

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET NO. UT-023063
)	
BG Enterprises, Inc.)	
d/b/a Grizzly Telephone)	ORDER GRANTING
)	DESIGNATION AS AN ELIGIBLE
For designation as an Eligible)	TELECOMMUNICATIONS
Telecommunication Carrier)	CARRIER
.....)	

BACKGROUND

- 1 The Federal Telecommunications Act of 1996 (Act) substantially altered national telecommunications policy and contemplated that the states, acting through their state public utility commissions, would implement that policy by conducting various proceedings as outlined in the Act. The federal policy embodied in the Act coincides, to a great extent, with the preexisting telecommunications policies of Washington State as expressed by the Legislature and implemented by this Commission.

- 2 The Act, as well as Washington law, embraces the policy that certain telecommunications services should be universally available. Congress articulated the basics of what should be included as part of “universal service,” in 47 U.S.C. §254(b), and established a Federal-State Joint Board on Universal Service to recommend to the Federal Communications Commission the details of what should be included within the concept of universally available telecommunications service. These services are to be supported for low-income customers by money from a fund which is supported by carrier contributions. 47 U.S.C. §254(d); *Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996), and First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997) (Universal Service Order).*

- 3 Congress provided that certain carriers, when designated “eligible telecommunications carriers” (ETCs), may draw from the fund for their provision of the described services to low-income consumers. The following services must be provided by a telecommunications carrier in order to be eligible

for federal universal-service support: single-party service; voice-grade access to the public switched network; dual-tone multi-frequency signaling or its functional equivalent; access to emergency services, including, in some circumstances, access to 911 and E911; access to operator services; access to interexchange services; access to directory assistance; and lifeline and link-up programs, including free toll-limitation services for qualifying low-income consumers.

- 4 Congress left to the state public utility commissions the task of designating “eligible telecommunications carriers.” *47 U.S.C. § 214(e)(2)*. In 1998, the Washington State Legislature authorized the Commission to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Federal Telecommunications Act of 1996. *RCW 80.36.610*.

MEMORANDUM

I. PETITION

- 5 On December 9, 2002, BG Enterprises, Inc. d/b/a Grizzly Telephone, filed with the Commission a petition seeking designation as an eligible telecommunications carrier for the entire state of Washington. It filed an amended petition on December 16, 2002, for the purpose of limiting its request for designation to all the exchanges served by Qwest Corporation.
- 6 BG Enterprises is a reseller of Qwest services in Washington. It is registered in Washington as a competitive local exchange carrier.

II. STATUTORY BACKGROUND AND JURISDICTION

- 7 Section 214(e) of the Act sets forth the standards and processes for a state public utility commission designation of an eligible telecommunications carrier.
- 8 This section in effect states two general criteria for designating a carrier as an ETC: (1) the carrier must offer the “services” that are supported by the federal fund, and (2) the carrier must advertise the availability of those services. The carrier must fulfill these criteria “throughout the service area for which the designation is received.” *47 U.S.C. §214(e)(1)*.

9 The Commission has jurisdiction over this petition both because of the 1996 Act and because of those provisions of state law which give the Commission authority over the rates and practices of telecommunications companies and its power to define the scope and nature of a carrier's service obligation. *RCW 80.01.040(3), 80.36.080, 80.36.090, 80.36.140, 80.36.230, 80.36.610.*

B. Waiver for Requirement of Providing Toll Limitation

10 All wireline petitioners who requested designation as an ETC prior to BG Enterprises' petition requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. Those petitioners demonstrated in their petitions that exceptional circumstances exist which warrant the granting of a waiver for providing toll limitation as authorized by 47 C.F.R. §54.101(c). It is not technically feasible for wireline carriers to provide this service at this time. While BG Enterprises did not petition for the waiver, because it resells the service of a company that has such a waiver, it is reasonable to conclude that BG Enterprises cannot provide toll limitation and should be granted the same waiver as has been granted to all other wireline petitioners.

C. Service Quality Issues

11 In the deliberations on the Commission's first ETC designations for wireline and wireless companies in December 1997, Staff originally urged the Commission to include as a condition of granting ETC status a requirement that the carriers, abide by Commission service quality standards set forth in WAC 480-120. A number of carriers contested the Commission's authority to condition the designation. We need not reach that issue of legal authority because we conclude that the carriers' obligation to "offer the services that are supported by federal universal service support mechanisms," as required by 47 U.S.C. §214(e)(A), requires not just willingness to offer the services, but actual performance of the services. Such performance in turn implies performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

12 Requiring adequate service also is consistent with the pro-competitive policies of the 1996 Act. No company should be able to obtain a competitive advantage by

avoiding its service-quality responsibilities. The Commission expects that all companies receiving ETC status will comply with relevant Commission rules.

D. Modification, Revocation, or Suspension

- 13 Given the changing dynamics of the market in the local exchange, the Commission may from time to time re-open these proceedings in order to modify the geographic area for which companies are designated. Such a proceeding may be commenced by the designated company, a petitioner for ETC status, by the Commission on its own motion, or by another appropriate person or entity.
- 14 In addition to geographic area modifications, the Commission has the authority to modify, revoke, or suspend the designations, should the prerequisites to the original designation cease to exist.¹ For example, should the company no longer advertise its services throughout the designated area as required by 47 U.S.C. §214(e)(B), the Commission may revoke the designation or suspend it until the deficiency is corrected. Likewise, should the company cease to “offer the services that are supported by federal universal service support mechanisms” as required by 47 U.S.C. §214(e)(A), the Commission may revoke or suspend the original designation. In making the determination of whether a designated company continues to offer such services, the Commission will look not just to the advertised availability of the services, but to the actual and timely delivery of those services. In determining whether a designated carrier is providing such service the Commission will be guided by currently accepted industry standards, including, but limited to, the quality of service rules contained in Chapter 480-120 WAC.
- 15 The Commission may modify this order for other reasons permitted by the Act.

¹ Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. *RCW 80.04.210*. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. *47 U.S.C. §214(e)(1)(2)*. There is nothing in that provision which limits a state commission on its own motion from re-designating a company already designated and in effect modifying the prior designation.

FINDINGS OF FACT

- 16 (1) BG Enterprises, Inc., is a telecommunications company authorized to conduct business in the state of Washington.
- 17 (2) After taking into account and considering fully the recommendations of the Federal-State Joint Board, the Commission finds that the appropriate service area for the petitioner is at the exchange level.
- 18 (3) The petitioner will offer all of the services that are to be supported by the federal universal service support mechanisms set forth in 47 C.F.R. §54.101(a), with the exception of toll limitation.
- 19 (4) The petitioner will provide advertisement of the availability of its service using media of general distribution as required by 47 U.S.C. §214(e)(1)(B).

CONCLUSIONS OF LAW

- 20 (1) The Commission has jurisdiction over the subject matter of this proceeding and BG Enterprises d/b/a Grizzly Telephone.
- 21 (2) Granting the relief requested in the petition, except as otherwise modified by this Order, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state and federal law.
- 22 (3) The Commission need not designate a petitioner for a study area, and in the case of BG enterprises, Inc., the petitioner has no study area at this time. The Commission, after taking into account the recommendations of the Federal-State Joint Board, may designate companies for geographic areas other than their study areas without conducting an adjudicatory proceeding prior to such designation.
- 23 (4) The Commission has authority to modify, suspend, or revoke this designation, including the service areas accompanying this designation, at a future date.

ORDER

- 24 (1) The petition of BG Enterprises, Inc., d/b/a Grizzly Telephone, as amended,
for designation as an eligible telecommunications carrier is granted.
- 25 (2) The geographic area for which the designation as an eligible
telecommunications carrier is granted is the exchanges served by Qwest
Corporation (See Appendix A).
- 26 (3) The requirement to provide toll control is waived until it is economically
and technically feasible to provide it.

DATED at Olympia, Washington, and effective this 8th day of January, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Appendix A

Qwest Exchanges for which BG Enterprises is designated an ETC

Aberdeen	Liberty Lake	Sunnyside
Auburn	Longview	Tacoma
Bainbridge Island	Loon Lake	Vancouver
Battleground	Maple Valley	Vancouver Orchards
Belfry	Moses Lake	Warden
Bellevue	Newman Lake	Waitsburg
Bellingham	Newport	Walla Walla
Bremerton	Ocean Shores	Winlock
Black Diamond	Olympia	Yakima
Buckley	Omak	
Castle Rock	Oroville	
Centralia	Othello	
Chehalis	Pasco	
Colby	Pateras	
Colfax	Pomeroy	
Colville	Port Angeles	
Coulee Dam	Port Orchard	
Dayton	Port Ludlow	
Deer Park	Port Townsend	
Des Moines	Puyallup	
Easton	Renton	
Elk	Ridgefield	
Ephrata	Rochester	
Greenbluff	Roy	
Graham	Seattle	
Hoodsport	Sequim	
Issaquah	Shelton	
Joyce	Silverdale	
Kent	Spokane	
Lacey	Sumner	