



Telecom Decision CRTC 2010-306

Ottawa, 25 May 2010

People's Tel Limited Partnership – Application for forbearance from the regulation of business local exchange services

File number: 8640-P52-201000934

In this decision, the Commission approves People's Tel's request for forbearance from the regulation of business local exchange services in the exchange of Forest, Ontario.

Introduction

1. The Commission received an application by People's Tel Limited Partnership (People's Tel), dated 26 January 2010, in which the company requested forbearance from the regulation of business local exchange services¹ in the exchange of Forest, Ontario.
2. The Commission received a submission regarding People's Tel's application from Execulink Telecom Inc. (Execulink). The public record of this proceeding, which closed on 12 April 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Commission's analysis and determinations

3. The Commission has assessed People's Tel's application by examining the four criteria set out below. These criteria are based on the local forbearance test originally set out in Telecom Decision 2006-15, and were modified by Telecom Regulatory Policy 2009-379.

a) Product market

4. The Commission received no comments with respect to People's Tel's proposed list of business local exchange services.
5. The Commission notes that People's Tel is seeking forbearance from the regulation of 10 tariffed business local exchange services. The Commission finds that nine of these services fall within the definition of local exchange services set out in Telecom Public Notice 2005-2.

¹ In this decision, "business local exchange services" refers to local exchange services used by business customers to access the public switched telephone network and any associated service charges, features, and ancillary services.

6. The Commission considers that the Multi Element Service Charges service is not eligible for forbearance because it is a generic service. In Telecom Decision 2005-35, the Commission excluded generic services from the scope of the local forbearance proceeding because tariffs for such services apply to both local exchange services as well as other telecommunications services that were not within the scope of that proceeding. A list of the nine approved services is set out in the Appendix to this decision.

b) Competitor presence test

7. The Commission notes that for the exchange of Forest, People's Tel has demonstrated that the competitor targets the core of the exchange. People's Tel submitted maps clearly showing the boundaries of the core of the exchange; a comparison of the densities of the entire exchange and its core; the total number of business local access lines that it is capable of serving with local exchange services in the core of the exchange; and the estimated percentage of businesses in the core of the exchange that its competitor is capable of serving, together with the assumptions made to support the estimate. Based on this information, the Commission considers that the competitor will continue to target the core of the exchange due to a lack of financial incentive to offer services in the outskirts of the exchange and, consequently, the 75 percent competitor presence threshold is unlikely to ever be achieved.
8. Although Execulink questioned whether the competitor presence test was met in the exchange of Forest, information provided by parties confirms that there is, in addition to People's Tel, at least one other independent facilities-based, fixed-line telecommunications service provider² that offers local exchange services in the market and is capable of serving at least 50 percent of the number of business local exchange service lines that People's Tel is capable of serving.³
9. Accordingly, the Commission determines that the exchange of Forest meets the competitor presence test.

c) Competitor quality of service

10. The Commission notes People's Tel's attestation that it received no complaints from competitors in the six months prior to the date of its application. The Commission also notes that it received no comments with respect to People's Tel's competitor quality of service.
11. Accordingly, the Commission determines that the quality of service provided by People's Tel to its competitors is at a sufficient level to grant forbearance.

² This competitor is Execulink.

³ In Telecom Regulatory Policy 2009-379, the Commission determined that a 50 percent competitor presence threshold would apply if evidence filed by the applicant small ILEC indicated that the 75 percent threshold would likely never be reached due to the competitor targeting only the core of the exchange.

d) Communications plan

12. The Commission has reviewed People's Tel's draft communications plan and is satisfied that it meets the information requirements set out in Telecom Decision 2006-15. However, the Commission finds that the company should list itself as the first point of contact in its communications materials and that it should include its contact information, such as phone and fax numbers, and web addresses.
13. The Commission **approves** the proposed communications plan with the revisions outlined above and directs People's Tel to provide the resulting communications materials to its customers, in both official languages where appropriate.

Other matter

14. People's Tel noted that in previous forbearance decisions, the Commission had included a "limitation of liability" provision to address the transition period from full regulation to regulatory forbearance. People's Tel requested that the Commission include this type of provision in this decision, proposing the following words:

Any provision limiting liability in existing contracts or other arrangements with customers will continue to remain in force for the greater of (i) 90 days after the effective date of this Forbearance Order, and (ii) until the end of the term of such contract or other arrangements, in accordance with the terms of such contracts or other arrangements

15. The Commission notes that Telecom Decision 2006-15, paragraph 313, states the following:

... any provision limiting liability in any existing contracts or arrangements, as of the date of the Commission decision granting forbearance in a relevant market, will remain in force until its expiry. Such existing contracts or arrangements will be deemed to terminate on the date or in the manner provided therein, notwithstanding any contractual provisions governing extensions.

16. The Commission finds that People's Tel's concerns have been addressed by this statement and that no limitation of liability provision is required in this decision.

Conclusion

17. The Commission determines that People's Tel's application regarding the exchange of Forest, Ontario, meets all the local forbearance criteria set out in Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379.
18. Pursuant to subsection 34(1) of the *Telecommunications Act* (the Act), the Commission finds as a question of fact that to refrain from exercising its powers and performing its duties, to the extent specified in Telecom Decision 2006-15, in relation to the provision by People's Tel of the business local exchange services

listed in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2 as they pertain to business customers only, in this exchange, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.

19. Pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that these business local exchange services are subject to a level of competition in this exchange sufficient to protect the interests of users of these services.
20. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that to refrain from exercising its powers and performing its duties, to the extent specified in Telecom Decision 2006-15, in relation to the provision by People's Tel of these business local exchange services in this exchange would be unlikely to impair unduly the continuance of a competitive market for these services.
21. In light of the above, the Commission **approves** People's Tel's application for forbearance from the regulation of the local exchange services listed in the Appendix and future services that fall within the definition of local exchange services set out in Telecom Public Notice 2005-2, as they pertain to business customers only, in the exchange of Forest, Ontario, subject to the powers and duties that the Commission has retained as set out in Telecom Decision 2006-15. This determination takes effect as of the date of this decision. The Commission directs People's Tel to file revised tariff pages with the Commission within 30 days of the date of this decision.

Secretary General

Related documents

- *Framework for forbearance from regulation of retail local exchange services in the serving territories of the small incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2009-379, 23 June 2009
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council, P.C. 2007-532, 4 April 2007
- *List of services within the scope of the proceeding on forbearance from the regulation of local exchange services*, Telecom Decision CRTC 2005-35, 15 June 2005, as amended by Telecom Decision CRTC 2005-35-1, 14 July 2005
- *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005

Appendix

Local exchange services eligible for forbearance from regulation in this decision (for business customers only)

Tariff	Item	List of services
25540	100.4	Business Private Line
25540	200	Digital Switched Service
25540	210	Centrex Service
25540	260	Distance Charges
25540	490.10	Custom Calling Features
25540	490.16	Call Management Services
25540	490.17	Calling Feature Bundles
25540	820	Call Answer Service
25540	2000.1	Business Local Services Bundle