



## Telecom Decision CRTC 2015-244

PDF version

Route references: Telecom Notices of Consultation 2013-614 and 2013-614-1

Ottawa, 9 June 2015

*File numbers: Tariff Notices 903 and 903A, 8661-C12-201316133*

### Northwestel Inc. – Toll-Free Origination Service

*The Commission **approves** Northwestel's proposal to introduce to its Access Services Tariff new tariff elements associated with its Toll-Free Origination Service (TFOS), namely the Toll-Free Terrestrial Transport and Satellite Southern Delivery charges. Further, the Commission **approves with changes** the proposed rates for the new tariff elements retroactively to 6 February 2014. Specifically, the Commission directs Northwestel to remove the 25% markup that the company had incorrectly added to Bell Canada's Access Tandem Service. The Commission also ratifies, up to and including 5 February 2014, the rates charged by Northwestel to carriers with which it had agreements for 800 service origination. The TFOS tariff replaces the 800 service origination agreements that Northwestel had entered into with other carriers, effective 6 February 2014.*

#### Introduction

1. Toll-Free Origination Service (TFOS) is used by toll-free service providers to provide toll-free calling. Toll-free service, also known as 800 service, enables customers to make long distance telephone calls without incurring long distance charges. Toll-free numbers commonly begin with, for example, 800, 855, or 888.
2. In Telecom Decision 2013-613, the Commission directed Northwestel to file proposed rates for wholesale services that were historically negotiated and provided under 800 service origination agreements with Primus Telecommunications Canada Inc. (Primus) and Globility Communications Corporation (Globility).
3. The Commission received a tariff application from Northwestel, dated 16 December 2013, and amended on 22 January 2014,<sup>1</sup> in which the company proposed to introduce item 40.4 – Toll-Free Origination Service<sup>2</sup> in its Access Services Tariff, pursuant to the Commission's directive in Telecom Decision 2013-613. Specifically,

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<sup>1</sup> On 24 February 2014, Northwestel disclosed information that it had filed on a confidential basis.

<sup>2</sup> TFOS routes a toll-free call that originates in Northwestel's operating territory to a third-party toll-free database, where the database is queried and the call is handed off to the toll-free provider in southern Canada. Bell Canada provides Northwestel with the transport services identified later in this decision that route toll-free calls to Bell Canada's database for carrier identification and hand-off to the appropriate toll-free provider.

Northwestel proposed to introduce two new tariff elements: the Toll-Free Terrestrial Transport Charge (terrestrial transport charge), for calls that originate in the western part of Northwestel's operating territory (western Arctic), and the Toll-Free Satellite Southern Delivery Charge (southern delivery charge), for calls that originate in the eastern part (eastern Arctic).<sup>3</sup>

4. In its application, Northwestel requested, pursuant to the Commission's directive in Telecom Decision 2013-613, that the Commission ratify the charging of the rates the company had billed to Primus. Northwestel also requested that the Commission ratify the rates it had charged to Globility and to any other carriers otherwise than in accordance with a tariff.
5. The Commission received interventions regarding Northwestel's application from Iristel Inc. (Iristel), MTS Inc. and Allstream Inc. (collectively, MTS Allstream),<sup>4</sup> and TELUS Communications Company (TCC). The public record of that proceeding, which closed on 9 December 2014, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the tariff notice numbers provided above.
6. In Telecom Order 2014-45, the Commission approved Northwestel's application on an interim basis, effective 6 February 2014.
7. In Telecom Notice of Consultation 2013-614 (the show cause proceeding), issued in conjunction with Telecom Decision 2013-613, the Commission directed Northwestel to show cause why the applicable rates for its 800 service origination arrangements with Bell Canada, Navigata Communications Inc. (Navigata), Rogers Cable Communications Inc. (RCCI), Rogers Communications Partnership (RCP), and Saskatchewan Telecommunications (SaskTel) should not also be provided pursuant to a Commission-approved tariff.
8. The Commission received interventions regarding the show cause proceeding from Northwestel and SaskTel. The public record of that proceeding, which closed on 13 January 2014, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the 16-digit file number provided above.

**Should Northwestel's 800 service origination arrangements (also referred to as TFOS) be provided pursuant to Commission-approved tariffs rather than agreements?**

9. In response to Telecom Notice of Consultation 2013-614, Northwestel submitted that it did not object to providing the services in question to all toll-free service providers pursuant to Commission-approved tariffs, and submitted that the tariffs would replace any existing agreements that may still be in force.

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<sup>3</sup> There are three existing tariff elements that are part of TFOS: (i) the Bundled Carrier Access Tariff Charge, (ii) the Satellite Proxy Transport Charge, and (iii) the Toll-Free Carrier Identification Charge.

<sup>4</sup> Interventions were later received from Allstream Inc. rather than MTS Allstream.

## **Commission's analysis and determinations**

10. In Telecom Decision 2013-613, the Commission determined that, because Northwestel was providing a telecommunications service (800 service origination) to Primus and Globility, the rates charged for the provision of that service must be tariffed. For the same reason, the Commission considers that Northwestel's 800 service origination arrangements (i.e. TFOS) should also be provided to other carriers pursuant to Commission-approved tariffs.
11. In light of the above, the Commission finds that Tariff Notice 903A will apply to the provision of TFOS by Northwestel to the carriers listed in paragraph 7 above.<sup>5</sup>
12. Accordingly, the Commission closes the file associated with Telecom Notice of Consultation 2013-614.

## **What is the regulatory status of third-party services that Northwestel acquires from Bell Canada to provide TFOS?**

13. Northwestel uses third-party services to provide TFOS because it does not have all the required elements. Northwestel acquires Access Tandem (AT) Service and two toll transport services, namely Satellite Gateway Service and Terrestrial Transport Service, from a third party (Bell Canada).<sup>6</sup>
14. Bell Canada and Northwestel submitted that, pursuant to Telecom Decision 97-19, the toll transport services provided by Bell Canada are forborne from regulation, and that Bell Canada provides these services to Northwestel pursuant to a negotiated agreement.
15. Iristel, MTS Allstream, and TCC disagreed that the forbearance determinations in Telecom Decision 97-19 apply to the toll transport services in question. Iristel and MTS Allstream submitted that the services are not forborne and should be regulated like toll interconnection services.
16. MTS Allstream also submitted that because TFOS provides for the routing of toll-free calls between a local switch in Northwestel's incumbent operating territory and AT switches in Bell Canada's incumbent operating territory, the service is identical to the incumbent local exchange carriers' (ILECs) AT wholesale toll interconnection service, and should therefore be regulated like it.
17. Northwestel and TCC submitted that Bell Canada's toll transport services are not identical to the ILECs' AT wholesale toll interconnection services because through

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<sup>5</sup> The agreement between Northwestel and SaskTel was assigned to Navigata in December 2009, when SaskTel disposed of its ownership of Navigata.

<sup>6</sup> AT Service provides switching and transport. Satellite Gateway Service provides equipment to receive toll-free calls originating in the eastern Arctic, and Terrestrial Transport Service provides transport between the interconnection points in High Level, Alberta or Fort St. John, British Columbia and Toronto, Ontario.

AT Service, (i) toll calls are allowed to be terminated or originated from the ILECs' end-customers, and (ii) the designated AT switch and the wire centre have to be located within the same ILEC's network, which is not the case for the toll transport services.

18. TCC disagreed that Telecom Decision 97-19, which granted forbearance from the regulation of retail and wholesale toll services, is the relevant directive granting forbearance to the wholesale transport service underlying Northwestel's TFOS. Further, TCC submitted that Terrestrial Transport Service is forborne in accordance with Commission interexchange (IX) transport forbearance decisions for the routes connecting High Level, Alberta, and Fort St. John, British Columbia, to Toronto, Ontario, whereas Satellite Gateway Service is unaccounted for from a regulatory perspective.
19. In reply, Bell Canada submitted that Telecom Decision 97-19 does not narrowly apply to services that provide both transport and call completion capabilities, but instead applies to toll, toll-free, and associated services in general. Bell Canada noted that the Appendix to Telecom Decision 97-19 lists several services that were forborne that do not directly transport or complete toll or toll-free calls, but instead are associated with these calls, e.g. business rewards and international directory assistance.
20. Bell Canada added that the full list of services that Telecom Decision 97-19 applied to includes switched call completion (SCC) service. This service allows carriers to contract with Bell Canada for transport to the designated AT for each call, and for call termination at the designated AT. Bell Canada argued that the toll-free transport service provided to Northwestel for toll-free calls originating in the Eastern Arctic, for which the rate charged includes (i) the receipt of traffic at the Satellite Gateway, (ii) transport of toll-free traffic to Bell Canada's AT, and (iii) call termination and handoff at the designated AT, is similar to SCC service. Thus, Bell Canada submitted that the toll transport services provided to Northwestel fall within the category of services to which Telecom Decision 97-19 is applicable, and are forborne.

### **Commission's analysis and determinations**

21. The AT Service that Bell Canada provides to Northwestel is a regulated service with an approved tariff.
22. The Commission considers that Bell Canada's toll transport services are not similar to AT wholesale toll interconnection service, since the AT switch is in Bell Canada's territory and the wire centre is in Northwestel's territory. Accordingly, the Commission determines that these services should not be regulated like interconnection services.
23. Further, the Commission considers that Terrestrial Transport Service is similar to IX transport service because they both provide transport between two specific locations. The Commission therefore considers that Terrestrial Transport Service is forborne

from regulation, consistent with previous Commission forbearance determinations<sup>7</sup> regarding IX transport service.

24. With respect to Satellite Gateway Service, the Commission considers that, based on the information provided, Satellite Gateway Service and AT Service provide similar functionality to SCC service because they provide transport to the designated AT and call termination and hand-off of the traffic at the designated AT. Accordingly, the Commission considers that Satellite Gateway Service, as provided to Northwestel, falls within the category of services to which Telecom Decision 97-19 is applicable, and should therefore be considered forborne from regulation.

**Is Bell Canada, in its provision of services to Northwestel, giving Northwestel an undue preference or engaging in anti-competitive behaviour?**

25. Parties expressed concern over the fact that Bell Canada is providing third-party services to Northwestel, a subsidiary of Bell Canada. Iristel and MTS Allstream submitted that given Bell Canada's full ownership of Northwestel, Bell Canada cannot be considered a third party and should not be allowed to layer markups for TFOS (i.e. both Bell Canada and Northwestel should not be permitted to apply their respective markups to the services).
26. MTS Allstream also submitted that costs incurred by Bell Canada and included in TFOS should be subject to the markup of 15% applicable to Bell Canada, rather than the 25% markup applicable to Northwestel.
27. TCC submitted that because Northwestel is using an affiliate for its third-party services, it is necessary to ensure that the rates it pays for those services are comparable with those that a non-affiliated provider would charge. TCC submitted that the Commission should confirm that Northwestel is not paying more than competitive market rates for these services, which would mean higher overall costs to toll-free service providers.
28. Northwestel replied that if it were to obtain the services provided by Bell Canada from an unaffiliated company, the unaffiliated company would charge rates similar to Bell Canada's and would also include a markup. Hence, Northwestel submitted that Bell Canada's markup should not be disallowed simply because of the relationship between the two companies.
29. Northwestel further submitted that Bell Canada's Satellite Gateway Service costs are based on a contract between Bell Canada and Telesat Canada (Telesat), an independent supplier to Bell Canada. Therefore, the rates paid by Bell Canada to Telesat are market-based rates. Northwestel also submitted that Bell Canada's Terrestrial Transport Service costs are based on a contract that Bell Canada has with

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<sup>7</sup> Forbearance was granted in Telecom Order 99-913 and in Telecom Decisions 97-20, 2006-18, and 2009-712.

another carrier. The rates are based on a formula that takes into consideration distance, level of remoteness and competitive alternatives available, and reciprocity. Accordingly, both companies are highly incented to ensure that the rates for these facilities reflect fair market value.

### **Commission's analysis and determinations**

30. The Commission considers that because Bell Canada's AT Service is regulated, layering of markups should not occur since regulated services are to be provided through an approved tariff and no additional markups are allowed. The Commission considers that Bell Canada is providing its AT Service appropriately at the approved tariffed rate.
31. With respect to the provisioning of the forborne services, Bell Canada includes a markup, which the Commission considers is consistent with what any other service provider would do.
32. Regarding MTS Allstream's submission that the markup on Bell Canada's costs should be 15% rather than 25%, the Commission notes that the forborne services in question are not mandated wholesale services, and are therefore not required to have only a 15% markup.
33. Based on the evidence provided, the Commission considers that TCC's concern about Northwestel possibly paying more than competitive market rates for third-party services is unfounded. The Commission does not consider that there is evidence of anti-competitive behaviour or that Bell Canada is providing Northwestel with an undue preference. In particular, there is no evidence that Bell Canada is treating Northwestel differently than it would treat any other service provider.
34. In light of the above, the Commission finds that there is no anti-competitive behaviour or undue preference given by Bell Canada towards Northwestel.

### **Are changes required to the TFOS configuration?**

35. Some parties requested that Northwestel provide an option to pick up toll-free calls at alternative locations.
36. Iristel submitted that it should have the option to pick up toll-free calls within Northwestel's operating territory so that it can transport them more cheaply over its own network. MTS Allstream submitted that it should have the option to (i) pick up eastern Arctic toll-free calls in Montréal instead of in Toronto, and (ii) pick up western Arctic toll-free calls in Edmonton instead of in Toronto, thereby eliminating the transport charges.
37. In response, Northwestel submitted that the requests are not feasible because it does not have the capability to perform certain functions (e.g. it cannot identify the carrier), or because the existing configuration represents the most effective solution to handle toll-free traffic (i.e. local hand-off of calls would be more costly). Northwestel

also clarified for MTS Allstream that toll-free traffic from the eastern Arctic is handed off in Montréal, not Toronto, and that elimination of the Southern Delivery Charge is not possible.

38. The Commission considers Northwestel's explanation that delivery of toll-free calls to alternative locations is not feasible at this time and is not cost effective to be reasonable. Accordingly, the Commission determines that no changes should be made to the TFOS configuration.

**Are both Bell Canada and Northwestel charging toll-free service providers for AT and Carrier Identification services?**

39. Northwestel charges toll-free service providers for Bell Canada's AT Service and applies its own approved rate for the toll-free Carrier Identification Charge (CIC). MTS Allstream and TCC expressed concern about whether Bell Canada is also charging toll-free service providers for these services. MTS Allstream also requested that Northwestel clarify how it recovers Bell Canada's AT Service charge.
40. Northwestel submitted that it has confirmed with Bell Canada's wholesale personnel that Bell Canada does not bill its charges associated with AT Service and the CIC separately to Northwestel's toll-free service providers. Northwestel also submitted that it recovers Bell Canada's AT Service charge through the terrestrial transport and southern delivery charges.
41. In light of the above, the Commission is satisfied that toll-free service providers are not being billed by both Bell Canada and Northwestel for AT Service and the CIC.

**Are Northwestel's costs reasonable?**

42. The Commission notes that the total cost of providing TFOS service includes both the third-party costs and Northwestel's own costs, which include product management costs and transport costs to interconnection points. The Commission has reviewed Northwestel's own costs to provide TFOS, and finds them to be reasonable.

**Are Northwestel's proposed 25% markup and proposed rates reasonable?**

43. Consistent with the Commission's determinations in Telecom Regulatory Policy 2011-771 and Telecom Order 2012-401, Northwestel proposed a 25% markup on the southern delivery and terrestrial transport charges.
44. MTS Allstream submitted that a 15% markup should apply because the costs are incurred by Bell Canada, not Northwestel.
45. The Commission considers that because Northwestel provides the service and only acquires some components from Bell Canada, it is appropriate for Northwestel to charge a 25% markup. The Commission considers that the proposed markup is reasonable because it is consistent with recent Commission determinations.

46. However, Northwestel has applied its markup to Bell Canada's AT Service, which is inappropriate because AT Service is a regulated service and has to be provided at the approved tariffed rate.
47. With regard to TFOS rates, the Commission notes that Northwestel's proposed rates are lower than the previously negotiated rates.
48. Accordingly, the Commission **directs** Northwestel to remove the 25% markup that the company had applied to Bell Canada's AT Service, and **approves** Northwestel's proposed rates subject to that modification.

**Should the final rates be applied retroactively to the date the rates were made interim?**

49. MTS Allstream submitted that Northwestel's final rates should be applied retroactively to either the date the rates were made interim (6 February 2014) or to the first day of the following month (1 March 2014) in consideration of billing complexities associated with the service.
50. The Commission has reviewed the financial impact of applying the final rates retroactively to the date they were made interim, and finds it to be minimal. The Commission further considers that the approved rates set out in paragraph 62 below are just and reasonable, and that it is therefore appropriate to apply them retroactively.
51. Accordingly, the Commission determines that the final approved rates will be effective on 6 February 2014.

**Should the rates charged to carriers with which Northwestel had negotiated agreements be ratified?**

52. As noted above, in Telecom Decision 2013-613, the Commission directed Northwestel to file tariffs for any rates for 800 service origination arrangements with Primus and Globility. It further directed Northwestel to file an application, pursuant to subsection 25(4) of the *Telecommunications Act* (the Act), to ratify the rates charged otherwise in accordance with a Commission-approved tariff.
53. Northwestel requested ratification of the above-mentioned rates. It submitted that the rates it had charged to Primus should be ratified because it had mistakenly entered into an agreement with Primus (a reseller) rather than Globility (the carrier). Northwestel submitted that the circumstances warrant ratification because the agreement with Primus was based on existing agreements between Northwestel and other carriers that had been approved by the Commission and, therefore, contained just and reasonable rates.
54. Northwestel proposed to rectify its oversight by signing a new agreement with Globility. However, in Telecom Decision 2013-613, the Commission determined that 800 service origination arrangements should be provided pursuant to a tariff, rather

than through negotiated agreements. Northwestel therefore also requested that the Commission ratify the rates it had charged to Globility.

55. Similarly, Northwestel requested that the Commission ratify the rates charged to any other carrier through agreements approved pursuant to section 29 of the Act, prior to the proposed tariff revisions coming into effect.

### **Commission's analysis and determinations**

56. Pursuant to subsection 25(4) of the Act, the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if it is satisfied that the rate was charged because of an error or other circumstance that warrants ratification.
57. The Commission previously considered that the rates in question could be set based on agreements. However, the Commission has since determined that section 25 of the Act applies to the amounts paid for the telecommunications service (TFOS) provided by Northwestel. Accordingly, the Commission considers that the circumstances warrant the ratification of the rates charged by Northwestel.
58. In light of the above, the Commission ratifies the rates charged by Northwestel to Bell Canada, Globility, Navigata, Primus, RCCI, RCP, and SaskTel up to and including 5 February 2014.

### **Other matters**

59. In their interventions, MTS Allstream and TCC raised the following issues, which either relate to the existing tariffs or constitute requests for new requirements:
- Is there double recovery of satellite link costs in the Carrier Access Tariff and Satellite Proxy Transport rates?
  - Should Northwestel apply Bell Canada's rate for its Carrier Identification Service?
  - Should Northwestel be required to file tariffs for any northbound toll traffic provided based on negotiated agreements?
60. The Commission considers that the first two issues are associated with existing Commission-approved tariffs, and that the third issue involves new requirements that are not related to the proposed rates being dealt with in Northwestel's application.
61. Given that Northwestel did not seek any changes regarding the above-noted issues, the Commission considers that these issues are not within the scope of the present application.

## Conclusion

62. In summary, the Commission

- **approves with changes, on a final basis**, Northwestel's application;
- **approves on a final basis** the following rates on a per-minute basis, effective 6 February 2014:
  - Toll-Free Terrestrial Transport Charge: \$0.0264
  - Toll-free Satellite Southern Delivery Charge: \$0.0238
- ratifies the rates charged by Northwestel to Bell Canada, Globility, Navigata, Primus, RCCI, RCP, and SaskTel for 800 service origination, up to and including 5 February 2014; and
- **directs** Northwestel to issue revised tariff pages reflecting the above-noted determinations within **10 days** of the date of this decision.<sup>8</sup>

Secretary General

## Related documents

- Telecom Order CRTC 2014-45, 6 February 2014
- *Northwestel Inc. – Applicable rates for 800 service origination arrangements*, Telecom Notice of Consultation CRTC 2013-614, 15 November 2013; as amended by Telecom Notice of Consultation CRTC 2013-614-1, 5 December 2013
- *Northwestel Inc. – 800 service origination agreements and arrangements*, Telecom Decision CRTC 2013-613, 15 November 2013
- *Northwestel Inc. – Local Network Interconnection Tariff*, Telecom Order CRTC 2012-401, 25 July 2012
- *Northwestel Inc. – Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 2011
- *Forbearance from the regulation of high capacity / digital data services interexchange private line services*, Telecom Decision CRTC 2009-712, 20 November 2009; as amended by Telecom Decision CRTC 2009-712-1, 15 December 2009

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<sup>8</sup> Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

- *Forbearance from regulating interexchange private line services on additional routes*, Telecom Decision CRTC 2006-18, 13 April 2006; as amended by Telecom Decisions CRTC 2006-18-1, 31 May 2006; and 2006-18-2, 6 June 2006
- Telecom Order CRTC 99-913, 23 September 1999
- *Stentor Resource Centre Inc. – Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997
- *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997; as amended by Telecom Decision CRTC 97-19-1, 9 March 1998