



Telecom Decision CRTC 2013-613

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Ottawa, 15 November 2013

Northwestel Inc. – 800 service origination agreements and arrangements

File number: 8340-N1-201307546

In this decision, the Commission determines that section 25 of the Telecommunications Act (the Act) applies to the amounts paid by Primus for telecommunications services provided by Northwestel under the 800 service origination arrangements between the two companies. The Commission directs Northwestel to file an application pursuant to subsection 25(4) of the Act to ratify the rates charged to Primus for those services.

The Commission also denies an application by Northwestel related to two proposed 800 service agreements between itself and Globility. Northwestel is directed to file, for Commission approval, proposed rates to be included in its Carrier Access Tariff for specific charges related to currently untariffed telecommunications services provided for in those agreements, supported by a Phase II cost study.

In addition, the Commission is releasing Telecom Notice of Consultation 2013-614 directing Northwestel to show cause why the applicable rates for its 800 service origination arrangements with other carriers should not be provided pursuant to a Commission-approved tariff. Interested persons will be given the opportunity to comment on Northwestel's submissions in the context of that proceeding.

Background

1. The Commission received applications from Northwestel Inc. (Northwestel), dated 27 July 2011 and revised 1 August 2011, requesting approval for (i) an amendment to an interconnection and service agreement between itself and Bell Canada, and (ii) three new 800 service origination agreements, made 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).

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.

2. In Telecom Order 2012-151, the Commission approved, for a period of 120 days, Northwestel's agreements with RCCI and SaskTel, as well as the amendment to the agreement between Northwestel and Bell Canada. The Commission also directed Northwestel to file newly executed 800 service origination agreements between itself and each of RCCI and SaskTel, and a newly executed amendment to the interconnection and service agreement between itself and Bell Canada.²
3. The file relating to the Primus agreement was closed in Telecom Order 2012-151, because the Commission found that since Primus is a reseller and not a Canadian carrier, that agreement did not fall under section 29 of the Act.

The appeal

4. TELUS Communications Company (TCC) filed an appeal in relation to Telecom Order 2012-151 with the Federal Court of Appeal (the Court or FCA). The company argued, among other things, that approval of agreements under section 29 of the Act does not exempt Northwestel from the requirements of section 25 of the Act, and therefore the amounts to be paid by each of Bell Canada, RCCI, and SaskTel to Northwestel must be included in a tariff that is filed, and then publicly disclosed, under section 25 of the Act.³ TCC further argued that, since the Commission found that no approval of the agreement between Northwestel and Primus was required under section 29 of the Act, the amounts that would be paid by Primus to Northwestel must be included in a tariff filed and approved under section 25 of the Act.
5. On 15 February 2013, in *TELUS Communications Company v. Northwestel Inc., Bell Canada, Rogers Cable Communications Inc., Saskatchewan Telecommunications and Primus Telecommunications Canada Inc.*, 2013 FCA 44, the Court, among other things, accepted the Commission's finding that the Bell Canada, RCCI, and SaskTel agreements apportioned revenue, and that in approving these agreements under section 29 of the Act, the Commission approved the amounts that each of these companies would be paying to Northwestel. The Court ruled that the Commission did not err in determining that, in respect of the arrangements, parties needed only approval of the agreements, not approval of tariffs as well.
6. Since the Commission approved the amounts that Bell Canada, RCCI, and SaskTel would be paying to Northwestel under section 29, the Court found that it would not be a reasonable interpretation of the Act to require the Commission to approve these

² Pursuant to the Commission's directives in Telecom Order 2012-151, Northwestel filed a series of applications for newly executed agreements, which were ultimately approved by the Commission in Telecom Order 2012-642. The agreements included references to (i) existing tariff rates, and (ii) charges that were considered to be the apportionment of rates or revenues. The Commission did not require the filing of tariffs in respect of the charges that were considered to be the apportionment of rates or revenues.

³ TCC had argued this point in the proceeding leading to Telecom Order 2012-151. TCC had also argued in that proceeding that the services in question must be available on a non-discriminatory basis to all carriers that may wish to purchase them, not simply to those few carriers that had concluded agreements to purchase the services off-tariff.

same amounts under section 25. In its ruling, the Court stated that the Commission should be given deference in determining whether section 25 or section 29 of the Act will apply in any particular situation.

7. However, the Court referred back to the Commission the matter of whether section 25 of the Act should apply to the amounts to be paid by Primus under its agreement with Northwestel.
8. Subsequent to the Court's ruling, in a joint letter to the Commission dated 16 April 2013, Northwestel and Primus proposed the following approach as a means to ensure compliance with sections 25 and 29 of the Act:
 - Northwestel and Primus would dissolve their current agreement; and
 - a new 800 service origination agreement between Northwestel and Globility Communications Corporation (Globility), a registered Canadian carrier affiliated with Primus, would be agreed upon and submitted for the Commission's approval, pursuant to section 29 of the Act.

The current application

9. On 21 May 2013, Northwestel filed its application requesting that the Commission approve two agreements between itself and Globility pursuant to section 29 of the Act. The first was a short-term agreement with a proposed effective date of 15 May 2013 and was submitted in order to govern Northwestel's relationship with Globility during the intervening period until a long-term agreement was approved by the Commission. The second agreement was the intended long-term agreement, submitted with a proposed effective date of 15 July 2013.
10. The Commission received interventions on Northwestel's application from Globility, Iristel Inc., and TCC. The public record of this proceeding, which closed on 16 July 2013, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
11. The Commission will address the following issues in this decision:
 - I. Should section 25 of the Act apply to the amounts paid by Primus in relation to its past 800 service origination agreement with Northwestel?
 - II. Should the Commission approve Northwestel's proposed agreements with Globility pursuant to section 29 of the Act?
 - III. Do the Commission's determinations in this decision affect 800 service origination agreements between Northwestel and other carriers?
- I. Should section 25 of the Act apply to the amounts paid by Primus in relation to its past 800 service origination agreement with Northwestel?**
12. TCC argued that the arrangements between Northwestel and Primus did not involve the apportionment of rates or revenues, and that Northwestel was therefore providing

a telecommunications service to Primus that should have been subject to a Commission-approved tariff pursuant to section 25 of the Act.

13. TCC submitted that Northwestel provided a toll interconnection service to Primus that was composed of a number of components, all of which should have been tariffed. TCC stated that each component was a distinct telecommunications service provided by Northwestel, for which Northwestel charged a per-minute rate.
14. Globility, Northwestel, and Primus argued that section 25 of the Act was not applicable in this case, stating that the Court had already rejected TCC's argument that the arrangements between Northwestel and Primus did not involve the apportionment of revenues. They submitted that the Court examined the applicability of section 29 of the Act to the agreements that were the subject of the Commission's determinations in Telecom Order 2012-151 and found the approval process to be appropriate for those types of agreements.

Commission's analysis and determinations

15. Given that Primus is not a Canadian carrier as defined in the Act, the Commission notes that section 29 of the Act is not applicable to Primus' agreement with Northwestel. To the extent that the arrangements between the two companies include the provision of a telecommunications service or services⁴ by Northwestel to Primus, any such service(s) must be provided pursuant to section 25 of the Act, absent a Commission forbearance determination in relation to the service(s).
16. Therefore, the Commission considers that it must first address the extent to which the arrangements between Northwestel and Primus included the provision of a telecommunications service or services by Northwestel to Primus.

Northwestel's provision of telecommunications service(s) to Primus

17. The Commission notes that the purpose of the arrangements between Northwestel and Primus was to enable Canadians in Northwestel's operating territory to place calls to toll-free telephone numbers for which Primus is the designated service provider. These toll-free calls were transferred in the North from Northwestel to Bell Canada and then, in turn, transferred to Primus at a location in southern Canada. Northwestel stated that it does not have the capability to determine the service provider to which a given toll-free call should be sent and, in most cases, it relies on Bell Canada to perform that function.
18. For eligible calls, Primus paid to Northwestel the following:

- Northwestel's bundled Carrier Access Tariff per-minute rate;

⁴ A telecommunications service is defined in the Act as "a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise." It also includes any service that is incidental to the business of providing telecommunications services.

- a toll-free carrier identification charge; and
 - a per-minute charge consisting of a transport fee and a “southern delivery” fee.
19. The Commission notes that tariffs exist for some, but not all, of the above-noted components, as follows:
- the bundled Carrier Access Tariff per-minute rate and the toll-free carrier identification charge are tariffed across Northwestel’s serving territory;
 - for calls originating from Northwestel’s eastern area, which includes most Nunavut communities, the transport fee is tariffed;
 - for calls originating from Northwestel’s western area, which covers the remainder of Northwestel’s territory, the transport fee is not currently tariffed; and
 - there is no tariff for the southern delivery fee.
20. The Commission notes that, in principle, there is no difference between the transport component applicable for calls that originate from Northwestel’s western area and the transport component for calls that originate from its eastern area. The Commission recognizes that there may be a difference in the technology or type of transmission facility used, but considers that the functionality provided is the same: the transport of calls from the North to the South. The Commission further considers that this functionality meets the Act’s definition of a telecommunications service. The service provided by Northwestel to Primus was the transport of toll-free calls destined for Primus, from Northwestel’s network to a point in southern Canada.
21. Northwestel described the southern delivery component as a fee for Bell Canada to deliver toll-free calls to Primus’ interconnection point at a Bell Canada access tandem switch. The Commission considers that, similar to the transport component, this functionality also meets the Act’s definition of a telecommunications service. The service provided by Northwestel to Primus was the delivery of toll-free calls from the point in southern Canada to which the calls were transported, to the Bell Canada switch for which Primus had established a network interconnection arrangement.
22. The Commission notes that it has not made a forbearance determination pursuant to section 25 of the Act in relation to these services.

Conclusion

23. In light of the above, the Commission determines that
- the arrangements between Northwestel and Primus included the provision of telecommunications services by Northwestel to Primus; and

- Northwestel provided these telecommunications services otherwise than in accordance with a Commission-approved tariff pursuant to section 25 of the Act.
24. Accordingly, Northwestel is directed to file an application, pursuant to subsection 25(4) of the Act, to ratify the rates charged otherwise than in accordance with a Commission-approved tariff.

II. Should the Commission approve Northwestel's proposed agreements with Globility pursuant to section 29 of the Act?

25. TCC argued that, regardless of whether Northwestel provides the service at issue to Primus or to its affiliated Canadian carrier Globility, it will still be providing the same telecommunications service, which should be tariffed pursuant to section 25 of the Act.
26. Northwestel provided a comparison between its 800 service origination agreements with Globility and the agreement it signed with RCCI, which was approved by the Commission. Northwestel argued that, in Telecom Order 2012-151, the Commission considered that the negotiated rates in the RCCI agreement were used to apportion revenues, so the same conclusion should apply with respect to the rates between itself and Globility.
27. Globility submitted that the 800 service origination agreements between Northwestel and itself were the same form of agreement as those considered between carriers in Telecom Order 2012-151, and that approval of them pursuant to section 29 of the Act would be appropriate.

Commission's analysis and determinations

28. The Commission notes that Globility is a Canadian carrier as defined in the Act, and therefore an agreement between it and Northwestel could be approved pursuant to section 29 of the Act if its content meets the criteria set out in that section – for example, if the agreement relates to the apportionment of rates.
29. In Telecom Order 2012-151, the Commission approved agreements involving RCCI and SaskTel that were similar to Northwestel's proposed agreements with Globility. Approval was granted on the basis that the negotiated rates for the transport of toll-free calls from Northwestel's western area and the southern delivery fee were used to apportion revenues between the parties to the agreements.
30. In this proceeding, Northwestel described in detail the nature of the arrangements it provides through its 800 service origination agreements. It is the Commission's view that the details provided by Northwestel clearly indicate that these arrangements involve the provision of telecommunications services. Based on this new information, the Commission no longer considers that Northwestel's 800 service

origination agreements involve the apportionment of rates or revenues.⁵ The Commission does not consider that Globility's requirement to pay the rates in question is contingent on or linked to its ability to collect revenues from its customers. Further, the Commission does not consider Northwestel's arrangements as two-way arrangements whereby the two carriers involved are jointly providing a retail service and sharing the rates or revenues.

31. In the Commission's view, it would be more appropriate to consider that the negotiated rates in these types of agreements are used as compensation for the provision of telecommunications services, rather than the apportionment of rates or revenues.
32. In light of the above, the Commission determines that the transport of calls from Northwestel's western area and the southern delivery fee do not constitute apportionments of rates or revenues that can be approved as part of an agreement pursuant to section 29 of the Act. The Commission therefore **denies** Northwestel's 21 May 2013 application requesting approval of two agreements with Globility pursuant to section 29 of the Act.
33. As the Commission has found that the transport of calls constitutes a telecommunications service, and that the arrangement for the provision of such services by Northwestel to Globility cannot be approved as an apportionment of rates or revenues, the Commission finds that the rates for this service must be tariffed pursuant to section 25 of the Act.
34. In the case of the proposed arrangements, Northwestel would be transferring toll-free calls from Canadians in its incumbent territory to Globility operating as a long distance service provider. The Commission notes that toll-free service is a competitive long distance service.
35. The main principle on which the Commission's current long distance network interconnection regime is based is that long distance service providers, including incumbent local exchange carriers (ILECs) operating out of their incumbent territories, are considered to be customers of, not equal carriers with, ILECs operating within their incumbent territories. As a result, a long distance service provider is responsible for (i) providing the interconnecting facility between its network and a local exchange carrier's (LEC) network, and (ii) paying Commission-approved tariff rates to a LEC for voice calls transferred between the long distance service provider and the LEC.
36. Northwestel is therefore directed to file for Commission approval, within **30 days** of the date of this decision, proposed rates to be included in its Carrier Access Tariff for (i) the transport component for calls that originate from Northwestel's western area,

⁵ No parties to this proceeding argued that, if these agreements did not involve the apportionment of rates or revenues, they would meet the other criteria listed in section 29 of the Act. In the Commission's view, the arrangements do not appear to be about the interchange of telecommunications or the management or operation of facilities.

and (ii) the southern delivery fee. The proposed rates must be supported by a Phase II cost study. If a revised 800 service origination agreement between Northwestel and Globility is required, Northwestel is also directed to file that agreement for the Commission's approval, pursuant to section 29 of the Act, within **30 days** of the date of this decision.

III. Do the Commission's determinations in this decision affect 800 service origination agreements between Northwestel and other carriers?

37. The Commission notes that it approved 800 service origination agreements, pursuant to section 29 of the Act, between the following:
- Northwestel and each of RCCI and SaskTel, in Telecom Order 2012-151. Both of these agreements had been executed in 2007.
 - Northwestel and each of Navigata Communications Inc. (Navigata) and Rogers Communications Partnership (RCP), in Telecom Order 2012-416. Both of these agreements were for one year ending 31 August 2012.
 - Northwestel and each of Bell Canada, Navigata, and RCP, in Telecom Order 2012-642. These three agreements were for one year ending 31 August 2013.
38. Given the determinations set out above, concurrent with this decision, the Commission is releasing Telecom Notice of Consultation 2013-614 to initiate a proceeding in which Northwestel is directed to show cause why the applicable rates for its 800 service origination arrangements with the carriers mentioned above should not be provided pursuant to a Commission-approved tariff. Interested persons will be able to comment on Northwestel's submissions in relation to this matter in the context of that proceeding.

Secretary General

Related documents

- *Northwestel Inc. – Applicable rates for 800 service origination arrangements*, Telecom Notice of Consultation CRTC 2013-614, 15 November 2013
- *Northwestel Inc. – Interconnection and Service Agreements*, Telecom Order CRTC 2012-642, 23 November 2012
- Telecom Order CRTC 2012-416, 31 July 2012
- *Northwestel Inc. – Interconnection and Service Agreements*, Telecom Order CRTC 2012-151, 14 March 2012