

Agenda Date: October 23, 2002
Item Number: A2

Docket: UT-020473
Company Name: BG Enterprises, Inc.

Staff: Dennis Shutler, Compliance Specialist, Business Practices Investigations
Vicki Elliott, Assistant Director, Consumer Affairs

Recommendation:

Issue a Complaint against BG Enterprises, Inc. Accept the proposed Settlement Agreement to resolve the Complaint.

Discussion:

The proposed Complaint and Settlement Agreement in this matter comes from a Staff investigation into the billing, disconnection, and rates and charges practices of BG Enterprises, Inc. (BG Enterprises).

In February 2002, Staff initiated a broad review of specific telecommunications companies specializing in advertising and providing basic local residential service to customers that have been disconnected by the traditional incumbent local exchange company because the customer had an unpaid, overdue balance. These companies generally offer such service without a deposit, but at considerably higher prices. In this case, BG Enterprises offers basic local residential service for \$49.99 per month. The company has about 300 customers in Washington State.

Staff began this investigation on March 1, 2002. In its investigation, Staff found a number of violations of WAC 480-120-106(1), failing to issue a bill each month; WAC 480-120-081(2)(a), failing to allow a payment period of fifteen days; WAC 480-120-081(5)(a) and (b), failing to provide proper notice prior to disconnection of service; and RCW 80.36.130, billing customers rates and charges not listed in the price list on file with the Commission.

Staff completed its report of findings on June 10, 2002. That same month, Staff notified BG Enterprises of its findings and invited the company to enter into discussions to resolve these issues. Staff and BG Enterprises shared information and discussed a possible resolution. These discussions resulted in the proposed Settlement Agreement presented today.

Briefly, in the Agreement, BG Enterprises has agreed to make changes to its processes and procedures so that it is able to comply with applicable rules and statutes. In addition, BG Enterprises has agreed to pay the Commission a total penalty of \$5,000. This amount represents penalties of \$1,000 for one violation of each of the following rules:

- WAC 480-120-081(2)(a) for failing to allow its customers fifteen days to pay their bill;
- WAC 480-120-081(5)(a) for failing to provide its customers a written notice of service disconnection;
- WAC 480-120-081(5)(b) for failing to provide its customers a proper second notice of service disconnection;

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- WAC 480-120-106(1) for failing to issue its customers a regularly rendered billing statement clearly listing all charges;
- RCW 80.36.130(1) for billing customers rates and charges not listed in its current price list on file with the Commission.

Recommendation

Staff recommends the Commission issue a Complaint against BG Enterprises, Inc., and accept the proposed Settlement Agreement to resolve the Complaint.

ATTACHMENT

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UT-020473
)	
Complainant,)	
)	SETTLEMENT AGREEMENT
v.)	
)	
BG ENTERPRISES, INC.)	
)	
Respondent.)	
.....)	

1 This Settlement Agreement is entered into by all parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are BG Enterprises, Inc. and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, “the Parties”).

II. BACKGROUND

3 Staff initiated an investigation into the billing, disconnection, and rates and charges practices of BG Enterprises, Inc. Staff issued a report with its findings on June 10, 2002.

III. AGREEMENT

4 The Parties have reached agreement on the issues raised in the above docket and wish to present their agreement for the Commission’s consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties entered into voluntarily to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

5 The Parties agree that BG Enterprises has violated several Commission rules and will pay the Commission monetary penalties totaling \$5,000. This amount represents penalties of \$1,000 for 1 violation of WAC 480-120-106(1); \$1,000 for 1 violation of WAC 480-120-081(2)(a); \$1,000 for 1 violation of WAC 480-120-081(5)(a); \$1,000 for 1 violation of WAC 480-120-081(5)(b); and \$1,000 for 1 violation of RCW 80.36.130(1). The total amount shall be ordered due and payable 15 days after the Commission issues an order adopting this Agreement.

6 The Parties agree that BG Enterprises will comply with all applicable Commission rules. Under the Settlement Agreement, BG Enterprises commits to full compliance with Washington's form of billing rules set forth in WAC 480-120-106(1); disconnection rules set forth in WAC 480-120-081(2)(a), WAC 480-120-081(5)(a), and WAC 480-120-081(5)(b); and rates and charges rules set forth in RCW 80.36.130(1).

7 The Parties agree that this Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules not related to the subject matter of this Agreement, or for subsequent violations of WAC 480-120-106(1); WAC 480-120-081(2)(a); WAC 480-120-081(5)(a); WAC 480-120-081(5)(b); and RCW 80.36.130(1).

IV. GENERAL PROVISIONS

8 The Parties agree that this Settlement Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is not binding on the Commission unless and until the Commission adopts the Agreement.

9 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

10 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

11 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

12 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

13 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

14 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 days. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek

reconsideration of the Order rejecting all or part of the Agreement. Additionally, the Parties will jointly request a prehearing conference be reconvened for purposes of establishing a procedural schedule to complete the case.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION STAFF

CHRISTINE O. GREGOIRE
Attorney General

BG ENTERPRISES, INC.

LISA WATSON
Assistant Attorney General
Counsel for Commission Staff
Dated: _____, 2002.

THOMAS C. ORR
Attorney and Counselor at Law
Regulatory Compliance Consultant
Dated: _____, 2002.