



Telecom Decision CRTC 2012-4

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Ottawa, 5 January 2012

SSi Micro Ltd. – Application regarding Northwestel Inc.’s backbone connectivity services

File number: 8661-S93-201109885

In this decision, the Commission determines that Northwestel’s V-Connect service is not forborne and directs Northwestel to file tariffs and associated cost studies for this service. The Commission also determines that setting interim rates for the V-Connect service is not appropriate at this time.

In view of these determinations, tariffs are not required for Northwestel’s I-Gate service; however, this service will be included in the review of Northwestel’s regulatory framework and telecommunications services discussed in Telecom Regulatory Policy 2011-771.

Introduction

1. On 23 June 2011, SSi Micro Ltd. (SSi Micro) filed an application requesting that the Commission direct Northwestel Inc. (Northwestel) to file tariffs for its Internet Protocol (IP) gateway service, marketed as I-Gate service, and for its data service, marketed as V-Connect service (collectively, the backbone connectivity services). Further, SSi Micro requested that, until the tariffs come into effect, the Commission set interim rates for those services.
2. In Northwestel’s view, there is no basis for SSi Micro’s application because the backbone connectivity services are forborne and therefore do not have to be provided in accordance with a tariff, and because Northwestel has offered these services to SSi Micro, on a negotiated basis, at just and reasonable rates.
3. Numerous interveners filed comments on SSi Micro’s application, including the Government of the Northwest Territories, the Government of Yukon, and the Mayor of Yellowknife. The public record of this proceeding, which closed on 21 October 2011, is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings” or by using the file number provided above.
4. The Commission considers that it must address the following issues in its determinations:
 - I. Should Northwestel be required to file tariffs for its backbone connectivity services?

II. Should the Commission set interim rates for the backbone connectivity services?

I. Should Northwestel be required to file tariffs for its backbone connectivity services?

5. SSi Micro noted that it has been offering retail Internet services in Yellowknife since 2004. SSi Micro submitted that Northwestel is the sole supplier of terrestrial facilities in the community of Yellowknife. SSi Micro also submitted that where terrestrial facilities exist, as is the case with Yellowknife, it must rely on Northwestel for backbone connectivity because other alternatives, such as satellite connectivity, are not economically feasible.
6. SSi Micro submitted that Northwestel, as both a retail competitor in the Internet service market and the only wholesale supplier of terrestrial backbone connectivity in its territory, is in a position to thwart competition. SSi Micro also submitted that the rates Northwestel charges or has proposed to charge for the backbone connectivity services it provides to SSi Micro are unjust and unreasonable, contrary to subsection 27(1) of the *Telecommunications Act* (the Act). Further, SSi Micro submitted that Northwestel is conferring an undue preference upon itself and subjecting SSi Micro to an undue and unreasonable disadvantage, contrary to subsection 27(2) of the Act.
7. Accordingly, SSi Micro submitted that Northwestel should be required to file tariffs for both of its backbone connectivity services (V-Connect and I-Gate) at just and reasonable rates, thereby addressing the alleged contraventions of subsections 27(1) and (2) noted above.
8. All the interveners generally supported SSi Micro's position that Northwestel is in a position to thwart competition in the retail Internet services market.

V-Connect service

9. SSi Micro submitted that it had made a request to Northwestel for V-Connect service, an Internet Protocol-Virtual Private Network (IP-VPN) data service that could provide a required transport service from Yellowknife to Edmonton. SSi Micro submitted that the rates proposed by Northwestel for its V-Connect service are about 30 times more than rates for comparable services in competitive markets in southern Canada and are therefore unreasonable.
10. Northwestel submitted that it is unreasonable to compare its rates for the backbone connectivity services to rates charged for similar services by southern carriers, because network cost factors in its operating territory are different due to low population density, large territory, and difficult terrain.
11. Northwestel also submitted that in Telecom Order 97-572, the Commission forbore from the regulation of current and future packet data services. In Northwestel's view, V-Connect fits the description of a future packet data service, as the underlying network topology for V-Connect is similar to that of the packet data services that

were the subject of that order. Northwestel therefore submitted that its V-Connect service is forborne.

12. SSi Micro submitted that V-Connect service does not meet the criteria of forbearance set out in Telecom Order 97-572 and that Northwestel has been violating its regulatory obligations by offering its V-Connect service on a forborne basis since 2006. SSi Micro argued that V-Connect is not just a packet data service but a packet-based service that supports voice, data, and video services.

I-Gate service

13. SSi Micro noted that it currently uses Northwestel's I-Gate service to provide retail Internet services in Yellowknife. I-Gate service includes two elements: i) transport of SSi Micro's retail Internet traffic from Yellowknife to Edmonton; and ii) connectivity to the Internet at Edmonton. SSi Micro submitted that its agreement with Northwestel regarding I-Gate service expired in November 2010, and since then Northwestel has provided the service on a month-to-month basis.
14. SSi Micro submitted that it has been unable to negotiate a new agreement with Northwestel for the provision of I-Gate service. SSi Micro also submitted that Northwestel has proposed new rates for I-Gate service that are approximately 13 times more than rates for comparable service in competitive markets in southern Canada. SSi Micro further submitted that the effective rate per gigabyte under the proposed new rates would be higher in some cases than rates that retail customers would pay to purchase Internet usage from Northwestel.
15. SSi Micro submitted that forbearance, if it applies to I-Gate service, should be undone, as Northwestel is the sole supplier of backbone connectivity services in its territory.
16. Northwestel submitted that in Telecom Order 98-619, the Commission forbore from regulating Internet services and specifically included in that determination dedicated Internet services, such as I-Gate, offered to Internet service providers.
17. Northwestel disagreed with SSi Micro that the proposed wholesale rates for its I-Gate service are higher than the retail rates it charges its customers. Northwestel submitted that SSi Micro had incorrectly compared the proposed rates to the rates Northwestel charges its retail customers for pre-purchased blocks of gigabyte usage. Northwestel added that in fact, retail customers typically use far less than the pre-purchased block of gigabytes; thus, the effective gigabyte rate paid is significantly higher than rates that SSi Micro would pay per gigabyte.

Commission's analysis and determinations

V-Connect service

18. As noted by Northwestel, in Telecom Order 97-572, the Commission forbore from regulating current and future packet data services. In that order, the Commission required Northwestel, upon offering any future packet data services, to file details of

such services with the Commission in order to demonstrate that the services meet the conditions of forbearance. The Commission notes that Northwestel began offering its V-Connect service in 2006 but did not provide the Commission with service details as required by Telecom Order 97-572.

19. In this proceeding, Northwestel provided the Commission with details regarding its V-Connect service, as required by the order. In the Commission's view, V-Connect service supports class of service capability, which allows it to prioritize between voice, video, and data applications, and thereby to handle multiple applications over the same connection. The Commission notes that the packet data services that were granted forbearance in Telecom Order 97-572 did not have class of service capability.
20. In light of the above, the Commission finds that V-Connect service is not forborne pursuant to Telecom Order 97-572, and therefore directs Northwestel to file tariffs for V-Connect service, with associated cost studies, within **30 days** of the date of this decision.

I-Gate service

21. The Commission notes that SSi Micro's requirement for I-Gate service stems from the absence of tariffed alternatives at just and reasonable rates for backbone connectivity from Yellowknife to Edmonton. The Commission considers that the determination in this decision requiring Northwestel to file tariffs for V-Connect service will result in the availability of backbone connectivity service at just and reasonable rates.
22. Accordingly, the Commission finds that it is not necessary at this time to require Northwestel to file tariffs for its I-Gate service. However, the Commission notes that in Telecom Regulatory Policy 2011-771, it determined that it would conduct a review of Northwestel's regulatory framework and of all the company's telecommunication services within the next two years. The Commission will include Northwestel's I-Gate service as part of that review.

II. Should the Commission set interim rates for the backbone connectivity services?

23. SSi Micro requested that the Commission grant it immediate relief from Northwestel's rates for the backbone connectivity services by setting interim rates at no more than twice the market rates in southern Canada for the same level of service.
24. Northwestel submitted that requiring interim rates for forborne services would in effect be a determination by the Commission to re-regulate those services. Northwestel submitted that it offers backbone connectivity services at just and reasonable rates, and that under the circumstances there is no basis for regulatory intervention by the Commission.

Commission's analysis and determinations

25. The Commission notes that, in light of its determination to require Northwestel to file tariffs for V-Connect service, it is limiting its consideration in this section to the appropriateness of setting interim rates for V-Connect service.
26. In the Commission's view, it would not be appropriate to set interim rates for Northwestel's V-Connect service based on rates for similar services in southern Canada, as the network cost factors in Northwestel's territory are not the same as those in territories further south. Therefore, the Commission considers that, in the absence of a Northwestel cost study, there is no appropriate basis upon which to set interim rates for V-Connect service at this time.

Secretary General

Related documents

- *Northwestel Inc. – Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 2011
- Telecom Order CRTC 98-619, 23 June 1998
- Telecom Order CRTC 97-572, 29 April 1997