



## Telecom Decision CRTC 2013-199

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Ottawa, 24 April 2013

### **Mornington Communications Co-operative Limited – Application for forbearance from the regulation of business local exchange services**

File number: 8640-M5-201213165

*In this decision, the Commission approves Mornington's request for forbearance from the regulation of business local exchange services in the exchange of Milverton, Ontario.*

#### **Introduction**

1. The Commission received an application from Mornington Communications Co-operative Limited (Mornington), dated 19 October 2012, in which the company requested forbearance from the regulation of business local exchange services<sup>1</sup> in the exchange of Milverton, Ontario.
2. The Commission received a submission regarding Mornington's application from Bragg Communications Inc., operating as EastLink (EastLink). The public record of this proceeding, which closed on 6 February 2013, is available on the Commission's website at [www.crtc.gc.ca](http://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 Mornington's application by examining the four criteria set out below. These criteria are based on the local forbearance test set out in Telecom Decision 2006-15 and applied to the small incumbent local exchange carriers (ILECs), with modifications, in Telecom Regulatory Policy 2009-379.

##### **a) Product market**

4. The Commission notes that Mornington is seeking forbearance from the regulation of 12 tariffed business local exchange services. The Commission received no comments with respect to Mornington's proposed list of services.

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<sup>1</sup> 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.

5. The Commission notes that it has determined in previous decisions that its local forbearance framework set out in Telecom Decision 2006-15 applies to five of the twelve types of services that are the subject of Mornington's application.<sup>2</sup> The Commission determines that the other seven services cannot be found eligible for forbearance in this decision, for the reasons set out below.
6. In Telecom Decision 2005-35, the Commission considered that generic services, including service charges, as well as construction service charges were outside the scope of the proceeding on forbearance from the regulation of local exchange services, which eventually led to Telecom Decision 2006-15. The Commission noted that (a) tariffs for these types of services apply only to tariffed services, and (b) if the Commission forbore from regulating a particular local exchange service, the relevant generic service tariffs and construction service charge tariffs would no longer apply to that forborne service.
7. The Commission notes that Mornington's tariff item entitled "Use of Customer-Provided Equipment with the Company's Facilities" includes a diagnostic maintenance charge that refers to a rate in another section of the company's tariff. The Commission considers that the diagnostic maintenance charge is a generic service as described in Telecom Decision 2005-35 and, for the reasons set out above, it cannot be found eligible for forbearance in this decision. The Commission notes that the remaining elements of this tariff item relate to the establishment of terms and conditions associated with the use of customer-provided equipment that is attached to, connected to, or otherwise used with Mornington's network. The Commission does not consider that such matters pertain to local exchange services as set out in Telecom Public Notice 2005-2.
8. In Telecom Decision 2005-35, the Commission considered that Digital Network Access service and foreign exchange service were outside the scope of the proceeding on forbearance because the former is not a local exchange service and the latter provides users with a capability equivalent to a private line between exchanges.
9. The Commission noted in Telecom Decision 2005-35 that "bundles are simply combinations of individual services under a rate structure and that tariff approval is not required for a bundle that does not include any tariffed service." The Commission therefore determines that it need not make forbearance findings regarding service bundles that do not include a tariffed service.
10. Finally, in Telecom Regulatory Policy 2010-777, the Commission forbore conditionally from regulating retail voice mail services. The Commission notes that in response to its directions in that decision, Mornington filed revised tariff pages for its Business Voice Mail services in October 2012 and, therefore, this service is already forborne from regulation in Mornington's territory.

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<sup>2</sup> See Telecom Decision 2005-35. In addition, the Commission confirmed, in Telecom Decision 2008-10, that for local forbearance purposes, one of the proposed services – Centrex service – forms part of the same relevant market as business local exchange services.

11. Accordingly, the Commission determines that only the five services listed in the Appendix are eligible for forbearance in this decision.

**b) Competitor presence test**

12. In Telecom Regulatory Policy 2009-379, the Commission determined that a 50 percent competitor presence threshold would apply if evidence filed on the record of the forbearance application indicated that the 75 percent threshold would likely never be reached due to the competitor targeting only the core of the exchange.
13. The Commission notes that information provided by parties demonstrates that there is, in addition to Mornington, one independent, facilities-based, fixed-line telecommunications service provider<sup>3</sup> that offers local exchange services in the exchange of Milverton and that is capable of serving at least 50 percent of the number of business local exchange service lines that Mornington is capable of serving.
14. The Commission further notes that Mornington has demonstrated that EastLink targets the core of the Milverton exchange. Mornington submitted the following information: (a) maps clearly showing the boundaries of the core of the exchange; (b) a comparison of the densities of the entire exchange and its core; (c) 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 (d) 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 that estimate. Based on this information, which EastLink did not dispute, the Commission considers that the competitor will continue to target the core of the exchange since there is no financial incentive to offer services in the outskirts of the exchange and, consequently, that the 75 percent competitor presence threshold is unlikely to ever be achieved.
15. Accordingly, the Commission determines that the exchange of Milverton meets the competitor presence test.

**c) Competitor quality of service (Q of S) results**

16. The Commission notes Mornington's attestation that it received no Q of S complaints from competitors since the implementation of local competition in its territory in August 2012.<sup>4</sup> The Commission also notes that it has received no comments with respect to Mornington's competitor Q of S for that period.
17. Accordingly, the Commission determines that Mornington's competitor Q of S is at a sufficient level to warrant forbearance from the regulation of business local exchange services in the exchange of Milverton.

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<sup>3</sup> This competitor is EastLink.

<sup>4</sup> In Telecom Regulatory Policy 2009-379, the Commission stated that, if applicable, a small ILEC could submit an attestation that it had received no complaints from competitors in the six months prior to the date of the forbearance application, or since the implementation of local competition if less than six months had passed.

#### **d) Communications plan**

18. The Commission has reviewed Mornington's proposed communications plan and is satisfied that it meets the information requirements set out in Telecom Decision 2006-15. However, the Commission considers that the company should modify its proposed customer bill insert to (a) update the contact information for the Canadian Consumer Information Gateway and the Office of the Privacy Commissioner of Canada; and (b) add contact information, such as phone and fax numbers and web addresses, for the Commissioner for Complaints for Telecommunications Services (CCTS) and the Competition Bureau.
19. The Commission **approves** the proposed communications plan with the revisions outlined above and directs Mornington to provide the resulting communications materials to its customers, in both official languages where appropriate.

#### **Conclusion**

20. The Commission determines that Mornington's application regarding the exchange of Milverton, Ontario meets all the local forbearance criteria set out in Telecom Decision 2006-15 as adopted and modified for small ILECs in Telecom Regulatory Policy 2009-379.
21. 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 Mornington 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.
22. 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.
23. 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 Mornington of these business local exchange services in this exchange would be unlikely to impair unduly the continuance of a competitive market for these services.
24. In light of the above, the Commission **approves** Mornington'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 Milverton, 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 Mornington to file revised tariff pages with the Commission within 30 days of the date of this decision.

25. The Commission reminds Mornington that, pursuant to its direction set out in Telecom Regulatory Policy 2011-46, the company will be required to become a participating service provider of the CCTS should the CCTS inform Mornington that it has received a complaint about the company that falls within the CCTS's mandate.

Secretary General

### **Related documents**

- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Forbearance from the regulation of retail voice mail services provided by the incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2010-777, 20 October 2010
- *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
- *The relevant product market for Centrex and Enhanced Exchange Wide Dial services for the purposes of forbearance from regulation*, Telecom Decision CRTC 2008-10, 31 January 2008
- *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)*

<b>Tariff</b>	<b>Section</b>	<b>Item</b>	<b>List of services</b>
25470	100	Item 4.02 B1	Primary Exchange Service
25470	170	Item 2	Business Service Definition
25470	210	Items 1 to 5	Centrex Services
25470	260	Items 1 and 2	Intra Exchange Channels and Distance Charges
25470	490	Item 3	Custom Calling Features Business