



Telecom Decision CRTC 2014-322

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Northwestel Inc. and ARDICOM Digital Communications Inc. – Request for a modification to the affiliate rule

*The Commission **approves** the request to modify the affiliate rule in order to allow affiliates of Northwestel to resell non-forborne services at a rate at least as high as Northwestel's tariffed rates for these services. The Commission will monitor the rates at which Northwestel's affiliates resell Northwestel's non-forborne services.*

Background

1. In Telecom Decision 2002-76, the Commission changed the conditions under which an incumbent local exchange carrier (ILEC) may provide tariffed services to an affiliate. The Commission determined that an ILEC may not provide an ILEC affiliate with non-forborne services which the affiliate uses to provide telecommunications services to the public, except pursuant to an approved tariff which identifies the rates, terms, and conditions under which the relevant telecommunications services are provided by the affiliate to the public. Those rates, terms, and conditions must be identical to the rates, terms, and conditions which would apply if the telecommunications services in question were provided to the public by the ILEC, instead of by the affiliate.
2. In that same decision, the Commission also revised the definition of an affiliate to include only those persons that are not Canadian carriers and that control or are controlled by the ILEC or that are controlled by a person that also controls the ILEC. In all cases, control means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of any body corporate or otherwise.
3. In Telecom Decision 2003-65, the Commission, among other things, lifted the joint marketing restrictions applicable to Northwestel Inc. (Northwestel), and was of the preliminary view that it would be appropriate for the company to comply with the modifications to the affiliate rule set out in Telecom Decision 2002-76.¹ By letter dated 23 January 2004, Northwestel stated that it agreed with the Commission's preliminary view concerning the affiliate rule, indicating that it would comply with the rule, as modified.

¹ A show cause process was established to assess the appropriateness of implementing the Commission's preliminary view.

Introduction

4. The Commission received an application from Northwestel and ARDICOM Digital Communications Inc. (ARDICOM) (collectively, the Companies), dated 12 December 2013, in which the Companies requested that the Commission apply the affiliate rule as set out in Telecom Decision 2002-76 to Northwestel with one modification. The proposed modification would permit resellers who are affiliates of Northwestel to resell the company's tariffed services at rates that are higher than Northwestel's tariffed rates.
5. Specifically, the Companies proposed that Northwestel affiliates, such as ARDICOM, be permitted to resell those services at rates that are at least as high as Northwestel's tariffed rates, only in those circumstances where a customer has the option of purchasing the same services directly from Northwestel at Commission-approved tariffed rates.
6. Northwestel acknowledged that it controls ARDICOM, although it owns only one-third of that company's shares, and, as such, ARDICOM is an affiliate of Northwestel pursuant to the definition set out in the affiliate rule.
7. The Commission received an intervention from Benjamin Klass. The public record of this proceeding, which closed on 13 February 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

8. The Commission has identified the following issues to be addressed in this decision:
 - Should the affiliate rule applicable to Northwestel be modified as requested by the Companies?
 - Are the determinations in this decision consistent with the Policy Direction?²

I. Should the affiliate rule applicable to Northwestel be modified as requested by the Companies?

9. The Companies stated that, in recognition of the importance of Aboriginal peoples in the North, many government contracts encourage aboriginal participation in the provision of telecommunications services in the North. For example, in 1997, when the Government of the Northwest Territories put out a tender for its data communications network, it indicated a preference would be given to companies that had aboriginal participants; ARDICOM³ was created in response to this position.

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

³ ARDICOM is a partnership of Northwestel, Arctic Co-operatives Limited, and Northern Aboriginal Services Company.

10. The Companies noted that ARDICOM resells, with a markup, Frame Relay service⁴ and V-Connect service⁵ to customers in Northwestel's operating territory. However, Northwestel's tariffs do not include the markup that is applied by ARDICOM on the services it resells to its customers. Northwestel stated that the markup contributes to sales and services support and project coordination provided by ARDICOM's three employees, the partners, and their investment in ARDICOM.
11. The Companies submitted that with the proposed modification to the affiliate rule, retail customers would be protected from any unfair pricing or unjust discrimination by the requirement that Northwestel would have to provide the same service at tariffed rates. The Companies noted that the service in question, namely V-Connect, is purchased by governments and large retail customers that are sophisticated entities and generally have telecom departments that are aware of service options and opportunities.
12. The Companies also submitted that competitors would still be protected by the modified affiliate rule because Northwestel's affiliates would not be permitted to sell below Northwestel's tariffed rates.
13. While acknowledging that it has generally complied with the affiliate rule since it filed its letter with the Commission on 23 January 2004, Northwestel indicated that it had inadvertently failed to revise its Resale and Sharing Tariff at that time to reflect the modified affiliate rule. As such, the Companies proposed to (a) revise Northwestel's Resale and Sharing Tariff by adopting the language used in Bell Canada's Resale and Sharing Tariff, which reflects the changes to the affiliate rule set out in Telecom Decision 2002-76, and (b) to include wording in Northwestel's tariff to reflect the requested modification to the affiliate rule, as follows:

In the case where a customer has the option of purchasing the identical service, including terms and conditions, from the Company at CRTC tariffed rates, an affiliate offering the same service may do so without a tariff provided it sells that service at a rate that is at least as high as the Company's tariffed service rate.

14. Benjamin Klass opposed the application, arguing that it amounts to a request for forbearance for ARDICOM, since Northwestel's operating territory is not subject to competition. Mr. Klass submitted that the distribution of the markup is not clear from the record of this proceeding, and, as such, it is not certain whether the benefit, if any, associated with ARDICOM's increased rates would accrue primarily to northern communities.
15. In reply, the Companies stated that the markup over Northwestel's tariffed rates funds the operations of ARDICOM which include employees, sales, offices, billing, and

⁴ In Telecom Order 97-572, the Commission forbore from the regulation of Frame Relay and Packet Data services offered by Northwestel.

⁵ V-Connect service is a retail business service which is used to create wide area networks (WANs) by providing site-to-site connections that can cover large geographic areas. In Telecom Decision 2013-710, the Commission forbore from the regulation of satellite WAN services in Northwestel's operating territory.

accounting services. Further, two-thirds of the remaining contribution is paid to two partners which are First Nations organizations from Northwestel's operating territory. They submitted that it is certain that a significant and primary benefit of the markup over tariffed rates goes to northern communities.

Commission's analysis and determinations

16. The affiliate rule is intended to prevent an ILEC from using an unregulated affiliate to provide non-forborne services at rates, terms, and conditions that are lower or better than the tariffed rates, terms, and conditions to which the ILEC is subject.
17. The Commission notes that Northwestel controls ARDICOM and therefore, based on the definition of an affiliate set out in Telecom Decision 2002-76, ARDICOM is an affiliate of Northwestel.
18. Under the Companies' proposed modification to the affiliate rule, the Commission notes that competitors would still be protected because Northwestel's affiliates would still not be permitted to resell below Northwestel's tariffed rates. Further, retail customers would be protected as they could purchase the same non-forborne services that ARDICOM provides, from Northwestel, at tariffed rates. The Commission also notes that ARDICOM's current customers are governments and large retail customers, who are sophisticated enough to be aware of service options offered by other providers, such as Northwestel.
19. In the circumstances, the Commission considers that it would be appropriate to modify the affiliate rule, as it applies to Northwestel, in the manner proposed by the Companies.
20. In view of the above, the Commission **approves** the proposed modification to the affiliate rule for Northwestel. Northwestel is **directed** to issue⁶ revised tariff pages for its Resale and Sharing Tariff, within **10 days** of the date of the decision, which incorporate the affiliate rule, as set out in Telecom Decision 2002-76, and as modified by the wording for the affiliate rule, as set out in paragraph 13 above.
21. In order to ensure that retail customers in Northwestel's operating territory will be adequately protected in light of the amended affiliate rule, the Commission intends to monitor the rates that Northwestel's affiliates charge and the extent to which they exceed Northwestel's tariffed rates. Accordingly, Northwestel is **directed** to file, for the 12-month period ending 30 June, the following information for each affiliate that resells Northwestel's non-forborne services:
 - the name of the customer;
 - the name of Northwestel's non-forborne service and tariff item;
 - the total annual revenues based on Northwestel's tariffed rates;
 - the total annual revenues from the markup on the tariffed rates;
 - the percent of the markup on the tariffed rates.

⁶ The revised tariff pages can be submitted to the Commission without a description page or an approval request; a tariff application is not required.

22. The report is to be filed on an annual basis by 1 September of each year, with the first report to be filed by 1 September 2014. Additional information should be provided where required to ensure that the information provided is complete and comprehensive.

II. Are the determinations in this decision consistent with the Policy Direction?

23. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.
24. The Commission considers that the determinations in this decision will advance the policy objectives set out in paragraphs 7(a), (b), (c), and (f)⁷ of the Act. The Commission also considers that its determinations are consistent with the Policy Direction requirements that (i) the measures in question are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and (ii) the measures neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

Secretary General

Related documents

- *Northwestel Inc. – Application to review and vary Telecom Decision 2012-644 regarding V-Connect service*, Telecom Decision CRTC 2013-710, 18 December 2013
- *Northwestel Inc. - Application to remove the joint marketing restrictions*, Telecom Decision CRTC 2003-65, 29 September 2003
- *Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, Telecom Decision CRTC 2002-76, 12 December 2002
- Telecom Order CRTC 97-572, 29 April 1997

⁷ The cited policy objectives of the Act are

- 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and
- 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.