



Telecom Order CRTC 2012-151

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Ottawa, 14 March 2012

Northwestel Inc. – Interconnection and Service Agreements

File numbers: 8340-B2-0010/04; 8340-N1-201111377; 8340-N1-201111385;
8340-N1-201111393

1. The Commission received applications from Northwestel Inc. (Northwestel), dated 27 July 2011, and subsequently revised 1 August 2011, requesting approval for an amendment to an Interconnection and Service Agreement between itself and Bell Canada, and for three new 800 service origination agreements pursuant to section 29¹ of the *Telecommunications Act* (the Act) between itself and respectively, Rogers Cable Communications Inc. (RCCI), Primus Telecommunications Canada Inc. (Primus), and Saskatchewan Telecommunications (SaskTel) (collectively, the agreements).
2. Northwestel designated certain negotiated rate information contained in the agreements as confidential, stating that disclosure of this information would provide the company's competitors with an undue competitive advantage and would harm contract negotiations between itself and the other parties to the agreements, thereby causing the company specific harm. Abridged versions of the agreements were provided for the public record.
3. The Commission received comments from TELUS Communications Company (TCC). The public record of this proceeding, which closed on 12 September 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.

Should the Commission approve Northwestel's applications?

4. TCC submitted that the Commission should not approve the agreements unless the confidential, negotiated rates contained in the agreements are tariffed. TCC submitted that filing an agreement under section 29 of the Act does not discharge the requirement pursuant to section 25 of the Act to provide a telecommunications service only in accordance with an approved tariff and that Northwestel had not received forbearance with regard to these rates.

¹ Section 29 of the Act states:

- No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting
- a) the interchange of telecommunications by means of their telecommunications facilities;
 - b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or
 - c) the apportionment of rates or revenues between the carriers.

5. TCC also submitted that the agreement between Northwestel and Primus is not within the scope of section 29 of the Act as this section only applies to agreements between carriers; and Primus is a reseller, not a carrier.
6. In reply, Northwestel submitted that for many years these types of agreements, which have received approval from the Commission pursuant to section 29 of the Act, have contained confidential, negotiated rates. It added that it has an Interconnection and Service Agreement with TCC containing the same type of confidential, negotiated rates, which was approved by the Commission pursuant to section 29 of the Act in 2008.²
7. The Commission notes that subsection 29(c) of the Act applies to agreements between carriers for the apportionment of revenues between the carriers. The Commission considers that it is clear that the negotiated rates in the agreements are used to apportion revenues, which are collected from end-customers for the payment of long distance and 800 calls, between the parties to the agreements.
8. The Commission notes that it has approved numerous agreements between carriers that contain the same type of confidential, negotiated rates for the apportionment of revenue pursuant to section 29 of the Act. The Commission also notes that it has not required these rates to be tariffed. The Commission considers that, consistent with its previous treatment of these types of agreements, the consideration of approval for the Northwestel agreements pursuant to section 29 of the Act and not section 25 is appropriate.
9. The Commission considers that the negotiated, confidential rates contained in the agreements between Northwestel and Bell Canada, RCCI, and SaskTel are reasonable and appear not to unduly discriminate between carriers.
10. The Commission finds, however, that Northwestel did not meet its obligation pursuant to section 29 of the Act to obtain prior approval of the Commission before giving effect to the agreements. The Commission notes that the agreements between Northwestel and both RCCI and SaskTel were executed in 2007 and filed for approval more than four years after their execution. Additionally, the amendment to the agreement with Bell Canada was executed in January 2010 and filed with the Commission 18 months later.
11. The Commission takes Northwestel's failure to comply with the Act very seriously. Accordingly, the Commission grants **approval**, for a period of 120 days, to the agreements between Northwestel and each of RCCI and SaskTel and to the amendment to the agreement between Northwestel and Bell Canada. The Commission also directs Northwestel to file newly executed 800 service origination agreements between itself and each of RCCI and SaskTel, and a newly executed amendment to the

² See Telecom Order CRTC 2008-10, 15 January 2008.

Interconnection and Service Agreement between the company and Bell Canada, with future effective dates, for the Commission's prior approval, by no later than 75 days from the date of this order. The Commission fully expects Northwestel to take the necessary measures to fulfill its obligations under the Act going forward and to file requests for approval for all agreements that require prior approval pursuant to section 29 of the Act.

12. The Commission finds that Northwestel's agreement with Primus does not fall under section 29 of the Act as Primus is a reseller, not a carrier; therefore, the file for this agreement has been closed.

Secretary General