

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation  
by Florida Public Service  
Commission of CLEC Certificate  
No. 7880 issued to W.G.I.  
Communications, Inc. d/b/a  
Boomerang Communications, Inc.,  
effective 9/15/03.

DOCKET NO. 030632-TX  
ORDER NO. PSC-03-1336-PAA-TX  
ISSUED: November 24, 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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING CANCELLATION OF COMPETITIVE LOCAL  
EXCHANGE CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc. (W.G.I.) currently holds Certificate of Public Convenience and Necessity No. 7880, issued by the Commission on August 27, 2001, authorizing the provision of Competitive Local Exchange service. The Division of the Commission Clerk and Administrative Services advised our staff that W.G.I. had not paid the 2001 and 2002 Regulatory Assessment Fees (RAFs). Also, accrued statutory penalties and interest charges for late RAFs payments for the 2001 and 2002 had not been paid.

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ORDER NO. PSC-03-1336-PAA-TX  
DOCKET NO. 030632-TX  
PAGE 2

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Competitive Local Exchange service.

On December 12, 2002, The Division of the Commission Clerk & Administrative Services mailed the 2002 RAF return form notifying the company that payment was due by January 30, 2003. The Office of the General Counsel mailed a delinquent notice via certified mail on February 21, 2003. The delinquent notice was signed for and delivered on February 27, 2003. The Division of the Commission Clerk & Administrative Services notified our staff that this company had not paid its 2002 RAF. Our staff again wrote the company and explained that the 2002 RAFs had not been paid and that in order to avoid an enforcement docket from being established, the RAFs needed to be paid by April 30, 2003.

After our staff faxed the company a note attempting collection, Docket No. 030632-TX was established on July 16, 2003, for nonpayment of the 2002 RAFs. On August 15, 2003, we received notice that this company filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court, Middle District of Florida, Tampa Division (Case No. 03-05415). Our staff proceeded to faxed the company's attorney, Mr. Chad Bowen, a letter and asked him to request cancellation of W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc.'s CLEC certificate if the company no longer existed and had no need of the certificate. We received that request in a letter dated September 12, 2003. Also on this date, our staff requested that the docket title be changed to reflect that this would be a bankruptcy cancellation. As of October 3, 2003 there were no outstanding consumer complaints against the company

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the

enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt. However, in this case, the company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due RAFs should not be sent to the Department of Financial Services for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

Accordingly, we find it appropriate to cancel Competitive Local Exchange Certificate No. 7880, effective September 15, 2003. If W.G.I.'s certificate is canceled in accordance with this Order, W.G.I. shall immediately cease and desist providing Competitive Local Exchange services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc.'s Certificate No. 7880 to provide Competitive Local Exchange services is hereby canceled, effective September 15, 2003. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request permission to write-off the uncollectible amount. It is further

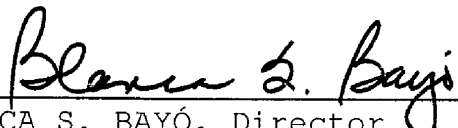
ORDERED that if W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc.'s Certificate No. 7880 is canceled in accordance with this Order, that entity shall immediately cease and desist providing Competitive Local Exchange services in Florida. It is further

ORDER NO. PSC-03-1336-PAA-TX  
DOCKET NO. 030632-TX  
PAGE 4

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th Day of November, 2003.

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

( S E A L )

VSM

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

ORDER NO. PSC-03-1336-PAA-TX  
DOCKET NO. 030632-TX  
PAGE 5

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 15, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.