

ORR LAW OFFICES, P.C.

Thomas C. Orr
P.O. Box 8096
222 East Pine Street
Missoula, Montana 59807
Phone: (406) 728-7177
Fax: (406) 728-0790

Attorney for Petitioner

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

PETITION FOR WAIVER OF WAC 480-120-
081; RCW 80.36.410--80.36.475; WAC 480-
120-083; and WAC 480-122-020

Docket No. UT- 030867

**BG ENTERPRISES, INC., d/b/a GRIZZLY
TELEPHONE'S AMENDED PETITION FOR
WAIVER FROM ENFORCEMENT OF
RULES**

BG Enterprises, Inc.(a Montana Corporation), d/b/a Grizzly Telephone, (“Grizzly”) hereby petitions the Washington Utilities and Transportation Commission (“Commission”) for clarification or, in the alternative, waiver of following sections of the Washington Administrative Code: WAC 480-120-081 and/or WAC 480-120-083 and/or RCW 80.36.410--80.36.475. These rules generally apply to the discontinuance of service of telecommunication customers and the termination of telecommunication services to some or all customers. The statutory provisions relate to State requirements obligating it to provide services under the Washington Telephone Assistance Program (WTAP). Grizzly wishes to note at this point that this is an amended petition that supercedes the one filed electronically on June 5, 2003.

INTRODUCTION

On June 3, 2003, the Washington Department of Social and Health Services informed Grizzly Telephone that it had adopted an emergency rule-making order significantly changing the terms and conditions upon which it would reimburse telecommunication companies which were providing services under the WTAP. Specifically, the emergency rule reduces the maximum amount that the Department will reimburse a telecommunication provider to the same amount paid to an incumbent local carrier or for a maximum of \$19.00. Because of the significant impact these changes will

have for Grizzly, the company brings this matter to the Commission under the provisions of WAC 480-120-015. The basis for the request is set forth below.

BACKGROUND

Grizzly is a Competitive Local Exchange Carrier (CLEC) that resells telecommunication services in the State of Washington. Grizzly currently provides service to 504 Washington customers. In July of 2002, the WUTC determined that, because Grizzly had more than 100 Washington customers, it must offer service to customers that the Department of Social & Health Services (DSHS) certified as eligible for assistance through the Washington Telephone Assistance Program (WTAP).

DSHS stated that it would reimburse Grizzly its standard monthly rate Grizzly Telephone's regular monthly rate of \$49.99 per month per customer less \$4.00 (the amount that the customer pays to participate in the program) and taxes that would be paid by the customer. Grizzly has attempted to obtain reimbursement for the federal access charge through Lifeline and Linkup has been unable as it is not an incumbent local exchange carrier.

Grizzly purchases the service that it resells to its WTAP and other Washington customers from Qwest. It pays Qwest \$18.80 per month for each resold line plus tax. Grizzly's costs for its services are set forth below:

Residence Line	10.66
Toll Restriction of Individual & Key Lines	1.71
Federal Access Charge	6.00
Federal Charge for Service Provider Number	<u>.43</u>
Total Telephone Charges	\$ 18.80
Federal Excise Tax	.56
State 911	.20
Local 911	.50
TRS Excise Funds	.14
Telephone Assistance Program	<u>.13</u>
Subtotal Taxes	\$ 1.53
Average Total Qwest charge for residential service	\$ 20.33

Grizzly's monthly overhead cost per customer is approximately \$21.42 according to its 2002 profit and loss statement. The overhead costs break down as follows: Grizzly had approximately 1518 customers in all of its areas of operations (Washington, Idaho, Montana, Oregon, & Iowa) for the year 2002. Expenses for that year were \$914,759. Overhead costs are considered the gross expenses (\$914,759) less payments on debt, listed as contracts on 2002 P&L, (\$33,866), less telephone charges (\$496,069) plus interest expense of the debt (\$6,025) for a total overhead cost of (\$390,849). Dividing this among all of its customers, this equals \$257.48 per year per customer or \$21.46 per customer per month. [\[1\]](#)

DISCUSSION

Combining the costs of overhead with the fixed costs for service, Grizzly's actual cost of telephone service that it resells is \$18.80 plus \$21.46 or \$40.26 per customer per month plus tax. DSHS proposes to pay an amount equal to the monthly flat rate of the incumbent local exchange carrier providing service in the customer's exchange area, minus the WTAP assistance rate set by the commission, and minus the amount of the federal lifeline program reimbursement available to an eligible telecommunications carrier.

Grizzly deals exclusively with Qwest from whom it purchases the services that it later resells. Qwest would be the incumbent local exchange carrier for all of Grizzly customers. Grizzly is not privy to the amount of Qwest's reimbursement, however we believe that Grizzly's reimbursement would be around \$8.50, based on Qwest residential line charge of \$18.50 minus the WTAP assistance rate set by the commission --\$4.00 "and minus the amount of the federal lifeline program reimbursement available to an eligible telecommunications carrier-- \$6.00. This compensation scheme will likely work for Qwest because that company is entitled to reimbursement from the federal Lifeline Link up service of \$6.00 federal access charge, This allows Qwest to remain financially whole while complying with the WAC 480-122-020. Grizzly, as a reseller, is not eligible for federal reimbursement. Therefore, the only reimbursement Grizzly would receive under the new DSHS reimbursement rate established June 1, 2003, would be \$12.50. Grizzly's costs per customer are \$40.26. Its reimbursement will be between \$12.50 This means that Grizzly will suffer a loss of between \$27.76per customer per month under the new guidelines. Extrapolating these costs to all of Grizzly's 276 WTAP customers will result in a loss of as much as \$7662 per month. Any new customer would pose an even greater loss as Grizzly does not charge either the customer or WTAP for installation even though the Grizzly pays Qwest \$35.00 for the average installation.

The new payment schedule established by the DSHS imposes upon Grizzly "undue hardship, of a degree or a kind different from the hardships imposed on similarly situated persons" (incumbent local exchange carriers such as Qwest) as required by WAC 480-120-015. In addition, Grizzly requests exemption from WAC 480-122-020 and RCW 80.36.410-475 because of the hardship that provision of such service will impose upon the company. Additionally, Grizzly requests exemption from WAC 480-120-081 (Discontinuance of service), for WTAP customers for whom Grizzly Telephone is currently providing service. Unless the WUTC grants these exemptions, Grizzly will quickly be out of business.

CONCLUSION

Grizzly's ability to provide services to WTAP customers depends entirely on the reimbursement that the State of Washington previously provided before the adoption of the emergency order. Grizzly had no opportunity to appear and comment upon the impacts of the rule prior to its adoption. Grizzly has, however, extended service to 276 WTAP customers, as it is required to by administrative regulation. Unless the emergency order is suspended or otherwise held in abeyance, Grizzly will lose as much as \$7662 this month and each month that it is required to provide services for which it does not receive full compensation.

Because Grizzly cannot continue to provide services at a loss, it respectfully request waiver from WAC 480-12-081, requiring 30 days notice prior to termination of

services. In addition, Grizzly requests an exemption from WAC 480-122-020 and RCW 80.36.410-475.

RESPECTFULLY SUBMITTED this ____ day of June, 2003.

BG Enterprises, Inc.(a Montana
Corporation)
d/b/a Grizzly Telephone

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition on June 5, 2003, via U.S. Mail, postage pre-paid, certified and return receipt requested, to the following:

Carole Washburn
Secretary
WUTC
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, Washington 98504

[\[1\]](#) The 2002 Profit and Loss Statement is attached and marked as exhibit "A." A representative bill for Qwest service is attached and marked as Exhibit "B." A list of all of Grizzly's WTAP customers is attached and marked as exhibit "C."