



Telecom Decision CRTC 2015-364

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SSi Group of Companies – Application concerning Northwestel Inc.’s Wholesale Connect Service rates

*The Commission **denies** an application from the SSi Group of Companies (SSi) to re-examine Northwestel’s Wholesale Connect Service rates approved in Telecom Regulatory Policy 2013-711. The Commission has found no basis to conclude that the rates are not just and reasonable or are unduly discriminatory.*

Background

1. Wholesale Connect Service allows competitors to transport telecommunications traffic across the portion of Northwestel Inc.’s (Northwestel) network served by fibre or high-capacity microwave radio transport links. Competitors can use the service to connect their points of presence in various communities and provide telecommunications services, such as retail Internet and voice services, to their customers in those communities.
2. The SSi Group of Companies (SSi) is an Internet service provider (ISP) that provides retail Internet services in competition with Northwestel in the Northwest Territories and Nunavut. SSi is also a customer of Northwestel and uses Wholesale Connect Service to deliver retail Internet services.
3. The Commission initially approved Northwestel’s Wholesale Connect Service rates on a final basis in Telecom Order 2013-93. The Commission then revised the rates in Telecom Regulatory Policy 2013-711 following an application from Northwestel to review and vary Telecom Order 2013-93. In that application, Northwestel alleged that the rates established in Telecom Order 2013-93 had forced it to cancel or suspend plans for future fibre builds proposed in its Modernization Plan.

Application

4. The Commission received an application from SSi, dated 18 November 2014, in which SSi requested that the Commission re-examine Northwestel’s Wholesale Connect Service rates that were approved in Telecom Regulatory Policy 2013-711. Specifically, SSi requested that the Commission establish final rates for Wholesale Connect Service that are lower than those previously approved in Telecom Order 2013-93. SSi also requested that the Commission immediately set as interim the Wholesale Connect Service rates previously approved in Telecom Order 2013-93.

5. SSi submitted that Northwestel is the monopoly provider of terrestrial backbone connectivity services in the North, and that Northwestel's retail Internet service rates make it clear that the Commission set the Wholesale Connect Service rates far too high in Telecom Regulatory Policy 2013-711. SSi argued that the Wholesale Connect Service rates are not just and reasonable, in violation of subsection 27(1) of the *Telecommunications Act* (the Act). SSi also submitted that Northwestel was thwarting competition and squeezing out margins available to Northwestel's competitors, thereby conferring an undue preference on itself and subjecting SSi to an undue or unreasonable disadvantage, contrary to subsection 27(2) of the Act.
6. The Commission received interventions regarding SSi's application from Iristel Inc. and Northwestel, and reply comments from SSi. The public record of this proceeding, which closed on 10 March 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Should the Commission re-examine the Wholesale Connect Service rates that were approved in Telecom Regulatory Policy 2013-711?

7. SSi argued that Northwestel's retail Internet service rates are lower than its wholesale service rates, which makes it impossible for independent ISPs to compete with Northwestel. SSi submitted that if Northwestel were required to impute the rates for Wholesale Connect Service that were approved in Telecom Regulatory Policy 2013-711 as a cost of its retail Internet service offerings, Wholesale Connect Service costs would exceed the revenues of Northwestel's retail Internet service plans. SSi also argued that, for typical rational levels of use by end-users, the price per gigabyte (GB) of usage on Northwestel's retail Internet service plans is lower than the price per GB of usage on Wholesale Connect Service. In SSi's view, independent ISPs cannot possibly employ Wholesale Connect Service for backbone connectivity at the currently approved rates and viably compete with Northwestel at the retail level, which indicates that the rates are not just and reasonable.
8. SSi further submitted that the validity of Northwestel's Wholesale Connect Service cost study, as filed in Tariff Notice (TN) 883A, has been repudiated by Northwestel's own subsequent filings. In its application to review and vary Telecom Order 2013-93, Northwestel requested that its Wholesale Connect Service rates be changed to a level that was significantly lower than what it had proposed in TN 883A. SSi submitted that if Northwestel itself was able to reassess Wholesale Connect Service rates to a significantly lower level than what it had originally proposed, then closer Commission scrutiny would likely lead to further reductions in the rates.
9. SSi also submitted that it has been forced to shut down retail Internet services in a number of Northwest Territories communities where it could not provide a competitive broadband offering relative to Northwestel, despite having previously established a significant broadband presence in those communities.
10. Northwestel argued that SSi's claim that Wholesale Connect Service rates are not just and reasonable is based on erroneous analysis, and that there is no reason to revisit

the Wholesale Connect Service cost study. Northwestel submitted that, when realistic assumptions are used, revenues from consumer retail Internet services are well above the cost of Wholesale Connect Service, and there are adequate margins available to sustain a competitive market. Northwestel also noted that Wholesale Connect Service can, in addition to retail Internet service, be used to provide voice, wireless, business Internet, and virtual private network services, which allows competitors to earn greater revenues than assumed by SSi. Northwestel submitted that imputing the cost of Wholesale Connect Service into its retail Internet cost study is inappropriate because Wholesale Connect Service is not an input into its retail Internet services and includes many features that are not available on retail Internet services, such as Class of Service options and Service Level Agreements. Northwestel also submitted that the Wholesale Connect Service rates were thoroughly vetted by the Commission and any arbitrary establishment of rates, as suggested by SSi, would undermine Northwestel's ability to make the continued capital investments in its transport network, as contained in its Modernization Plan.

Commission's analysis and determinations

11. With respect to SSi's position that Wholesale Connect Service costs would exceed the revenues of Northwestel's retail Internet service plans, the costs for certain items included in the Wholesale Connect Service rates, such as co-location, billing, and sales management, are not causal to Northwestel's use of its own transport network but, rather, are causal to a competitor's use of its network. Therefore, Wholesale Connect Service is not an input into Northwestel's retail Internet services. Furthermore, it would not be consistent with the Commission's costing methodologies to require Northwestel to impute the Wholesale Connect Service rates into its retail Internet cost study.
12. Regarding SSi's position that the Wholesale Connect Service rates are too high to enable it to compete with Northwestel, SSi does offer its own retail Internet services using Wholesale Connect Service. Furthermore, Wholesale Connect Service can be used to provide telecommunications services other than retail Internet, which enables competitors to earn revenues in addition to those from retail Internet service and better compete with Northwestel.
13. With regard to SSi's submission that it has been forced to shut down retail Internet services in a number of Northwest Territories communities, SSi did not employ Wholesale Connect Service in any of the communities from which it withdrew its retail Internet services, and withdrew these services from most of the communities before the rates established in Telecom Regulatory Policy 2013-711 took effect. Accordingly, it is questionable whether the increase in Wholesale Connect Service rates that resulted from Telecom Regulatory Policy 2013-711 were relevant to SSi's decision to withdraw its service offerings.
14. The Wholesale Connect Service rates were recently and thoroughly reviewed in Telecom Order 2013-93 and Telecom Regulatory Policy 2013-711, and no persuasive arguments were submitted in this proceeding to support adjustments to any of the

specific cost or markup components that would warrant a review of the rates. Further, Northwestel's rates for terrestrial retail Internet services were approved in Telecom Decision 2015-78 following an extensive process. In the circumstances, the Commission is not persuaded that Northwestel is conferring an undue preference on itself or is subjecting SSI to an undue or unreasonable disadvantage contrary to subsection 27(2) of the Act.

Conclusion

15. In light of the above, the Commission **denies** SSI's request that the Commission re-examine the Wholesale Connect Service rates.
16. Given this finding, it is not necessary to address SSI's request that the Wholesale Connect Service rates be made interim.

Other matters

17. On 9 April 2015, the Commission issued Telecom Notice of Consultation 2015-134, in which it announced that it will examine which telecommunications services Canadians require to participate meaningfully in the digital economy and the Commission's role in ensuring the availability of affordable basic telecommunications services to all Canadians. As part of its review of basic telecommunications services, the Commission will examine whether a mechanism is required in Northwestel's operating territory to support the provision of modern telecommunications services by funding capital infrastructure investment in transport facilities, as well as the cost of maintaining and enhancing these facilities. Such a funding mechanism, if found to be appropriate, would have the potential to make transport services, such as Wholesale Connect Service, more affordable and stimulate competition.

Secretary General

Related documents

- *Review of basic telecommunications services*, Telecom Notice of Consultation CRTC 2015-134, 9 April 2015, as amended by Telecom Notice of Consultation CRTC 2015-134-1, 3 June 2015
- *Northwestel Inc. – Tariffs for terrestrial retail Internet service*, Telecom Decision CRTC 2015-78, 4 March 2015
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Northwestel Inc. – Wholesale Connect Service*, Telecom Order CRTC 2013-93, 25 February 2013