



Telecom Order CRTC 2020-370

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Ottawa, 9 November 2020

Public record: Tariff Notice 1084

Northwestel Inc. – General Tariff – Amendment to terrestrial Internet services

*The Commission **approves on a final basis** Northwestel's application to increase the usage allowance in certain residential and business cable, digital subscriber line, and fibre-to-the-premises Internet packages.*

Background

1. In March 2020, in order to alleviate increased Internet usage costs for customers resulting from the situation created by the COVID-19 pandemic, Northwestel Inc. (Northwestel) introduced a promotion¹ to waive or reduce terrestrial residential Internet data usage charges for all residential cable and fibre-to-the-premises (FTTP) Internet packages. Furthermore, the company provided digital subscriber line (DSL) customers an extra 100 gigabytes (GB) of data usage in addition to their existing Internet monthly data usage allowance.
2. The promotion, which was extended several times, expired on 30 June 2020.

Application

3. On 1 June 2020, the Commission received an application from Northwestel under Tariff Notice (TN) 1084, proposing revisions to its General Tariff, item 1735 – Terrestrial Internet Services,² effective 1 July 2020.
4. In its application, Northwestel proposed a more permanent solution to address the needs of consumers following the expiration of the promotional offerings for its terrestrial residential Internet services. Northwestel proposed to increase the usage allowance in certain residential and business cable, DSL, and FTTP Internet packages by 7% to 100%, without any corresponding increases in the retail rates.

¹ This promotion was proposed in Tariff Notice (TN) 1076, which the Commission approved in Telecom Order 2020-103 for March and April 2020, and TNs 1080 and 1083, which the Commission approved in Telecom Orders 2020-136 and 2020-170, respectively, for May and June 2020.

² Terrestrial Internet is a service offered in communities that are served by transport infrastructure that uses terrestrial-based facilities, such as microwave radio or fibre, as opposed to communities that are served by satellite technologies.

5. Northwestel submitted that it had observed a substantial year-over-year increase in DSL usage and an even larger surge in residential cable usage from January to April 2020. As a result, the company indicated that providing additional usage to the majority of its residential and business packages was required. Northwestel submitted that its proposal to increase data usage caps increases costs and reduces revenues for certain DSL services that are already offered at rates significantly below costs and that would not be able to pass a price floor test.³
6. Northwestel submitted that customer, territorial government, and Commission support for extending its promotion as mentioned above and the increased usage demand across the company's network in light of the COVID-19 pandemic demonstrated customers' need for increased data usage within its existing Internet service offering.
7. Furthermore, Northwestel submitted that the proposed changes would help prevent usage charges over the usage allowance and would enable more customers to continue their work and educational activities online and at home.
8. The Commission granted interim approval to the application in Telecom Order 2020-200.
9. The Commission received 48 interventions from individual Internet subscribers regarding Northwestel's application. Northwestel replied to those interventions on 14 July 2020. Commission staff then sent a request for information (RFI) to Northwestel by way of a letter dated 17 August 2020 to clarify statements made in the company's reply. Northwestel responded to the RFI on 28 August 2020 and received an additional comment from an intervener, to which the company responded on 14 September 2020.

Positions of parties

10. Northwestel submitted that its reply addressed all the interventions, which it grouped into the following three categories:
 - the essentiality of Internet service to customers across the North
 - the desire for an unlimited data option and the generally higher prices for Internet service in the North compared to the South
 - other issues (e.g. quality of service and billing)

Essentiality of Internet service to customers across the North

11. In numerous interventions, customers mentioned specifically that Internet service is essential to subscribers in the North. Customers indicated the escalated importance of

³ The price floor test establishes a minimum price threshold to ensure that rates are just and reasonable and not unjustly discriminatory.

Internet service over the past several months. The current COVID-19 restrictions have increased the need for distance learning and teleworking and hindered other everyday activities, such as conducting business, interacting with government, accessing healthcare, and keeping in touch with friends and family.

12. In its response, Northwestel agreed that Internet service is very important in the day-to-day life of its customers. It highlighted various initiatives it has undertaken over the past years to upgrade its Internet infrastructure and enhance Internet services, including (i) projects completed under its Modernization Plan;⁴ (ii) the deployment of FTTP Internet in Hay River, Northwest Territories and an indication it would continue to deploy FTTP Internet in other communities in the future; and (iii) the submission of several bids for funding for its serving territory under the Commission's Broadband Fund application process,⁵ which, if approved, would provide 50 megabits per second (Mbps) download and 10 Mbps upload speeds (50/10 Mbps) with unlimited data plan options to over 90% of residential customers in the Northwest Territories and Yukon.⁶
13. Northwestel submitted that it remains committed to providing high-quality Internet services in the North.

Desire for an unlimited data option and the generally higher prices for Internet service in the North compared to the South

14. In several interventions, customers requested that Northwestel make unlimited data plans available. Other customers mentioned the price for Internet services in its serving territory are higher than average.
15. Northwestel noted that it had offered promotions on various Internet service packages in response to the COVID-19 emergency, which included unlimited data on its residential cable and FTTP Internet packages. Northwestel submitted that the measures taken to provide unlimited data increased its costs and reduced its revenues for services that, in many cases, were already offered at rates significantly below its costs. However, in light of the unprecedented situation facing its customers, the changes proposed were reasonable and required at that time.
16. Northwestel submitted that although it is increasing data usage caps for most of its residential customers, it is not in a position to offer unlimited data packages on an

⁴ Pursuant to Telecom Regulatory Policies 2011-771 and 2013-711, Northwestel implemented a Modernization Plan to update its infrastructure to ensure that northern customers receive telecommunications services, both regulated and forborne, comparable to those available to southern Canada in terms of choice, quality, and reliability. Over a five-year period, Northwestel completed a total of 460 projects, including improvements to transport and implementing local number portability, enhanced calling features, and switch upgrades, which provided Canadians living in its operating territory with improved telecommunications services, including broadband Internet services.

⁵ See Telecom Notice of Consultation 2019-191.

⁶ The Commission approved some of these bids in Telecom Decisions 2020-257, 2020-258, 2020-259, and 2020-260.

ongoing basis at this time. The availability of unlimited packages would encourage customers to use more bandwidth, which would require the company to modify its network to accommodate greater traffic, thereby increasing its costs. Northwestel submitted that this plan is not sustainable in the long term and makes the enhancements its customers are looking for, such as unlimited data plans, prohibitive.

17. Northwestel submitted that it would propose making unlimited data plans available if it manages to secure funding through the Broadband Fund, as outlined above.

Other issues

18. Some interveners expressed concerns with service quality and billing. Northwestel submitted that it has referred those specific issues to its customer service teams to investigate and, where appropriate, reach out to those individual customers to address their specific concerns.

19. Other customers expressed a variety of other concerns, such as the lack of a wider selection of speeds and data packages. Northwestel responded that although those concerns are beyond the scope of the present tariff notice, it had noted these issues.

20. A few customers expressed discontent with the specific usage allowance increases and with Northwestel's current tariff structure or proposed that the usage allowance increases be applied equally over all Internet packages. Northwestel replied that the proposed increases have been applied across various Internet packages and are tailored to each plan based on the overall aggregate usage patterns for each of those plans. The company indicated that it must still continue to support the underlying network to support the increased usage that these new data caps will enable.

21. Northwestel submitted that given that (i) it has not proposed any change in the rates for these packages or for any other Internet service in this tariff, and considering (ii) the cost pressures that it noted above, the specific data cap increases it has proposed are reasonable and will assist its customers in managing their data usage.

22. For all of the above reasons, Northwestel requested that the Commission provide final approval of the increased data usage caps as proposed in TN 1084.

Additional comment and reply

23. The Commission received an additional comment following Northwestel's response to the RFI. The intervention was in relation to affordability of the Internet, and the intervener claimed that Northwestel's tariff is not just and reasonable and is in violation of Section 27 of the *Telecommunications Act* (the Act), which requires every rate charged by Northwestel to be just and reasonable. The intervener submitted that the structure of Northwestel's retail Internet tariff is flawed, and that the imbalances therein are so stark that it is impossible for all the proposed rates to be just and reasonable at the same time.

24. The intervener requested that the Commission (i) find that Northwestel's proposed tariff is not just and reasonable, (ii) allow Northwestel to continue its current tariffs until the end of October, and (iii) provide Northwestel with guidelines so it can file revised, lawful tariffs shortly.
25. In reply, Northwestel submitted that in Telecom Decision 2015-78, the Commission approved the company's terrestrial Internet rates and found the rates to be just and reasonable after a comprehensive and extensive review of the company's costing information. Northwestel further submitted that it has been offering its terrestrial Internet packages to customers at the Commission-approved rates since the issuance of that decision.
26. Northwestel submitted that increasing the data usage allowance for certain Internet packages in communities to which it serves cable and FTTP Internet while not proposing any rate changes does not change the Commission's finding that the rates are just and reasonable. Therefore, Northwestel argued that there is no basis to the claim that its rates are not just and reasonable.

Commission's analysis and determinations

27. In Telecom Decision 2015-78, the Commission considered that it must take exceptional measures to ensure that Internet service is provided at reasonable rates across all of Northwestel's operating territory, which includes a very large territory and a small, dispersed population. To that end, the Commission approved, with certain reductions, Northwestel's proposed tariffs for terrestrial retail Internet services for residential, business, and enterprise customers. Although certain service tiers were priced below the price floor test, the Commission considered that requiring Northwestel to re-price certain residential Internet service rates so that they pass the price floor test would negatively affect Canadians in the North. Further, the Commission considered that the rate reductions imposed by the Commission would not have a significant detrimental impact on Northwestel's revenues. The Commission found the approved rates to be just and reasonable.
28. In addition, as a result of the service pricing constraints that were established in Telecom Decision 2015-79, the rates for terrestrial retail Internet services have essentially remained frozen since 2015.⁷
29. In regard to the comments related to the essentiality of Internet service, in Telecom Regulatory Policy 2016-496, the Commission recognized the importance of Internet services and established a universal service objective. Specifically regarding fixed broadband Internet services, the Commission indicated that residential and business

⁷ The Commission assigned Northwestel's terrestrial retail Internet services to a separate capped Internet Services basket, with sub-baskets for each residential and business service. The Commission capped Northwestel's residential Internet service rates and applied a rate element constraint of 5% to business retail Internet service rates. The Commission considered that placing an overall cap on the Internet Services basket should provide Northwestel with incentives to increase efficiencies and would not prevent the company from developing new Internet service offerings to increase demand and revenues.

fixed broadband Internet access service subscribers should be able to access speeds of at least 50/10 Mbps and subscribe to a service offering with an unlimited data allowance. The Commission acknowledged that it would take time to achieve these targets. In an effort to work towards achieving these targets, the Commission established the Broadband Fund. Although the Commission determined that fixed and mobile wireless broadband Internet access services were basic telecommunications services, it did not determine that those services were essential.

30. Regarding interveners' requests for an unlimited data option and comments about the general affordability of Internet services in the North, Northwestel did provide unlimited usage as part of a limited promotion. However, some of Northwestel's Internet packages were already provided at rates below cost pursuant to the Commission's determinations in Telecom Decision 2015-78. The disparity between rates and cost may be even more disproportionate in some cases with the present filing because data usage has been increased without any corresponding increase in the rates for the services. In the Commission's view, the continued offering of unlimited data plans, as requested by interveners, in the same manner that was provided during the promotional period could potentially have a negative impact on Northwestel's revenues and network infrastructure.
31. In Telecom Regulatory Policy 2020-40, the Commission, among other things, acknowledged the unique circumstances of the North, including limited competitive choices and general concerns about the affordability of services. The Commission announced that it would undertake a more thorough assessment of Northwestel's costs to (i) determine the extent of the shortfall resulting from the elimination of the local services subsidy and (ii) consider what measures may be required to support Northwestel's service offerings while protecting residents and businesses from being disproportionately affected. On 2 November 2020, the Commission issued Telecom Notice of Consultation 2020-367. Changes resulting from that proceeding could potentially further impact the offering of Northwestel's retail terrestrial Internet services once a decision has been made.
32. The increases in the data packages are an improvement in data allowance and move towards creating a more comprehensive Internet service for most customers, while they pay rates that have already been approved and were found to be just and reasonable. Although the additional data allotment could be perceived as Northwestel providing itself an undue preference, the Commission addressed this concern in Telecom Decision 2015-78. In that decision, the Commission determined that some of Northwestel's services, including the ones in question in this tariff notice, should be available to consumers at rates that were more comparable to those available in the South, which resulted in the approval of some rates that are below cost.
33. The proposed increases may have a negative effect on competition for these particular services. However, the Commission must take measures to ensure that residential Internet service is provided at reasonable rates across all of Northwestel's operating territory. The measures taken in Telecom Decision 2015-78 were found to advance the ability of Canadians in the North – 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 that of Canadians in the South.

34. The COVID-19 pandemic has resulted in increased reliance on the Internet to conduct day-to-day activities, such as distance learning and teleworking. The Commission considers that the additional data allotments proposed by Northwestel are reasonable and contribute to continuing to meet the needs of Northwestel's customers. Moreover, approval of Northwestel's application would provide pricing relief to certain customers who require additional data beyond the monthly usage allowance included in their respective Internet plan.
35. With respect to the other issues raised in the interventions, Northwestel has indicated that customer service teams will investigate and, where appropriate, contact individual customers who raised concerns with service quality and billing to address those specific concerns. The Commission considers this approach to be appropriate and beneficial to both parties even though these issues are outside the scope of this tariff notice.
36. In the Commission's view, the requests to include new data packages with a wider selection of speeds are outside the scope of this tariff notice, but, as noted by Northwestel, the company will consider those in the future. The Commission considers this approach to be reasonable.
37. In light of all the above, the Commission **approves on a final basis** Northwestel's application to increase the usage allowance in certain residential and business cable, DSL, and FTTP Internet packages.

Policy Directions

38. The 2019 Policy Direction⁸ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation.
39. The Commission has reviewed Northwestel's application in light of the 2019 Policy Direction and has considered its aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. The Commission considers that its approval of the application is compliant with the 2019 Policy Direction, given that the application promotes (i) consumer interests and affordability by providing additional flexibility to customers through the availability of increased data usage allowance at no additional charge in light of the current situation and changing environment due to the COVID-19 pandemic; and (ii) innovation by ensuring consumers have access to high-quality telecommunications services as a result of receiving increased data usage allowances and by progressing towards creating a more comprehensive Internet service for most customers.

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

40. Further, in compliance with subparagraph 1(b)(i) of the 2006 Policy Direction,⁹ the Commission considers that its approval of Northwestel's application will advance the policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.¹⁰

Secretary General

Related documents

- *Call for comments – Review of the Commission's regulatory framework for Northwestel Inc. and the state of telecommunications services in Canada's North*, Telecom Notice of Consultation CRTC 2020-367, 2 November 2020
- *Broadband Fund – Project funding approval for Northwestel Inc.'s Yukon fibre project*, Telecom Decision CRTC 2020-260, 12 August 2020
- *Broadband Fund – Project funding approval for Northwestel Inc.'s Old Crow satellite project*, Telecom Decision CRTC 2020-259, 12 August 2020
- *Broadband Fund – Project funding approval for Northwestel Inc.'s Northwest Territories fibre project*, Telecom Decision CRTC 2020-258, 12 August 2020
- *Broadband Fund – Project funding approval for Northwestel Inc.'s Northwest Territories satellite project*, Telecom Decision CRTC 2020-257, 12 August 2020
- Telecom Order CRTC 2020-200, 19 June 2020
- Telecom Order CRTC 2020-170, 26 May 2020
- Telecom Order CRTC 2020-136, 24 April 2020
- Telecom Order CRTC 2020-103, 23 March 2020
- *Review of the price cap and local forbearance regimes*, Telecom Regulatory Policy CRTC 2020-40, 4 February 2020
- *Broadband Fund – Call for applications*, Telecom Notice of Consultation CRTC 2019-191, 3 June 2019
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016

⁹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

¹⁰ The cited policy objectives 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; (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.

- *Northwestel Inc. – Basket structure and pricing constraints for terrestrial retail Internet services*, Telecom Decision CRTC 2015-79, 4 March 2015
- *Northwestel Inc. – Tariffs for terrestrial retail Internet services*, 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. – Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 2011