



# Public Service Commission - FPSC

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**-M-E-M-O-R-A-N-D-U-M-** COMMISSION  
CLERK

**DATE:** OCTOBER 22, 2003

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*  
OFFICE OF THE GENERAL COUNSEL (MCKAY) *USM DK*

**RE:** DOCKET NO. 030632-TX - 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. *WMB*

**AGENDA:** 11/03/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\030632.RCM

## CASE BACKGROUND

- **08/27/01** - This company obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company (CLEC) Certificate No. 7880.
- **05/21/02** - The company paid its 2001 Regulatory Assessment Fee (RAF) and reported no revenues for the period ended December 31, 2001.
- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 RAF return form and payment was due by January 30, 2003.
- **02/21/03** - The Office of the General Counsel mailed a delinquent notice via certified mail. The US Postal Service

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returned the certified receipt which showed the delinquent notice was signed for and delivered on February 27, 2003.

- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid its 2002 RAF.
- **04/11/03** - Staff wrote the company and explained that the 2002 RAF had not been paid and that in order to avoid an enforcement docket from being established, the RAF needed to be paid by April 30, 2003.
- **06/26/03** - Staff faxed the company a note attempting collection prior to establishing a docket.
- **07/16/03** - The company did not pay the past due amount or contact staff; therefore, Docket No. 030632-TX was established for nonpayment of the 2002 RAF.
- **08/15/03** - The Commission 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).
- **08/29/03** - Staff 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.
- **09/15/03** - The Commission received a letter dated September 12, 2003 from Mr. Chad S. Bowen, Attorney for the company, requesting cancellation of W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc.'s CLEC certificate. Also on this date, staff requested that the docket title be changed to reflect that this would be a bankruptcy cancellation.
- **10/03/03** - As of this date, there are no outstanding consumer complaints against W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida

Statutes. Accordingly, staff believes the following recommendations are appropriate.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc. cancellation of its CLEC Certificate No. 7880 due to bankruptcy?

**RECOMMENDATION:** The Commission should grant the company a bankruptcy cancellation of its CLEC Certificate No. 7880 with an effective date of September 15, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, including penalty and interest charges for the year 2002, should not be sent to the Florida Department of Financial Services for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. If the company's CLEC certificate is cancelled in accordance with the Commission's Order from this recommendation, W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc. should be required to immediately cease and desist providing competitive local exchange services in Florida. **(Isler; McKay)**

**STAFF ANALYSIS:** 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)(4) 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. 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 pre-petition debt. However, in this case, the company's attorney has requested cancellation of W.G.I. Communications, Inc.

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d/b/a Boomerang Communications, Inc.'s CLEC certificate. Under those circumstances, this Commission is free to do so.

Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On August 15, 2003, the Commission received notice that W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc. had filed for Chapter 11 bankruptcy protection. On September 15, 2003, the Commission received a letter from Mr. Chad S. Bowen, Attorney for the company, which advised that the company had ceased operations and had no customers. Mr. Bowen also requested cancellation of the company's CLEC certificate and asked that any unpaid Regulatory Assessment Fees be written-off.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its CLEC Certificate No. 7880 with an effective date of September 15, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, including penalty and interest charges for the year 2002, should not be sent to the Florida Department of Financial Services for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. If the company's CLEC certificate is cancelled in accordance with the Commission's Order from this recommendation, W.G.I. Communications, Inc. d/b/a Boomerang Communications, Inc. should be required to immediately cease and desist providing competitive local exchange services in Florida.

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**ISSUE 2:** 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. The docket should then be closed.  
**(McKay)**

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 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 the issuance of the Order, this docket should be closed upon issuance of a Consummating Order.