



Telecom Order CRTC 2021-296

PDF version

Ottawa, 27 August 2021

Public record: Tariff Notice 1121

Northwestel Inc. – Request to extend Try-it-and-Save promotion for an additional year

The Commission **approves with modifications** Northwestel Inc.'s (Northwestel) request to extend its Try-it-and-Save promotion, such that the renewal is limited to a combined enrolment and benefit period of six months and the promotion is subject to a subsequent six-month cooling-off period during which the promotion must cease; and **denies** Northwestel's request to add unlimited Internet packages to the promotion.

Background

1. Since 2018, Northwestel Inc. (Northwestel) has offered the Try-it-and-Save promotion to residential and business Internet customers who subscribe to Northwestel's General Tariff, item 1735 – Terrestrial Internet Services.
2. Try-it-and-Save is offered to customers whose Internet usage charges would justify an upgrade to their Internet package and gives eligible customers the opportunity to upgrade their monthly Internet package to a higher speed that is immediately above the one in their current package at no additional cost for the first month. Northwestel also waives any associated order processing charge.
3. Try-it-and-Save was introduced under Tariff Notice (TN) 1015. It initially ran for 12 months, and was extended for another 12 months under TN 1044. A further 12-month extension was approved under TN 1073.¹

Application

4. The Commission received an application from Northwestel, TN 1121, dated 13 April 2021, in which Northwestel proposed changes to the Try-it-and-Save promotion in order to (i) extend the promotion by an additional 12 months, to 29 April 2022, and (ii) include unlimited Internet packages as part of the promotion.

¹ The Commission approved TN 1015 in Telecom Order 2018-136 and Telecom Order 2018-180; TN 1044 in Telecom Order 2019-117 and Telecom Order 2019-161; and TN 1073 in Telecom Order 2020-87 and Telecom Order 2020-117.

5. Northwestel submitted that the extension of the Try-it-and-Save promotion is consistent with the Commission's direction in Telecom Regulatory Policy 2016-496 that Internet service providers that offer retail fixed broadband Internet access services notify residential and small business customers who have incurred overage charges of alternative plans that may better suit their needs, and thus enable the company to continue to respond to the economic and social requirements of users of Internet services in the Far North.
6. The Commission received an intervention from SSi Micro Ltd. (SSi).

SSi's intervention

7. SSi submitted that, although it did not object to the extension of the promotion per se, it opposed Northwestel's addition of unlimited Internet services to the promotion because such services have only been approved on an interim basis.² The company submitted that the expansion of Northwestel's Try-it-and-Save promotion to services that are subject to an interim approval order would appear to prejudge the merits of the issue to be determined by the Commission in its final decision.

Northwestel's reply

8. Northwestel replied that the Commission has already given interim approval to the company's unlimited Internet packages, and that there is no valid reason to deny the extension of the promotion to customers who wish to avail themselves of those services.

Commission's analysis and determinations

9. The Commission notes that in Telecom Decision 94-13, and Telecom Decision 97-8, it considered that below-cost pricing in the case of market trials and promotions was generally not anti-competitive, and exempted market trials and promotions from the application of a price floor test on the condition that sufficient information is provided by the incumbent local exchange carriers (ILECs) to demonstrate that the offering is a legitimate market trial or promotion of limited duration.
10. In Telecom Decision 2008-41, the Commission forbore in large part from the regulation of promotions for retail residential and business local wireline services in non-forborne areas if they met certain criteria. Specifically, promotions forborne from regulation are those where (i) the combined enrolment and benefit period does not exceed 12 months;³ (ii) there is a cooling-off period equal to at least one-half the combined enrolment and benefit period; and (iii) there are no existing or recently elapsed promotions that involve any of the same tariffed services or underlying

² Unlimited Internet packages were approved by the Commission, under Northwestel TN 1099, in Telecom Order 2020-378.

³ The enrolment period is typically the length of time the promotion is being offered to customers, while the benefit period is the length of time the customer benefits from the promotional offering.

services in the same geographical area. The Commission further determined that ILECs will continue to be required to file tariff applications for any proposed promotions for residential and business local wireline services that do not meet the criteria set out above.⁴

11. While Telecom Decision 2008-41 does not apply in this case given that the Try-it-and-Save promotion involves retail Internet services rather than local wireline services, the Commission is of the view that its past policies with respect to promotions provide guidelines as to acceptable practices for promotions and should be taken into consideration in assessing the reasonableness of the proposed extension. Specifically, the Commission notes (i) its previous consideration that below-cost pricing for promotions is generally not anti-competitive, and (ii) the limitations it has placed on the length of promotional offerings.
12. The Commission acknowledges that the low-risk trial of a higher-speed Internet service provided by the Try-it-and-Save promotion has benefitted Northwestel customers who have incurred Internet overage charges, and that the promotion has been a means of notifying such customers of alternative plans in accordance with the Commission's direction in Telecom Regulatory Policy 2016-496. The Commission also notes that the ongoing COVID-19 pandemic has resulted in an increased need for higher-speed Internet services and packages with additional data allowances.
13. The Commission notes that the promotion has been offered for longer than the 12-month combined enrolment and benefit period set out in Telecom Decision 2008-41. However, given the benefits derived by customers, the Commission considers that it would be reasonable to extend the current promotion for a limited period, to be followed by a cooling-off period similar to that set out in that decision. The Commission further considers that limiting the promotion to a combined enrolment and benefit period of an additional six months, followed by a cooling-off period of at least six months, would be reasonable.
14. Further, the Commission considers that including Northwestel's unlimited Internet services at this time would potentially add complexity to the administration of the promotion and confusion to customers, given that this service has been approved on an interim basis only.

⁴ In Telecom Regulatory Policy 2013-711, the Commission considered that policies regarding bundles, market trials, and promotions that already apply to all other ILECs should apply to Northwestel as well.

Conclusion

15. In light of all of the above, the Commission

- **approves with modifications** Northwestel's request to extend its Try-it-and-Save promotion, such that the resumption of the existing promotion is limited to a combined enrolment and benefit period of six months and such that the promotional period should subsequently be followed by a cooling-off period of at least six months; and
- **denies** Northwestel's request to add unlimited Internet packages to the promotion.

Policy Directions

16. In compliance with subparagraph 1(b)(i) of the 2006 Policy Direction,⁵ approval of this application advances section 7(b) of the *Telecommunications Act*.⁶

17. The 2019 Policy Direction⁷ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation. The Commission considers that approval of this application is compliant with the 2019 Policy Direction because it will (i) extend the availability of the promotion and (ii) promote customers' use of more innovative telecommunications services.

Secretary General

Related documents

- Telecom Order CRTC 2020-378, 24 November 2020
- Telecom Order CRTC 2020-117, 7 April 2020
- Telecom Order CRTC 2020-87, 6 March 2020
- Telecom Order CRTC 2019-161, 17 May 2019
- Telecom Order CRTC 2019-117, 25 April 2019
- Telecom Order CRTC 2018-180, 23 May 2018
- Telecom Order CRTC 2018-136, 26 April 2018

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁶ The cited policy objective is: 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 *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

- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Forbearance from the regulation of promotions for retail residential and business local wireline services*, Telecom Decision CRTC 2008-41, 22 May 2008
- *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Review of Regulatory Framework - Targeted Pricing, Anti-Competitive Pricing and Imputation Test for Telephone Company Toll Filings*, Telecom Decision CRTC 94-13, 13 July 1994