



## Telecom Decision CRTC 2015-78

PDF version

Ottawa, 4 March 2015

*File numbers: Tariff Notices 904, 904A, 904B, and 904C*

### Northwestel Inc. – Tariffs for terrestrial retail Internet services

*In Telecom Regulatory Policy 2013-711, the Commission determined that Northern Canadians should have access to telecommunications services that are as comparable as possible to those provided to southern Canadians. Further, the Commission determined that it was no longer appropriate to refrain from regulating Northwestel's terrestrial retail Internet services, which resulted in the application that is the subject of the present decision.*

*In arriving at the determinations in this decision, the Commission has taken into consideration the special circumstances that exist in Northwestel's operating territory, and has adopted a balanced approach that will enable Northern Canadians, including those in many small and remote communities, to participate in the digital economy and contribute to economic development in the North.*

*The Commission **approves, with changes**, Northwestel's proposed tariffs for terrestrial retail Internet services for residential, business, and enterprise customers. The changes include the reduction of the company's residential DSL [digital subscriber line] Internet Lite and DSL Internet 2 rates by 10%, and residential DSL Internet 5 and DSL Internet 15 rates by 30%.*

*The Commission **denies** Northwestel's proposed charges for stand-alone DSL Internet service, which would apply to certain residential consumers and businesses that purchase Internet but not telephone service from the company.*

*The Commission also **directs** Northwestel to reduce its overage charge rates for its non-grandfathered residential and business Internet services by no less than \$0.50 per gigabyte in 2016. These reductions will be in addition to those already applied by the company since the issuance of Telecom Regulatory Policy 2013-711.*

*In addition, any future changes that Northwestel proposes to its Internet services must be approved by the Commission.*

*As a result of this decision, certain Northwestel residential and business subscribers will experience a significant reduction in the monthly price they pay for Internet service. Further, all of Northwestel's residential and business subscribers will benefit from reduced surcharges in circumstances when they exceed the monthly usage allowances already included in their Internet plans. These changes will help to reduce the disparity between what consumers in the North pay for Internet services in comparison to the*

*South, as well as the disparity among the rates that Northwestel's own customers pay based on factors such as the technology used to provide service or the customer's location.*

*A dissenting opinion by Commissioner Candice Molnar is attached to this document.*

## **Introduction**

1. In Telecom Regulatory Policy 2013-711, in which the Commission last reviewed the regulatory framework for Northwestel Inc. (Northwestel), the Commission determined, among other things, that the characteristics of the terrestrial retail Internet market in the far North had changed since the Commission forbore from regulating Northwestel's Internet services in 1999 and that Northwestel now has significant market power.
2. The Commission determined, therefore, that it was no longer appropriate to refrain from regulating Northwestel's terrestrial retail Internet services (Internet services), and directed the company to file tariffs and associated cost studies for these services.
3. In that decision, the Commission also determined that it would not be appropriate for Northwestel to charge an additional fee for providing its retail digital subscriber line (DSL) Internet access service independent from its primary exchange service – that is, to apply an extra fee for customers who purchase Internet but not phone service from the company.
4. In Telecom Decision 2014-379, the Commission approved a request by Northwestel to review and vary its determination regarding the additional fee. The Commission noted that more detailed costing information would be required to determine whether an additional fee for stand-alone Internet service was appropriate and, if so, the amount of the additional fee. It stated that it would consider whether the proposed fee was appropriate under the Tariff Notice 904 process, which is the subject of this decision.

## **Application**

5. The Commission received an application from Northwestel, dated 4 February 2014, in which the company proposed to introduce tariffs for its Internet services, including rates, terms, and conditions for residential and business asymmetric digital subscriber line (ADSL) and cable Internet packages, and for enterprise Internet services.
6. Northwestel also proposed rates for additional data usage (overage charges)<sup>1</sup> for these services, and additional fees for residential and business stand-alone ADSL Internet services. The company further proposed to grandfather certain services, meaning that current customers could continue to use existing services, but these services would no

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<sup>1</sup> “Additional data usage,” or “overage,” refers to data used beyond the monthly data usage allowance already included in the service package selected by the customer.

longer be available to new customers. Northwestel requested that the Commission approve its application on a final basis effective at the end of a month to avoid the complications of making bill changes in the middle of a month. Northwestel also requested that the Commission ratify the charging of the proposed rates from 18 December 2013 – the date that Telecom Regulatory Policy 2013-711 was issued – to the date of approval of the rates.

7. On 3 April 2014, Northwestel submitted an amended application (Tariff Notice [TN] 904A) to include dial-up Internet services and to add one cable Internet service that had inadvertently been left out of its initial filing.
8. On 23 May 2014, Northwestel submitted an economic study, including price floor tests,<sup>2</sup> in support of its proposed services.
9. On 17 October 2014, Northwestel submitted a second amended application (TN 904B), in which it proposed to increase the usage allowance for certain residential and business Internet services effective 1 November 2014. It also submitted revised price floor tests to reflect these changes.
10. On 23 January 2015, Northwestel submitted a third amended application (TN 904C), in which it proposed to reduce, by \$0.50 per gigabyte (GB), the overage rates that it applies to its non-grandfathered residential and business Internet services. It also submitted revised price floor tests to reflect these changes.
11. The Commission received interventions from the Government of the Northwest Territories (GNWT), the Yukon Government (YG), and the SSi Group of Companies (SSi). The public record of this proceeding, which closed on 17 February 2015, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file numbers provided above.
12. The Commission has identified the following issues to be addressed in its determinations:
  - Should the Commission approve Northwestel's proposed Internet service rates?
  - Are Northwestel's proposed stand-alone Internet service fees appropriate?
  - Is Northwestel's proposal to grandfather or withdraw certain services reasonable?
  - Should the Commission approve on a final basis, effective at the end of a month, and ratify the charging of the proposed Internet service rates?

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<sup>2</sup> The price floor test establishes a minimum price threshold to ensure that rates are just and reasonable, and not unjustly discriminatory.

## Should the Commission approve Northwestel's proposed Internet service rates?

13. Northwestel stated that certain residential Internet service rates do not pass the price floor test. The company submitted that in its specific circumstances, it would be appropriate for the Commission to consider the overall profitability of the company's Internet services versus requiring each of the services to be profitable on its own. Northwestel submitted that its current rates pass the price floor test overall and that they are just and reasonable. It also submitted that its pricing practice has been to pursue comparable services at comparable rates across its operating territory where feasible, which, in its view, is consistent with the policy objectives set out in section 7 of the *Telecommunications Act* (the Act).<sup>3</sup>
14. GNWT submitted that it is not only necessary to establish rates that are at or above defined price floor levels but, given the social and economic importance of Internet services, the Commission must ensure that rates for such services do not involve excessive markups or profit levels that make the services less affordable to Northwestel's subscribers. GNWT further submitted that Northwestel's existing Internet service rates are significantly higher than those available in southern Canada, and requested that the Commission carefully consider whether Northwestel should be directed to lower its Internet service rates from existing levels.
15. SSi submitted that Northwestel is the dominant retail provider of terrestrial Internet services and the monopoly wholesale provider of terrestrial backbone connectivity in the North, and that, accordingly, the company is in a unique position to thwart competition by squeezing out margins available to competing Internet service providers (ISPs). SSi submitted that the Commission must ensure that pricing for wholesale backhaul connectivity and retail Internet service is balanced and appropriate in order to achieve a competitive retail Internet market. SSi argued that a competitor cannot employ Wholesale Connect (which is the wholesale service that Northwestel makes available to competitors so that they can in turn serve their own retail high-speed Internet customers) at the currently approved rates and viably compete with Northwestel's retail rates. SSi stated that it was considering filing an application to request that the Commission review and vary the Wholesale Connect pricing established in Telecom Regulatory Policy 2013-711.<sup>4</sup>
16. SSi requested that the Commission delay approving the proposed rates because the pricing regime for high-cost communities should be reviewed as part of the

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<sup>3</sup> Northwestel referenced the following policy objectives: 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; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

<sup>4</sup> On 18 November 2014, SSi submitted a Part 1 application in which it requested, among other things, that the Commission establish lower rates for Northwestel's Wholesale Connect service.

Commission's upcoming review of basic telecommunications services that are required by all Canadians to fully participate in the digital economy, as mentioned in Telecom Regulatory Policy 2013-711.

17. SSi submitted that Northwestel's proposal for below-cost retail Internet service rates – that is, rates for which the price floor test is not met – and comparable service at comparable rates across Northwestel's operating territory effectively amounts to predatory pricing. SSi added that such pricing has forced it to shut down retail Internet service in a number of communities where it could not compete, despite having previously established a significant broadband market presence in those communities.
18. Northwestel submitted that SSi's request that retail Internet service rates not be approved until the Commission's upcoming review of basic telecommunications services is complete is unreasonable because it would create uncertainty for Northwestel and its retail customers, and would impede the introduction of new products. The company stated that if the upcoming review results in changes to the Internet regulatory environment, those changes should be reflected in its tariffs at that time.
19. Northwestel indicated that there was no evidence on the record of the proceeding that its rates are dramatically higher than those in remote communities in southern Canada, and reiterated that its overall average markups were reasonable.

#### **Commission's analysis and determinations**

20. The Commission considers that, because Northwestel is now required to provide Internet services pursuant to Commission approval following its determinations in Telecom Regulatory Policy 2013-711, contrary to the submission by SSi, it is not open to the Commission to wait until a review of basic telecommunications services is completed before dealing with the current application. Further, the Commission considers it important that consumers in Northwestel's operating territory and the company have certainty with respect to Internet service rates.

#### **Residential, business, and enterprise service rates**

21. At the time of its initial application, Northwestel proposed changes to some of its previous prices and to its data usage allowance that would benefit consumers. Moreover, in TN 904B, Northwestel revised its proposal, increasing the allowable amount of data usage for non-grandfathered residential Internet services by up to 50 GB, and for non-grandfathered business Internet services by up to 80 GB. These increases would benefit certain residential and business customers that exceed the usage allowance associated with their service subscription.
22. Furthermore, in response to a request for information, Northwestel offered additional adjustments to its overage charges, which would also benefit residential and business customers, as discussed below. Despite these improvements, Northwestel's proposed

residential rates remain significantly higher than rates available elsewhere in Canada for comparable services.

23. As noted above, certain of Northwestel's proposed residential Internet service rates do not pass the price floor test. Except for the provision of local exchange service in high-cost serving areas (HCSAs), the Commission's practice has been to require that rates pass the price floor test. Generally, this practice has been applied to services that, though regulated, are subject to a degree of competition, and for which the rates in question are sufficient to be considered just and reasonable as contemplated by the Act. However, the Commission considers that requiring Northwestel to re-price certain residential Internet service rates so that they pass the price floor test would negatively affect Northern Canadians.
24. In Telecom Regulatory Policy 2013-711, the Commission reasserted its jurisdiction to apply certain of its powers and duties that it had previously refrained from exercising, including requiring approved tariffs for services that are the subject of this decision. In taking the significant step of reasserting the exercise of its jurisdiction, the Commission found that market forces were not sufficient to protect the interests of Internet service customers in Northwestel's operating territory.
25. The Commission considers that in the very special circumstances that prevail in Northwestel's operating territory, including a very large territory and a small, dispersed population, it is necessary and appropriate to provide customers of certain residential DSL Internet services with pricing relief to attenuate the difference in the rates they pay compared with (i) rates that Northwestel's cable Internet service customers pay for similar services, and (ii) rates that Internet service customers pay for similar services in the South.
26. Specifically, the Commission considers it necessary and appropriate to reduce the proposed rates for the two lowest-speed non-grandfathered residential DSL Internet services by 10%. This would make it less expensive for Northern Canadians to subscribe to these particular residential Internet services, while avoiding a large rate disparity when compared to the lower-speed cable rates. In addition, the Commission considers it necessary and appropriate to reduce the proposed rates for residential DSL Internet 5 and DSL Internet 15 – two higher-speed services – by 30% in order to more closely align the pricing differentials between cable and DSL Internet services in the North with cable and DSL Internet services in the South.
27. The Commission considers that these changes will not have a significant detrimental impact on Northwestel's revenues or ability to pursue initiatives such as its ongoing network modernization plan. The Commission acknowledges that these changes may have a negative effect on competition for these particular services, but considers that it must take exceptional measures in this case to ensure that residential Internet service is provided at reasonable rates across all of Northwestel's operating territory. These measures will advance the ability of Northern Canadians, particularly those in small and remote communities in Northwestel's operating territory, to access online services and participate in the digital economy at a level that is much closer to

southern Canadians. The Commission considers that these measures are consistent with the policy objectives set out in paragraphs 7(b) and (h) of the Act.

28. Accordingly, the Commission **approves** Northwestel's proposed residential cable Internet service rates, but **directs** Northwestel to reduce its residential DSL Internet Lite and DSL Internet 2 rates by 10%, and to reduce its residential DSL Internet 5 and DSL Internet 15 rates by 30%.
29. The Commission notes that Northwestel's proposed business Internet and enterprise Internet service rates pass the price floor test. The Commission **approves** those proposed rates.

### **Overage charges**

30. Both GNWT and YG expressed concern about Northwestel's overage charges. GNWT submitted that Northwestel had not justified the high level of overage charges which, in its view, served to severely limit the amount of Internet usage that northern subscribers can afford. YG submitted that Northwestel had not addressed the issue of limits or caps on the overage charges, which it considered to be a serious affordability concern for consumers.
31. In its reply to a request for information regarding overage charges and the unavailability of an unlimited usage subscription option, Northwestel submitted that its application reflected reductions to its overage rates for residential and small business Internet services, made immediately prior to its initial filing, by \$1.50 per GB for DSL and \$2.00 per GB for cable, as well as increased usage allowances for some services. Northwestel argued that its cost studies supported the proposed overage charges and that these charges were an important tool to maintain profitability. The company submitted that it had not offered an unlimited subscription option out of concern for the impact it would have on customers' Internet performance and experience, especially in rural communities that are mainly served via more expensive microwave radio.
32. Northwestel further submitted that it had lowered usage rates in recognition of previously expressed concerns, but that arbitrarily lowering usage rates might result in the company having to increase the base rate for services in rural communities or reduce capital investment in HCSAs. Northwestel argued that increasing the base rate to accommodate usage charges would adversely affect low-usage customers and noted that higher-usage customers have the option of migrating to higher-usage packages.
33. Northwestel submitted that it currently has a number of tools and methods to educate customers on Internet usage and how to constrain their usage, such as online reporting and email notification when certain thresholds are reached.
34. Northwestel submitted that customers who consume a higher volume of bandwidth contribute disproportionately to peak utilization and, therefore, to higher network costs. The company argued that it is fair for heavy users to pay more for their higher

usage levels and that the average Internet user should not have to subsidize heavy users. Northwestel submitted that these charges are necessary in northern Canada, with its extremely low population density, long distances, and costly backhaul networks.

35. Northwestel submitted, however, that it was willing to commit to decreases in its overage rates in each of the next two years (before the end of February 2015 and 2016).
36. Northwestel proposed revisions, effective 1 November 2014, to increase the allowable data usage for certain services. Northwestel also proposed revisions, effective 1 February 2015, to reduce overage charges by \$0.50 per GB for its non-grandfathered DSL and cable residential and business Internet services.
37. The Commission notes YG's comments regarding the lack of caps on overage charges and the related effect on affordability for consumers. However, the Commission also notes Northwestel's concerns that heavy users disproportionately cause higher network costs.
38. The Commission notes Northwestel's proposed overage charge reductions, effective 1 February 2015. The Commission also notes Northwestel's proposal to increase usage allowances and reduce overage charges over time, and its commitment to further decrease overage rates in February 2016. The Commission considers that Northwestel's proposal to increase usage allowances and reduce overage charges over time would benefit the majority of its customers.
39. Accordingly, the Commission **approves** Northwestel's proposed tariffs for its overage charges. In addition, the Commission **directs** Northwestel to reduce overage charge rates for its non-grandfathered retail residential and business Internet services by no less than \$0.50 per GB in February 2016.

#### **Are Northwestel's proposed stand-alone Internet service fees appropriate?**

40. Northwestel submitted that it had introduced stand-alone ADSL Internet services in October 2013 for an additional fee of \$20 per month for residential service and \$50 per month for business service. The company indicated that these fees would apply when a customer purchases only high-speed Internet service from it, without phone service.
41. Northwestel also submitted that, in light of the Commission's determination in Telecom Regulatory Policy 2013-711, it had reduced the additional fee for business stand-alone ADSL Internet service to \$30 per month, effective 1 February 2014.
42. Northwestel argued that given that the local loop<sup>5</sup> is needed to provide DSL Internet service whether the customer purchases telephone service from the company or not,

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<sup>5</sup> The local loop is the facility that connects the demarcation point at the customer's premises to the telecommunications service provider.

and that it would not receive a subsidy from the National Contribution Fund (NCF) for stand-alone DSL Internet service, it would be appropriate for the customer to pay some contribution towards the cost of the facility being used to provide Internet service to its premises. Northwestel submitted that it only receives subsidies from the NCF to support the provision of telephone service in HCSAs and that, therefore, it only applies the additional stand-alone fee where it is most appropriate – in HCSAs. Northwestel argued that customer demand demonstrates that the rates are reasonable and do not hinder customer migration to a competitive alternative to local exchange service.

43. Northwestel submitted that the proposed rates were meant to balance the needs of consumers and competitors, and to recover a portion of the costs associated with the local loop. The company indicated that it was not opposed to charging an additional fee in Whitehorse and Yellowknife if directed to do so. It submitted, however, that given that the local loop cost in these communities is only a third of the local loop cost in HCSAs, a contribution towards recovery of the local loop cost is not required via a stand-alone fee.

#### **Commission's analysis and determinations**

44. In Telecom Decision 2014-379, the Commission approved Northwestel's request to review and vary its determination in Telecom Regulatory Policy 2013-711 regarding the additional fees. The Commission further stated that it would consider whether the proposed fees were appropriate in the TN 904 proceeding.
45. Northwestel currently receives a subsidy from the NCF for each residential telephone service it provides in certain areas in recognition of the high cost of service in these areas. Where it provides stand-alone residential DSL Internet service, the company receives no revenues for residential telephone service and no subsidy from the NCF to offset the cost of the local loop. Where the company only provides business Internet service, it receives no revenues for business telephone service to offset the cost of the local loop.
46. The Commission notes that incumbent local exchange carriers in the South have the flexibility to apply an additional fee for stand-alone retail Internet service because Internet service rates in the South are forborne from regulation. Therefore, they may or may not choose to apply an additional fee.
47. The Commission also notes that Northwestel has chosen to apply additional fees in HCSAs, but not in non-HCSAs, which means that the additional fees would apply to customers in more remote areas that are also primarily served using DSL. Those DSL rates remain higher than cable rates, even with the Commission's direction in this decision that Northwestel reduce residential DSL rates.
48. The Commission notes that application of the additional fees would increase the disparity in the rates that a subset of DSL customers in these remote areas pay compared with (i) rates that Northwestel's cable Internet service customers pay for

similar services, and (ii) rates that Internet service customers pay for similar services in the South. The Commission considers that the additional fees may deter or prevent certain consumers in the North from participating in the digital economy. In addition, the Commission considers that the markups for DSL business Internet services are sufficient to allow the rates for those services to cover the local loop cost for stand-alone DSL service without additional fees.

49. The Commission considers that requiring Northwestel to apply the same rates to customers in HCSAs as those in non-HCSAs would further the Commission's goal of ensuring that Northern Canadians are provided Internet access at reasonable prices.
50. Therefore, the Commission **denies** Northwestel's proposed additional fees for stand-alone DSL Internet service and **directs** Northwestel to stop applying these fees to customers.

### **Is Northwestel's proposal to grandfather or withdraw certain services reasonable?**

51. Northwestel noted that it no longer offers certain legacy Internet packages to new customers, but that it has a number of existing customers who subscribe to these packages. It therefore proposed to grandfather these packages and submitted that existing customers could migrate to more current packages.
52. In Tariff Notice 904A, Northwestel indicated that the last customer of the grandfathered I-Hotel service had migrated off the service. Therefore, it proposed to withdraw the service.

### **Commission's analysis and determinations**

53. The Commission considers it appropriate for Northwestel to grandfather certain legacy Internet services and to withdraw the I-Hotel service. The Commission notes that customers may choose to subscribe to other regulated Internet access services.
54. The Commission therefore **approves** Northwestel's proposal to grandfather the legacy services discussed in its application and to withdraw the I-Hotel service.

### **Should the Commission approve on a final basis, effective at the end of a month, and ratify the charging of the proposed Internet service rates?**

55. Northwestel submitted that its proposed Internet service rates were in effect at the time of its initial filing, and that certain rates had been lowered since Telecom Regulatory Policy 2013-711 was issued.
56. Northwestel requested that these rates be approved effective at the end of a month to avoid complications associated with making bill changes in the middle of the month.
57. The company also requested that the Commission ratify the charging of the rates, pursuant to subsection 25(4) of the Act, from 18 December 2013, the date on which

Telecom Regulatory Policy 2013-711 was issued and the services officially required approved tariffs, to the date of approval.

### **Commission's analysis and determinations**

58. The Commission notes that Northwestel was directed to file a tariff for these services in Telecom Regulatory Policy 2013-711 and that, therefore, the company has been providing the services without approved tariffs since 18 December 2013.
59. Subsection 25(4) of the Act specifies that the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate was charged because of an error or other circumstance that warrant ratification.
60. The Commission considers that ratification of Northwestel's charging of its Internet service rates prior to the effective date of the associated Commission-approved tariffs, as set out in this decision, is appropriate.
61. The Commission therefore ratifies the charging of Northwestel's Internet service rates without an approved tariff from 18 December 2013 to the date that the tariffs for the services in question are effective, consistent with this decision.
62. The Commission considers it reasonable that Northwestel should have sufficient time to revise its billing systems to implement the determinations made in this decision. The Commission therefore **approves** Northwestel's Internet service rates, as revised by the Commission in this decision, effective within **60 days** of the date of this decision.
63. The Commission **directs** Northwestel to issue revised tariff pages reflecting the above determinations (other than the Commission's revisions to the company's proposed rates) within **10 days** of the date of this decision. The Commission **directs** Northwestel to then issue further revised tariff pages reflecting the Commission's revisions to the company's rates, as set out in this decision, within **10 days** of those rates taking effect.<sup>6</sup>

### **Conclusion**

64. In summary, the Commission
  - i. ratifies Northwestel's charging of its proposed Internet service rates from 18 December 2013 to their effective date, consistent with the determinations made in this decision;

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<sup>6</sup> Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

- ii. **approves** Northwestel's proposed Internet service rates, with the following changes:
  - (a) Northwestel is directed to reduce its DSL Internet Lite and DSL Internet 2 rates by 10%, and its DSL Internet 5 and DSL Internet 15 rates by 30%, effective no later than **60 days** following the date of this decision;
  - (b) Northwestel is directed to reduce the overage charge rates for its non-grandfathered residential and business Internet services by no less than \$0.50 per GB in February 2016;
- iii. **denies** the proposed additional fees for stand-alone DSL Internet service, and **directs** Northwestel to stop applying them to customers, effective no later than **60 days** following the date of this decision;
- iv. **approves** Northwestel's proposal to remove the I-Hotel service and to grandfather certain Internet services, effective immediately; and
- v. **directs** Northwestel to issue revised tariff pages reflecting the determinations in this decision, as set out in paragraph 63 above.

## Policy Direction

65. The Commission considers that the determinations made in this decision are consistent with the Policy Direction<sup>7</sup> for the reasons set out below.
66. The Policy Direction states that the Commission, in exercising its powers and performing its duties under 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.
67. The regulatory measures under consideration in this decision relate to the regulated rates for Northwestel's terrestrial retail Internet services. Therefore, subparagraph 1(a)(ii)<sup>8</sup> and subparagraphs 1(b)(i) and (ii)<sup>9</sup> of the Policy Direction apply to the Commission's determinations in this decision.

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<sup>7</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>8</sup> Subparagraph 1(a)(ii) states that the Commission should, when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

<sup>9</sup> Paragraph 1(b) states that the Commission, when relying on regulation, should use measures that satisfy the following criteria among others: (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order, and (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

68. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are 1) efficient and proportionate to their purpose, and minimally interfere with market forces, and 2) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. Specifically, the Commission considers that the pricing constraints applied in this decision are narrow in their application to a subset of Northwestel's service offerings, and proportionate to the need for affordability in terrestrial Internet services for Northern Canadians.
69. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(b) and (h) of the Act<sup>10</sup> are advanced by the regulatory measures established in this decision.

Secretary General

### **Related documents**

- *Northwestel Inc. – Application to review and vary certain determinations in Telecom Regulatory Policy 2013-711*, Telecom Decision CRTC 2014-379, 21 July 2014
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013

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<sup>10</sup> The cited policy objectives of the Act are 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; and (h) to respond to the economic and social requirements of users of telecommunications services.

## **Dissenting opinion by Commissioner Candice Molnar**

Over the past few years, the Commission has rightfully placed significant attention on the communications needs of Canada's Far North. Concerned that Northwestel was not meeting the needs of Northern consumers, we conducted two comprehensive reviews of Northwestel's operations. We denied Northwestel's request to increase the prices of local telephone service and opened the local market to competition. We directed Northwestel to develop a modernization plan to improve the delivery of modern communications services, such as Internet and wireless services. As well, when evidence demonstrated that retail Internet competition in terrestrially served communities was insufficient to ensure that the rates for these services were just and reasonable, we took the unprecedented step of re-establishing rate regulation for Northwestel's retail Internet services. Northwestel was directed to file tariffs detailing the rates, terms, and conditions for all of its terrestrial Internet services, and to provide cost studies in support of these tariffs.

I have been firmly in support of the initiatives undertaken by the Commission to address issues related to service quality, availability, and affordability in the North. However, I cannot support the Majority's decision to artificially reduce the prices for residential DSL (digital subscriber line) Internet services, nor can I support the decision to deny a surcharge for stand-alone DSL Internet services.

### **DSL Internet price reductions**

The decision of the Majority mandates price reductions for residential DSL Internet services that range from 10% to 30% of existing basic monthly charges. Not only are these reductions unwarranted and contrary to the Commission's long-established tariff approval processes, but I am concerned that they will produce consequences for Northern consumers that the Majority has not acknowledged. What's more, the decision of the Majority is based upon policy rationale that was not properly canvassed in this tariff proceeding and, in my view, that would be more appropriately considered in the upcoming review of basic services.

It is important to note that, when stating that price reductions are unwarranted, I base my conclusion on the costs and associated markups for Northwestel's existing Internet services, incorporating all recent changes to data allowances and usage fees. Northwestel provided detailed costing information, scrutinized by the Commission, that demonstrates that the aggregated markup for the company's portfolio of Internet services is not excessive. These cost studies also demonstrate a very significant degree of cross-subsidy between Northwestel's Internet customers. The weighted average markup on residential services is significantly less than on business services, and the aggregated markup on DSL services is significantly less than on cable services. In fact, certain DSL services are currently priced below cost. Notwithstanding this, the price reductions imposed by the Majority target one or more of these services.

When determining whether rates are just and reasonable, it is the Commission's long-standing practice that rates must pass the price floor test (i.e. exceed their marginal cost)

and incorporate a reasonable markup. With the exception of local telephone service in high-cost serving areas, which is subsidized through the National Contribution Fund, I am unaware of any other instance where the Commission has determined that it is unreasonable to price a retail service at or above its associated cost.

The Majority argue that it is necessary and appropriate to reduce the existing prices of certain DSL Internet services in order to more closely align the prices of Northwestel's cable and ADSL (asymmetric digital subscriber line) Internet services, and to reduce the price difference between Internet services in the North and the South. They argue that exceptional measures are necessary to ensure that residential Internet service is provided at reasonable rates across all of Northwestel's operating territory.

I acknowledge that this tariff application is unique. This proceeding is the only instance where the Commission reasserted its rate-setting jurisdiction over previously forborne retail services and was then requested to approve rates that are both below cost and in effect. I believe it would have been appropriate for the Commission to approve the existing DSL services at existing rates in order to avoid price increases for consumers. But I do not believe it is appropriate for the Majority to drive the prices further below cost, at least not in this tariff proceeding.

The importance of Internet services to Northern Canadians – and indeed all Canadians – cannot be disputed. The Commission will soon launch a policy proceeding to review the basic telecommunications services required by all Canadians to participate in the digital economy. In my view, this upcoming proceeding would have been the appropriate venue for examining 1) whether, and to what extent, there should be pricing/service parity between technologies and between geographic areas – be it urban versus rural or North versus South; 2) whether it is reasonable for some broadband services to be priced below their cost; and 3) if so, how an Internet service provider would be compensated for providing these unprofitable services.

Instead, the Majority reach conclusions regarding these important policy matters as part of a tariff filing process, and based on a scant evidentiary record. It is noteworthy that this decision does not encompass all parts of Northwestel's operating territory or address all technologies and Internet services relied upon in the North. The extent to which this decision will create a precedent in decision making, or expectations among Northern Canadians, is yet to be determined.

How Northwestel will offset the revenue lost through the mandated price reductions is also to be determined, but I have little doubt that the cost of the Majority's decision will be borne by Northern consumers. Although the Majority express the view that the price reductions would not significantly impact Northwestel's revenue or modernization plan, I question this conclusion. The revenue impact of the price reductions is not insignificant and is recurring. There is no reason to expect this impact to be borne by Northwestel's shareholders.

Perhaps Northwestel will reduce its capital investment in what have become highly unprofitable DSL Internet services, at least in its most high-cost serving areas. Perhaps

Northwestel will delay elements of its Modernization Plan. Perhaps it will request an exogenous adjustment, which would allow the company to recover the lost revenue from other regulated services, including other Internet services. Whatever the outcome, it will be telecom service users in the North who will live with the consequences.

As an aside, I would note that the Majority have reduced the DSL Internet service rates to the point where they now appear to be of better value, in some instances, than the rates available via the urban cable infrastructure. Take the example of the 5 megabit-per-second (Mbps) service shown below – for the same price, DSL service provides a 300% greater usage allowance. The Majority has decided that this outcome is appropriate. I wonder if Northwestel’s cable Internet customers will agree.

<b>Residential service</b>	<b>Price</b>	<b>Download speed up to (Mbps)</b>	<b>Upload speed up to (Mbps)</b>	<b>Data usage allowance</b>	<b>Additional data usage</b>	<b>Email accounts included</b>
<b>DSL Internet 5</b>	\$62.97	5	0.512	125	\$3.00	5
<b>Cable Internet 5</b>	\$62.95	5	0.384	40	\$2.50	2

#### **Stand-alone DSL Internet services**

I also disagree with the Majority’s decision to deny Northwestel’s proposed surcharge for stand-alone DSL Internet services, particularly residential DSL services.

The Majority acknowledge that Northwestel receives no revenue from the provision of local telephone service and no subsidy to offset the cost of the local loop within its high-cost serving areas when using this infrastructure to provide stand-alone DSL Internet services. For business DSL Internet services, the Majority deny the surcharge – at least in part – based on an examination of the markups for these services, determining that existing markups are sufficient to cover the local loop cost for stand-alone DSL services.

Yet the Majority completely ignore the cost and markup associated with residential DSL services – this despite Telecom Decision 2014-379, wherein the Commission stated that “more detailed costing information in regard to the company’s DSL Internet access services is required to determine whether a surcharge is appropriate in this case and, if so, to determine the amount of the surcharge.”

There is no doubt that the detailed costing information provided in this proceeding supports a stand-alone charge for residential DSL Internet services. At Northwestel’s existing rates, certain DSL Internet services are provided below cost. By incorporating the price reductions mandated by the Majority, the aggregate profitability of the entire residential DSL service portfolio is severely reduced.

Citizens and regulated entities alike deserve a Commission that is fair, predictable, and transparent – and one whose decisions are based upon the evidence of the proceeding. In this instance, the Commission stated that it would determine the appropriateness of the stand-alone surcharge based upon detailed costing information. The detailed costing

information filed in this proceeding clearly indicates that a stand-alone fee is warranted, yet the Majority deny the surcharge.

At a minimum, the decision of the Majority is not predictable.