



Telecom Decision CRTC 2011-70

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Ottawa, 4 February 2011

NorthernTel, Limited Partnership's application for forbearance from regulation of single-line inside wire services

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The Commission forbears, conditionally, to the extent set out in this decision, from regulating NorthernTel's residential and business single-line inside wire services on the customer's side of the demarcation point. Customers in premises without a jack-ended demarcation device will not be required to pay for the diagnosis, repair, and maintenance of inside wire when reporting transmission problems.

NorthernTel's application

1. The Commission received an application from NorthernTel, Limited Partnership (NorthernTel), dated 5 August 2010, requesting that the Commission forbear from the regulation of its residential and business single-line inside wire services (inside wire services) on the customer side of the demarcation point at the customer's premises. These services include installation, repair, and related services, as well as any similar services that the company may offer in the future that can be characterized as inside wire services.
2. Northern Tel also requested the Commission's approval to charge customers in premises without a jack-ended demarcation device for repairs to inside wire. However, NorthernTel proposed to continue to provide free diagnostic services to these customers when a transmission problem is reported.
3. The Commission received no comments regarding this application. The public record of this proceeding, which closed on 12 October 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Issues

4. The Commission has identified the following issues to be addressed in this decision:
 - I. Should the Commission forbear from regulating NorthernTel's inside wire services?

II. Would forbearance be consistent with the Policy Direction?¹

I. Should the Commission forbear from regulating NorthernTel's inside wire services?

5. NorthernTel requested that, pursuant to section 34 of the *Telecommunications Act* (the Act), the Commission refrain wholly and unconditionally from exercising any power or performing any duty under sections 24 (in part), 25, 29, and 31, and subsections 27(1), 27(2), 27(3) (in part), 27(4), 27(5), and 27(6) of the Act in relation to inside wire services presently offered by the company and any inside wire services the company may offer in the future.
6. NorthernTel submitted that, pursuant to *NorthernTel Limited Partnership – Transfer of responsibility for maintenance and repair of existing inside wire and new installations, additions, moves and rearrangements of same to subscribers*, Telecom Order CRTC 2003-258, 27 June 2003, its customers have been responsible for single-line inside wire since 27 December 2003. In that order, the Commission approved the transfer of responsibility to subscribers for (a) maintenance and repair of existing inside wire, and (b) new installations, additions, moves, and rearrangements of inside wire.
7. NorthernTel submitted that there is no regulatory, legislative, technical, or financial barrier for entry into the market. It also submitted that there are sufficient competitive safeguards to protect customers as there are already many suppliers and potential suppliers in this market and, as such, predatory pricing would not be a workable strategy for the company.
8. NorthernTel submitted that it does not have market power in the provision of inside wire services and provided evidence that there have been substantial decreases in revenue from these services over the past several years.
9. NorthernTel noted that in recent single-line inside wire forbearance rulings, the Commission had stated that if customers in premises without a jack-ended demarcation device experienced inside wire trouble, they should not be charged for diagnosis of the problem or for repair of their inside wire.
10. NorthernTel submitted that it was inappropriate to mandate free repair when a demarcation jack was not present. The company argued that under this scenario, it would treat two customers with an identical single-line inside wire trouble differently: customers in premises with a jack-ended demarcation device would be required to pay for repair, while customers in premises without the device would receive repair at no charge. NorthernTel submitted that such a practice would be unfair.

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

11. NorthernTel also submitted that providing repair services at no charge to certain customers was a disincentive to those customers who would otherwise seek competitive repair alternatives, and was, therefore, contrary to the Commission's objective of promoting competition in the single-line inside wire installation and repair market.

Commission's analysis and determinations

Application of subsections 34(1), 34(2), and 34(3) of the Act

12. The Commission notes that while subsection 34(1) of the Act provides that the Commission may refrain from regulating a service or class of services when it finds that such forbearance is consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act, subsection 34(2) requires it to forbear where it finds that the market for the service in question is, or will be, subject to sufficient competition to protect the interests of users. The Commission also notes, however, that subsection 34(3) of the Act provides that the Commission shall not forbear if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service.
13. The Commission considers it appropriate, for the purpose of this application, to define the market for inside wire services to include the maintenance and repair of all existing inside wire; new installations, additions, moves, and rearrangements of inside wire; and similar new inside wire services used for telecommunications purposes that are on the customer's side of the demarcation point. Further, the Commission determines that the market for inside wire services extends throughout NorthernTel's entire service territory because electricians and installers of security systems, in addition to NorthernTel, offer such services, and the required parts and supplies are available throughout this territory.
14. The Commission finds that in light of the evidence submitted by NorthernTel, the market for inside wire services in NorthernTel's territory is competitive, with many existing and potential suppliers and no barriers to entry. The Commission also finds that the potential exists for customers in premises with a jack-ended demarcation device to perform inside wiring work themselves.
15. The Commission considers that since the market for inside wire services is competitive, NorthernTel could not recoup any loss from below-cost pricing by increasing its prices in the future.
16. However, the Commission notes that while NorthernTel installs a jack-ended demarcation device at no cost when a customer without such a device reports a transmission problem, the record of this proceeding indicates that NorthernTel has not installed such a device at all customer premises. The Commission also notes that customers in premises without such a device would typically be unable to determine whether any transmission problems originate on the inside wiring, for which they would be responsible, or on the company's network, for which they would not be responsible.

17. The Commission considers that customers in premises without a jack-ended demarcation device will not have the same degree of choice of supplier as a customer in premises with a jack-ended demarcation device. Therefore, the Commission considers that with respect to premises without a jack-ended demarcation device, the market is not sufficiently competitive to protect the interests of customers.
18. Accordingly, pursuant to subsection 34(2) of the Act, the Commission finds, as a question of fact, that the provision of inside wire services in premises with a jack-ended demarcation device in NorthernTel's territory is sufficiently competitive to protect the interests of users so as to warrant forbearance to the extent set out in this decision.
19. Pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that refraining from exercising its powers and performing its duties, to the extent set out in this decision, with respect to inside wire services in premises with a jack-ended demarcation device in NorthernTel's territory, is consistent with the Canadian telecommunications policy objectives, specifically those in paragraphs 7(c), 7(f), and 7(h) of the Act.²
20. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that refraining from regulating inside wire services in premises with a jack-ended demarcation device in NorthernTel's territory, to the extent set out in this decision, is unlikely to unduly impair the continuance of a competitive market for inside wire services.
21. In light of these findings, the Commission must determine the extent to which it is appropriate to refrain, in whole or in part, and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 of the Act.

Section 24

22. The Commission considers that it is appropriate to retain its powers to impose conditions, pursuant to section 24 of the Act, so as to ensure that the confidentiality of customer information continues to be protected. As NorthernTel's Terms of Service, which ensure the confidentiality of customer information for regulated services, do not apply to forborne services, the Commission directs NorthernTel, as a condition of providing inside wire services, to abide by the existing conditions regarding

² The cited policy objectives of the Act are

7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

disclosure of confidential customer information to third parties with respect to the services forborne from regulation in this decision.

23. The Commission also directs NorthernTel, on a going-forward basis and as a condition of providing inside wire services, to incorporate, where appropriate, the existing conditions regarding disclosure of confidential customer information to third parties into all contracts and any other arrangements for services forborne from regulation in this decision.
24. In addition, in light of the conclusions reached in this decision regarding customers in premises without jack-ended demarcation devices who report transmission problems, the Commission directs NorthernTel, as a condition of providing inside wire services, to specify in future editions of the white pages of its telephone directories that customers will not incur a charge for the diagnosis, maintenance, and repair of single-line inside wire if, at the time of reporting transmission problems, there is no jack-ended demarcation device at the customer's premises.
25. Finally, the Commission considers that it is also appropriate for it to retain sufficient powers under section 24 of the Act to specify possible future conditions for offering and providing inside wire services.

Section 25

26. In light of its finding that NorthernTel does not have market power for inside wire services, the Commission considers that requiring NorthernTel to obtain prior Commission approval for inside wire service rates and terms would not represent efficient and effective regulation. Accordingly, the Commission concludes that it would be appropriate to forbear from the exercise of its powers and the performance of its duties under section 25 of the Act with respect to inside wire services, except for diagnostic, maintenance, and repair services for customers in premises without a jack-ended demarcation device.

Section 27

27. The Commission considers that there is no need to apply the regulatory standards for "just and reasonable" rates, as provided for in section 27 of the Act, to rates that are set in a competitive market. Accordingly, consistent with the Commission's conclusion that the market for inside wire services in NorthernTel's territory is not sufficiently competitive to protect the interests of customers in premises without a jack-ended demarcation device, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under subsection 27(1) of the Act with respect to inside wire services in NorthernTel's service territory except with respect to the diagnosis, maintenance, and repair of single-line inside wiring of customers in premises without a jack-ended demarcation device.
28. The Commission notes that customers in premises without a jack-ended demarcation device may be unable to determine the origin of a transmission problem. Accordingly, the Commission considers that NorthernTel should specify in its tariff that customers

will not incur a charge for the diagnosis, maintenance, and repair of single-line inside wire if, at the time of reporting transmission problems, there is no jack-ended demarcation device at the customer's premises.

29. The Commission will refrain from the exercise of all of its powers and the performance of all of its duties under subsection 27(2) of the Act with respect to inside wire services.
30. The Commission considers it necessary to retain its powers under subsection 27(3) of the Act with respect to compliance with powers and duties from which it has not forborne in this decision.
31. The Commission will refrain from the exercise of its powers under subsection 27(5) of the Act with respect to inside wire services provided to customers in premises with a jack-ended demarcation device as that subsection relates to subsection 27(1) of the Act, with respect to which the Commission is forbearing in this decision as far as such customers are concerned. However, the Commission considers it necessary, with respect to customers in premises without a jack-ended demarcation device, to retain its powers under subsection 27(5) of the Act, as this subsection relates to subsection 27(1) of the Act, for which the Commission is retaining its powers insofar as such customers are concerned.
32. The Commission will also forbear from all of its powers under subsections 27(4) and 27(6) of the Act with respect to inside wire services, because subsection 27(4) of the Act relates to subsection 27(2) of the Act with respect to which the Commission is forbearing in this decision, and because subsection 27(6) of the Act does not relate per se to the charging of rates to customers in premises without a jack-ended demarcation device.

Sections 29 and 31

33. The Commission considers it appropriate that NorthernTel no longer be required to obtain the Commission's prior approval to enter into agreements with other telecommunications common carriers regarding inside wire services. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 29 of the Act with respect to inside wire services.
34. The Commission also considers it appropriate that NorthernTel be able to limit its liability regarding inside wire services in the same way as an unregulated service provider. Accordingly, the Commission will refrain from the exercise of all of its powers and the performance of all of its duties under section 31 of the Act with respect to inside wire services.

Declaration pursuant to subsection 34(4) of the Act

35. In light of the above, the Commission declares, pursuant to subsection 34(4) of the Act, that sections 24, 25, 27, 29, and 31 of the Act do not apply to NorthernTel's inside wire services, except with respect to

- the conditions set out in this decision pursuant to section 24 of the Act with respect to the confidentiality of customer information;
- the condition set out in this decision pursuant to section 24 of the Act with respect to the publication in the white pages of the telephone directories of a statement that customers will not incur a charge for the diagnosis, maintenance, and repair of single-line inside wire, if at the time of reporting transmission problems there is no jack-ended demarcation device at the customer's premises;
- any future condition that the Commission may impose, pursuant to section 24 of the Act, with respect to inside wire services;
- the Commission's powers under subsections 25(1), 27(1), and 27(5) of the Act with respect to the filing and approval of tariffs and just and reasonable rates for inside wire services as they relate to customers in premises without a jack-ended demarcation device; and
- the Commission's powers under subsection 27(3) of the Act with respect to compliance with powers and duties not forborne from in this decision.

II. Would forbearance be consistent with the Policy Direction?

36. The Policy Direction³ requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the Canadian telecommunications policy objectives. The Commission considers that forbearance from the regulation of inside wire services, as set out in this decision, would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act. The Commission considers that such forbearance would also be consistent with subparagraphs 1(a)(i) and 1(a)(ii) of the Policy Direction.
37. Consistent with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that its determinations in this decision advance the telecommunications policy objectives set out in paragraphs 7(c), 7(f), and 7(h) of the Act. Consistent with subparagraph 1(b)(ii) of the Policy Direction, the Commission considers that its

³ Paragraph 1(a), and subparagraphs 1(b)(i) and 1(b)(ii) of the Policy Direction state the following:

1(a) the Commission should

- (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
- (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;

1(b) the Commission, when relying on regulation, should use measures that ...

- (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction],
- (ii) if there are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,

...

determinations in this decision neither deter economically efficient competitive entry into the inside wire services market nor promote economically inefficient entry.

Conclusion

38. The Commission directs NorthernTel to issue revised tariff pages that reflect the following changes:
 - delete the existing tariff provisions related to residential and business single-line inside wire services; and
 - include provisions stating that if at the time of reporting transmission problems, there is no jack-ended demarcation device in the customer's premises, the customer will not incur a charge for the diagnosis, maintenance, and repair of single-line inside wire.
39. Forbearance will take effect on the date that NorthernTel issues its revised tariff pages.
40. The conditions for customers in premises without the jack-ended demarcation device must also be included in future editions of NorthernTel's white pages directories.

Secretary General