasonable in light of the whole record,
- Consistent with the law, and
- In the public interest.

We find that the Settlement Agreement meets the criteria for approval under Rule 12.1(d), as follows:

##### **4.1. The Settlement is Reasonable in Light of the Whole Record.**

Under D.00-09-034, a proposed settlement is reasonable if it saves the Commission significant expenses and use of its resources, when compared to the risk, expense, complexity, and likely duration of further proceedings.<sup>4</sup> The

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<sup>4</sup> D.00-09-034, 2000 CPUC LEXIS 694, at p. 29.

parties' evaluation should carry material weight in the Commission's review of a settlement.<sup>5</sup>

Here, the proposed Settlement will save the Commission the further expense and commitment of resources involved in litigating this case to a Commission decision and possibly through the rehearing process. Since BRW has admitted the violations and has agreed that the Settlement Agreement is reasonable, continued litigation of this case is not necessary to resolve disputed issues or to protect the rights of the parties to a full and fair hearing.

Further, the terms of the Settlement Agreement that require BRW to file required reports and pay the fees and surcharges owed for 2008, to file required reports and pay required fees in the future, to pay back fees and surcharges with interest, to pay a reasonable fine to the State General Fund based on the violations, and to file a new application for registration which discloses this Commission's previous revocation of BRW's CPCN and BRW's settlement with the Florida Public Service Commission are reasonable steps to remedy BRW's noncompliance with Commission and legal requirements in the past and to deter future violations. BRW has already complied with the requirement to pay its fees and surcharges owed to the Commission to date for 2008.

The amount of the penalty agreed to in the Settlement Agreement is also reasonable in light of the number and seriousness of the violations committed by BRW. Under Section 405, the Commission may impose a penalty of up to 25% of fees and surcharges owed by a telecommunications carrier, if the carrier is in

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<sup>5</sup> *Id.* at p. 31.

default of these obligations for 30 days or longer.<sup>6</sup> Here, since BRW failed to pay required fees and surcharges to the Commission for approximately eight years, it is reasonable for the Commission to impose the maximum permitted penalty for these violations. The remainder of the \$20,000 penalty is reasonable based on BRW's unlawful operations in this state without a CPCN for approximately five years and its violation of Rule 1.1 in this application, and is legally permissible under Section 2107 and 2108.<sup>7</sup> BRW is subject to a penalty for its violation of Rule 1.1, even if the violation was inadvertent, as claimed by BRW.<sup>8</sup> We note that in a prior decision, the Commission imposed a fine of \$10,000 per violation solely for Rule 1.1 violations, which the utility claimed were not intentional.<sup>9</sup> The amount of the penalty imposed by the Settlement Agreement is substantial enough to deter future violations by BRW, but, with the permitted

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<sup>6</sup> Since BRW owes the Commission \$41,264.80 in back penalties and surcharges for the years 2000-2007, a 25% penalty would equal \$10,316.20. The Commission could impose an additional penalty for late payment of the fees and surcharges owed for 2008.

<sup>7</sup> Section 2107 states: § 2107. Penalty for offenses not otherwise provided.

Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.

Further, under Section 2108, each day on which a violation continues to exist may be considered a separate violation.

<sup>8</sup> See D.01-08-019.

<sup>9</sup> *Id.*

installment payments and the ability of BRW to avoid paying interest by making timely payments, is reasonable for a relatively small company, such as BRW.

However, we do not approve CPSD's proposal to withdraw its protest upon Commission approval of the Settlement Agreement, because we believe that CPSD's protest should remain part of the record of this proceeding. We note that upon the approval of this Settlement Agreement, CPSD is no longer objecting to BRW's application for registration, so long as BRW is in full compliance with the Settlement Agreement. BRW does not object to CPSD's protest remaining on file in the proceeding as part of the record.

The remaining provisions of the Settlement Agreement are also consistent with the record as a whole.

#### **4.2. The Settlement is Reasonable in Light of the Whole Record.**

The Agreement is consistent with the applicable law because it enforces state laws and Commission Rules and orders that were violated by BRW and imposes reasonable penalties consistent with Sections 405, 2107, and 2108.

BRW has admitted the following violations of state laws, as well Commission Rules and orders:

- Section 1001, which requires telecommunications companies operating in California to obtain and maintain a CPCN,<sup>10</sup> and
- Section 702,<sup>11</sup> by failing to pay surcharges and fees and to file reports with the Commission, as required by D.01-01-058,

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<sup>10</sup> Under Section 1013, the Commission may in some cases exempt telecommunications carriers from the requirement of obtaining a CPCN or may permit telecommunications carriers to undergo registration with the Commission, as an alternative to obtaining a CPCN.

and by failing to disclose this Commission's prior revocation of its CPCN and the imposition of sanctions by the Florida Public Service Commission in this application, as required by Commission Rule 1.1.

The penalty imposed on BRW by the Settlement Agreement is authorized by Sections 405 and 2107, as explained above.

Moreover, the Settlement Agreement appears not to violate any other provision of state or federal law.

#### **4.3 The Settlement is in the Public Interest**

The Settlement Agreement is in the public interest, because it will resolve the issues raised by the parties without the need for extensive, time-consuming, and costly Commission proceedings and litigation, remedies the violations committed by BRW, and will promote the future compliance of BRW with Commission and legal requirements. BRW's payment of all fees and surcharges owed to the Commission will also benefit the public by increasing the funds available for the Commission's public purpose programs.

Further, the Settlement Agreement's requirement that BRW pay a penalty for its violation of Rule 1.1 and file a new application for registration, which acknowledges the prior revocation of its California CPCN and the sanctions imposed by the Florida Public Service Commission, helps to protect the integrity

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<sup>11</sup> Section 702. Compliance with commission's orders and directions:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

of the Commission's registration process for telecommunications carriers and thereby benefits the public. The Settlement Agreement also protects the public interest by providing that the Commission may consider this order in considering any future application by BRW for registration or for a CPCN.

In addition to the above criteria applicable to all settlements, we note that the Settlement Agreement fairly represents the affected interests, since BRW represents the interests of its shareholders, and CPSD represents the interests of BRW ratepayers and advocates for all ratepayers in this state and the public. Finally, we note the Settlement Agreement includes sufficient information regarding the rights and obligations of the parties and is adequately clear for the parties and the Commission to understand its terms and for the parties to carry out the agreement.

##### **5. Motion to File Certain Documents under Seal**

The parties have filed motions for leave to file confidential versions of the Joint Stipulation and the Settlement Agreement under seal, based on BRW's belief that these documents contain confidential and proprietary information. CPSD contends that none of the information is propriety or confidential, except for certain portions of the Stipulation related to BRW's business operations and revenues.

We find that none of the information in the Joint Stipulation and the Settlement Agreement is confidential, except for Paragraphs 10-12 and Paragraphs 19 through 28 of the Stipulation, regarding BRW's business operations and its California revenues for the years 2000 through 2008. We therefore deny the motion to file the Joint Stipulation and the Settlement Agreement under seal, except for Paragraphs 10-12 and Paragraphs 19 through 28 of the Stipulation. Within 30 days, BRW shall file a new redacted

version of the Settlement Agreement, accompanied by a motion for leave to file the document under seal, as consistent with this order.

## **6. Conclusion**

For all of the foregoing reasons, we grant the motion of BRW and CPSD for approval of the Settlement Agreement and approve the Settlement Agreement without modification, except that CPSD's protest shall remain on file as part of the record. However, as an additional requirement, BRW must reference this decision in any future application for registration or for a CPCN filed with this Commission.

## **7. Categorization and Need for Hearings**

On October 18, 2007, in Resolution ALJ 176-3201, we preliminarily categorized this proceeding as ratesetting and determined that a hearing is not necessary. Based on our further review of this application, and the hearing held on March 10, 2009, we find that a hearing is necessary, and therefore alter the preliminary determination regarding hearing made in Resolution ALJ 176-3201.

## **8. Comments on Proposed Decision**

The proposed decision of the ALJ Prestidge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 3, 2009, by CPSD. CPSD's comments pointed out two minor technical errors in the decision. We have corrected the decision accordingly.

## **9. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. On October 18, 2007, in Resolution ALJ 176-3201, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing is not necessary.

2. BRW is a Delaware corporation currently operating in California.

3. BRW filed this application for registration as a telecommunications provider on October 3, 2007.

4. BRW certified in this application that the company has never been sanctioned by the FCC or a state regulatory agency for failure to comply with any regulatory statute, rule, or order.

5. On November 9, 2007, CPSD filed a protest which alleged that: (a) BRW has been unlawfully operating in this state without a CPCN since September 23, 2004, when this Commission revoked BRW's CPCN pursuant to Resolution T-16875, and (b) BRW attempted to mislead the Commission in this application in violation of Rule 1.1 by failing to disclose the previous revocation of its CPCN and a previous settlement of rule violations between BRW and the Florida Public Service Commission.

6. This Commission previously granted BRW a CPCN authorizing the provision of resold interexchange services in this state pursuant to D.01-01-058.

7. On September 23, 2004, in Resolution T-16875, this Commission revoked BRW's CPCN, based on the company's noncompliance with regulatory requirements.

8. In 2003, BRW entered into a settlement with the Florida Public Service Commission, which required BRW to pay a penalty of \$7,500 to the Florida General Revenue Fund and to take other corrective actions, based on alleged rule violations.

9. BRW admits that it violated Rule 1.1 by its failure to disclose the prior revocation of its CPCN and its settlement with the Florida Public Service Commission, but claims that this violation was inadvertent.

10. BRW claims that it was unaware of this Commission's revocation of its CPCN, until one of BRW's vendors advised of the revocation in 2007.

11. BRW claims that it was unaware that it needed to disclose its settlement with the Florida Public Service Commission in this application.

12. BRW admits that it has continued to operate unlawfully in this state since this Commission's revocation of the company's CPCN in Resolution T-16875.

13. BRW admits that it operated unlawfully in this state from January 1, 2000 to January 31, 2001, before acquiring the CPCN that was later revoked by this Commission in Resolution T-16875.

14. BRW admits that it has never paid required fees and surcharges or filed required reports with the Commission at any time during its approximately eight years of operations in this state.

15. BRW claims that it believed that the California State Board of Equalization's emergency user's tax was the only tax that the company needed to pay.

16. BRW currently owes outstanding fees and surcharges for the period from January 1, 2000 through December 31, 2007, plus simple interest accrued at the rate of 10% per year, in the amount of \$41,264.80.

17. BRW admits that it also currently owes the Commission fees and surcharges for 2008.

18. The Settlement Agreement remedies the violations committed by requiring BRW to do the following: (a) file a new application for registration that discloses this Commission's previous revocation of BRW's CPCN and BRW's

settlement with the Florida Public Service Commission; (b) pay a fine of \$20,000 to the State General Fund in installment payments, as specified in the Settlement Agreement; (c) pay fees and surcharges owed to this Commission for 2008 by no later than August 10, 2008; (d) pay back fees and surcharges owed to the Commission for 2000-2007 in the amount of \$41,264.80, which includes simple interest calculated at 10% per year, in installment payments as specified in the Settlement Agreement, plus additional interest accrued on the unpaid balance at the rate of 10% per year calculated as compound interest; (e) file required reports for 2008 and timely file all required reports with the Commission in the future; (f) provide CPSD with an electronic spreadsheet which shows all payments made and payment dates every three months, until all balances recited in the Settlement Agreement are paid in full; and (g) provide CPSD with a copy of BRW's bank statements upon request.

19. CPSD has proposed to withdraw its protest within five days of the effective date of this order.

20. Upon the approval of the Settlement Agreement, CPSD no longer objects to BRW's application for registration, so long as BRW remains in full compliance with the Settlement Agreement.

21. BRW has already complied with the provision of the Settlement Agreement that required payment of fees and surcharges owed to the Commission for 2008 to date.

22. CPSD has agreed that, upon the effective date of this order, CPSD will take no further enforcement action against BRW based on the violations stated in the Settlement Agreement, unless BRW violates the Settlement Agreement or this order.

23. The fine of \$20,000 imposed on BRW pursuant to the Settlement Agreement is reasonable, based on the number, duration, and seriousness of BRW's violations, as well as the opportunity for BRW to make installment payments and to avoid interest on the fine by making timely payments.

24. BRW is subject to a fine for its violations, including noncompliance with Rule 1.1, even if the violations were inadvertent, as claimed by BRW.

25. The Settlement Agreement is reasonable in light of the whole record, because it saves the Commission the expense, risk, and duration of further proceedings on this case; remedies the violations committed by BRW; deters future violations by BRW; and allows CPSD the opportunity to monitor BRW's compliance with the Settlement Agreement, provided that CPSD's protest remains on file as part of the record of this proceeding.

26. The Settlement Agreement is in the public interest because it: (a) resolves the issues without the need for extensive, time-consuming and costly litigation; (b) remedies the violations committed by BRW; (c) promotes the future compliance of BRW with regulatory requirements; (d) increases the funds available for the Commission's public purpose programs, through BRW's payment of fees and surcharges owed for 2000 through 2008; (e) upholds the integrity of the Commission's registration process for telecommunications carriers; and (f) permits CPSD to monitor BRW's compliance with the Settlement Agreement.

27. The Settlement Agreement fairly represents the affected interests, because BRW represents the interests of its shareholders, and CPSD represents the interest of BRW ratepayers and all ratepayers in this state.

28. The Settlement Agreement includes sufficient information regarding the rights and obligations of the parties and is adequately clear for the parties and the Commission to understand its terms and for the parties to implement it.

29. The parties agree that they have freely, voluntarily, and knowingly entered into the Settlement Agreement, that the Settlement Agreement is fair and reasonable, and that each party has had the opportunity for representation by counsel.

30. All active parties have agreed to settle this case, after extensive discussions and review of the record.

31. Conducting further proceedings and litigating the issues in this case, would unnecessarily consume the time and valuable resources of the Commission and the parties.

32. BRW and CPSD have stipulated that no statements in the Settlement Agreement or the Stipulation shall be a binding admission or concession in any other proceeding, and that this Settlement shall not be precedent in any other Commission proceeding.

### **Conclusions of Law**

1. The Settlement Agreement fully resolves and settles all disputed issues between the parties in this proceeding.

2. The amount of the fine imposed on BRW by the Settlement Agreement is permissible under state law.

3. The Settlement Agreement is consistent with the applicable law and prior Commission decisions.

4. The Settlement Agreement is in the public interest and should be approved.

5. The Settlement Agreement shall not be precedent in any future Commission proceeding.

6. Based on our review of this application, there is no need to alter the preliminary determination made in Resolution ALJ 176-3201 as to the category of this proceeding, but we alter the preliminary determination regarding hearings, and determine a hearing is necessary.

7. This decision should be effective today so that the Settlement Agreement will take effect immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The joint motion of Bigredwire.com, Inc. and the Commission Consumer Protection and Safety Division for adoption of the proposed Settlement Agreement, which is on file in this proceeding, is granted.

2. The Settlement Agreement is approved without modification, except that Consumer Protection and Safety Division's protest shall remain on file as part of the record in this proceeding.

3. Bigredwire.com, Inc. shall comply with all terms of the Settlement Agreement in a timely manner. Specially, Bigredwire.com, Inc. shall (a) file a new application for registration that discloses this Commission's previous revocation of Bigredwire.com, Inc.'s Certificate of Public Convenience and Necessity and Bigredwire.com, Inc.'s settlement with the Florida Public Service Commission; (b) pay a fine of \$20,000 to the State General Fund in installment payments, as specified in the Settlement Agreement; (c) pay fees and surcharges owed to this Commission for 2008 by no later than August 10, 2008 referencing such payment with their former utility ID #6484; (d) pay back fees and

surcharges owed to the Commission for 2000-2007 in the amount of \$41,264.80, which includes simple interest calculated at 10% per year, in installment payments as specified in the Settlement Agreement, plus additional interest accrued on the unpaid balance at the rate of 10% per year calculated as compound interest; (e) file required reports for 2008 and timely file all required reports with the Commission in the future; (f) provide Consumer Protection and Safety Division with an electronic spreadsheet which shows all payments made and payment dates every three months, until all balances recited in the Settlement Agreement are paid in full; and (g) provide Consumer Protection and Safety Division with a copy of Bigredwire.com, Inc.'s bank statements upon request.

4. Consumer Protection and Safety Division shall also comply with the Settlement Agreement (except that its protest shall remain on file) and shall monitor Bigredwire.com, Inc.'s compliance.

5. Consumer Protection and Safety Division's protest shall remain on file as part of the record in this proceeding.

6. Bigredwire.com, Inc. shall file a new application for registration as a telecommunications utility in this state, in a manner consistent with the Settlement Agreement and this order, within 30 days.

7. Bigredwire.com, Inc. shall disclose this order in any subsequent application(s) for a Certificate of Public Convenience and Necessity or for registration as a telecommunications provider in this state.

8. The Settlement Agreement shall not be precedent in any other Commission proceeding.

9. Neither the Joint Statement of Undisputed facts nor any other statement in the Settlement Agreement shall be a binding admission or concession of either party in any other proceeding.

10. The motions to file the Joint Stipulation of Undisputed Facts (Stipulation) and the Settlement Agreement under seal are denied, except as to Paragraphs 10 through 12 and Paragraphs 19 through 28 of the Stipulation. Bigredwire.com, Inc. shall file a new redacted version of the Stipulation consistent with this order, accompanied by a motion for leave to file the Stipulation under seal, within 30 days.

11. Application 07-10-003 is closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners