



Telecom Order CRTC 2022-16

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Northwestel Inc. – Tariff Notice 1099 and Tariff Notice 1122, Terrestrial Internet Services

The Commission **approves on a final basis** Northwestel Inc.'s Tariff Notice 1099 to introduce new Internet packages for residential and business customers in its areas served by fibre-to-the premises and cable facilities and **approves** Tariff Notice 1122 to (i) reduce rates for certain unlimited residential Internet packages, and (ii) provide unlimited data to previously capped residential Internet packages.

Application

Tariff Notice (TN) 1099

1. On 14 October 2020, the Commission received an application from Northwestel Inc. (Northwestel), proposing revisions to its General Tariff CRTC 3001, item 1735 – Terrestrial Internet Services. Northwestel applied to introduce new Internet packages, including unlimited Internet packages for residential and business customers that would be consistent with the universal service objective, in its areas served by fibre-to-the-premises (FTTP) and cable Internet facilities.
2. Specifically, Northwestel proposed the introduction of
 - new unlimited data Internet packages in cable- and FTTP-served areas offering 50 megabits per second (Mbps) download and 10 Mbps upload (50/10 Mbps) and priced at \$160.95 per month for residential Internet customers and \$299.95 per month for business customers;
 - two additional speed options for residential (Residential 250+ and Residential 125+) and business (Business 300+ and Business 150+) cable and FTTP unlimited Internet packages; and
 - two new cable and FTTP business Internet packages in all communities, including the Mackenzie Valley Fibre Link (Cable and FTTP Business Internet package 25 and Cable and FTTP Business Internet package 15).
3. Northwestel also proposed the introduction of a short-term promotion that would ensure that customers who have upgraded their Internet package within the last 90 days, and who may elect to move to unlimited Internet packages once these are available, would not be charged an order processing charge if they selected a lower-speed package. Northwestel submitted that this short-term promotion would

ensure that customers are able to move to the best service package for their needs without incurring additional costs. This promotion ended in February 2021.

4. Northwestel submitted that, with the introduction of unlimited data packages, it was proposing the addition to its tariff of clarifying language with respect to Internet traffic management practices (ITMPs). The company indicated that it did not have any immediate plans to impose ITMPs and that there are currently no active ITMPs that slow down Internet traffic on its retail wireline Internet services. Nonetheless, Northwestel submitted that it reserves the right to impose ITMPs, if required, but only in accordance with the Commission's requirements as set out in Telecom Regulatory Policy 2009-657. Northwestel added that it would provide the required 30-day notification of implementation of any new ITMPs along with a description of those ITMPs on its website in a similar manner to that required from all other Internet service providers in Canada.
5. Northwestel also proposed removing an expired promotion and making other housekeeping changes to clarify capped and unlimited packages.
6. In Telecom Order 2020-378, the Commission approved Northwestel's application on an interim basis, effective 1 December 2020.
7. The Commission received interventions from Ethix contracting ltd (Ethix), Fillion Landscapes, the Government of the Northwest Territories, SSi Micro Ltd. (SSi), TechYukon, Yukonstruct Society, and over 40 individuals. Among these individuals, Daniel Sokolov provided a detailed intervention.

TN 1122

8. On 20 April 2021, the Commission received an application from Northwestel requesting approval of proposed changes to Northwestel's General Tariff CRTC 3001, item 1735 – Terrestrial Internet Services. Northwestel proposed decreasing the rates of certain residential unlimited packages introduced under TN 1099.
9. Specifically, Northwestel proposed offering
 - its Internet 50+ unlimited package for \$149.95 (it is currently offered at the rate of \$160.95, which was approved on an interim basis);
 - its Internet 125+ unlimited package for \$189.95 (it is currently offered at the rate of \$199.95, which was approved on an interim basis); and
 - its Internet 250+ unlimited package for \$239.95 (it is currently offered at the rate of \$249.95, which was approved on an interim basis).
10. Northwestel also proposed automatically giving unlimited data to all current subscribers of its capped 125 Mbps and 250 Mbps residential Internet packages because the rates for those packages would be the same as the rates for its uncapped packages at the same speeds.

11. The Commission received interventions from the Tourism Industry Association of Yukon, SSI, and Daniel Sokolov.

Issues

12. The Commission has identified the following issues to be addressed in this order:

- Does the introduction of the new Internet packages and rates help achieve the universal service objective?
- Do the proposed tariffs meet the price floor test?
- Does the introduction of the new Internet packages and rates harm competition and constitute an undue preference?
- Should subscribers to the packages introduced by TN 1099 be granted a refund if TN 1122 was to be approved?
- Other matters

Does the introduction of the new Internet packages and rates help achieve the universal service objective?

Positions of parties

TN 1099

Interveners

13. In general, while interveners supported the availability of unlimited Internet options, they were concerned that the prices were still too high. Most individuals indicated that as the need for Internet data increases, there are people who need plans with more generous data allowances but cannot afford them.

14. Daniel Sokolov argued that Northwestel's application and proposed rates fail to fulfil the requirements under the Broadband Fund and the *Telecommunications Act* (the Act). Daniel Sokolov requested that unlimited data options be made available for all Internet packages or that a protection clause be added to protect clients from paying more for slower, limited service than what they would pay for faster, unlimited service. Daniel Sokolov added that enticing the power users to stress the network and withholding unlimited options from access lines with less bandwidth than 50/10 Mbps makes Northwestel's proposed tariff unjust.

15. TechYukon and the Yukonstruct Society supported the approval of Northwestel's application. TechYukon submitted that it is important to have access to an unlimited Internet package and added that Northwestel's proposal would provide much-needed cost certainty for local Yukon businesses. Yukonstruct Society submitted that the tech sector in Yukon is poised to grow and that the approval of Northwestel's application

would have a positive impact on Yukon entrepreneurs and small businesses as well as on the diversification of the economy.

16. The Government of the Northwest Territories submitted that the proposal is an important milestone in the ongoing efforts to provide Northerners with service options that satisfy the Commission's universal service objective. However, the Government of the Northwest Territories submitted that the proposal raises concerns including, but not limited to, the appropriate level and affordability of prices and the absence of unlimited service packages for download speeds under 50 Mbps in communities not currently served by cable or FTTP facilities.
17. SSi submitted that it was opposed to the final approval of TN 1099. SSi stated that it recognized the public interest in introducing unlimited Internet packages in Canada's North. However, SSi was of the view that TN 1099 has such significant anti-competitive implications that it cannot represent an appropriate way to achieve the goal of offering the pricing and service benefits of competitive choice wherever possible in the North.

TN 1122

Interveners

18. Daniel Sokolov submitted that the Commission should grant the suggested rate reductions. However, Daniel Sokolov argued that the Commission should deny Northwestel's request to remove the data cap on the residential Internet 125 and Internet 250 packages, and instead order an interim rate reduction for those packages. Daniel Sokolov made other proposals such as reducing rates for business packages, introducing uncapped packages for download speeds under 50 Mbps, and unbundling services.
19. SSi argued that the Commission should deny TN 1122, because of the implications it would have for the competitive marketplace.
20. The Tourism Industry Association of Yukon requested that Northwestel be required to implement the same rate reductions for unlimited Internet plans for Yukon's businesses as Northwestel intends to implement for residential customers in its application. The Tourism Industry Association of Yukon submitted that cost minimization is a top priority for Yukon's businesses as they continue to weather the effects of the COVID-19 pandemic, and it is absolutely essential that the overall territorial economy remain competitive.

Northwestel's reply

21. Northwestel noted that most individual interveners were supportive of the introduction of unlimited data packages for the North. Northwestel added that it understands its customers' concerns and desire for lower rates, but that the supporting cost study demonstrates that the price floor test is met, that the costs included in the

study are appropriate and in accordance with Northwestel's Regulatory Economic Studies Manual, and that the mark-ups are reasonable.

22. Northwestel stated that Daniel Sokolov's assertion that TN 1099 does not meet the Broadband Fund's requirements is erroneous. Northwestel is proposing the introduction of unlimited Internet packages in non-funded communities, which are not subject to Broadband Fund requirements. Northwestel added that Daniel Sokolov's proposal is unnecessary and potentially disadvantageous for customers as the current usage caps for packages at speeds under 50/10 Mbps remain appropriate for the vast majority of customers subscribed to them.
23. Regarding TN 1122, Northwestel added that any proposals beyond the specific rate changes proposed by Northwestel, such as those put forward by Daniel Sokolov and by the Tourism Industry Association of Yukon, are outside of the scope of this proceeding and should be dismissed.
24. Regarding SSI's concerns, Northwestel disagreed with the argument that the introduction of unlimited Internet packages for its customers is anti-competitive. Northwestel added that its proposed rate reductions comply with the Commission's requirements associated with tariff filings and respond to the desires of Northwestel's customers.

Commission's analysis and determinations

25. In Telecom Regulatory Policy 2016-496, in relation to fixed broadband Internet services, the Commission stated that residential and business fixed broadband Internet access service subscribers should be able to access speeds of at least 50 Mbps download and 10 Mbps upload and subscribe to a service offering with an unlimited data allowance.
26. The residential and business packages that Northwestel has proposed provide additional options to customers to address the increasing demand, as evidenced by the interventions received, for Internet services at faster speeds and with increased data limits. Further, the proposed 50/10 Mbps package with unlimited data allowance aligns with the Commission's universal service objective and responds to residential and business consumer assertions that such services are necessary and important in the North.
27. With respect to Daniel Sokolov's concern that Northwestel's application fails to fulfill the Broadband Fund obligations, both TN 1099 and TN 1122 are separate from any project proposals for broadband funding that the company has submitted.
28. The Commission has maintained that Canadians living in the North should have access to telecommunications services that are as comparable as possible to those available to Canadians living in the South. Approving TN 1099 and TN 1122 would be a positive step in that direction.

29. Given the above, the Commission determines that the proposed new Internet packages and rates help achieve the universal service objective.

Do the proposed tariffs meet the price floor test?

Positions of parties

30. Northwestel filed its cost study in support of TN 1099 on 13 November 2021, and initially relied on this cost study and on the cost information filed in the proceeding initiated by Telecom Notice of Consultation 2020-367 in support of TN 1122. In response to requests for information sent by Commission staff, Northwestel filed updated costing information and stated its support for the blended rating approach used in relation to TN 1099, which it also referenced in support of TN 1122. Northwestel also provided support for its use of a minus 18.4% unit cost change factor in the cost studies; however, as requested by the Commission, Northwestel provided revised responses with the annual capital unit cost change assumption for fibre electronics set to minus 26.4%.
31. Northwestel submitted that it does not want to distinguish between its retail Internet pricing based on the technological differences between cable and fibre networks, considering that these are both next-generation networks and that no other provider in Canada makes such distinctions. Northwestel added that uniform rates are simpler to administer and easier to understand for consumers, as well as being consistent with both the government's direction to have uniform pricing between locations and the retail Internet pricing in forborne retail markets.
32. Northwestel submitted that it is not aware of a requirement for a retail service offering to pass the price floor test by technology if the rates for that service are the same irrespective of the technology used to offer the service. Northwestel added that assessing the price floor test for the retail Internet services on a combined basis across technologies is also consistent with the manner in which Northwestel conducts price floor tests for other retail services that are offered using different technologies (e.g., Ethernet Metropolitan Area Network Service).
33. Northwestel added that charging different rates for its retail Internet services in the FTTP-based serving areas because FTTP is more costly would negatively impact its customers served by FTTP.
34. Given the above, Northwestel argued that from a price floor test perspective, the Commission should permit reliance on the combined price floor test results across its cable- and FTTP-served areas for the residential Internet services at issue. Based on those results, the price floor tests associated with TN 1099 and TN 1122 are met.
35. With respect to the minus 18.4% annual capital unit cost change assumption initially used in the updated cost studies Northwestel filed in support of TN 1099 and TN 1122, the company submitted that it is appropriate to use that rate as the annual capital unit cost assumption change. Northwestel indicated that this was the unit cost

change factor for dense wavelength division multiplexing equipment, identified in the [Scott Report](#)¹ referenced by the Commission in Telecom Decision 2016-117.

36. Northwestel indicated that the cost of fibre optic equipment is calculated independently, without the use of a fibre cost factor or any other factor. Therefore, Northwestel submitted that it was of the view that the unit costs for fibre electronics it developed and used in its cost studies were not derived from the switching and routing unit costs which are subject to the minus 26.4% annual unit cost change factor. As a result, Northwestel submitted that the minus 18.4% unit cost change factor from the Scott Report was the appropriate factor to apply for its fibre electronics.

Commission's analysis and determinations

37. When it assesses proposed tariffs, the Commission also examines, among other elements, the cost studies filed in support of the proposed tariffs. To attest that the price floor test was met for TN 1099 and TN 1122, Northwestel relied on specific assumptions and methodologies. In particular, Northwestel relied on (i) the use of an annual capital unit cost change assumption of minus 18.4% instead of minus 26.4%, and (ii) the blending of the cable and FTTP price floor test results.
38. Regarding the use of an annual capital unit cost change assumption of minus 18.4%, the Commission notes that, in Telecom Decision 2016-117, it approved a modification of the annual capital unit cost change assumption to minus 26.4% for traffic-driven equipment. The Commission also notes that, in Telecom Decision 2017-287, it denied Northwestel's proposed modifications to the annual capital unit cost change assumption. However, the Commission indicated that should Northwestel wish to pursue this matter, it would have to provide supporting company-specific information rather than rely on a third-party report. The Commission considers that, in TN 1099 and TN 1122, Northwestel did not provide adequate information or reasons to support a modification of the annual capital unit cost change assumption. Accordingly, the annual capital unit cost change assumption of minus 26.4% should be used in the cost studies for the proposed tariffs.
39. As concerns the blending of the cable and FTTP price floor tests, Northwestel's Regulatory Economic Studies Manual does not explicitly state that each speed tier is required to pass the price floor test for each technology or for each market segment when rates are not differentiated according to technology or market segment. However, the installation, maintenance, and management of telecommunications infrastructure have different costs depending on the technology, and the rollout of FTTP is more costly than the provision of cable Internet service. The Commission considers that the use of uniform prices in Northwestel's territory based on the blending of costs would allow for a form of cross-subsidization of one technology by the other, which could negatively impact the development of competition and deter the rollout of fibre technology. It is important to reduce barriers to entry into the

¹ J. Scott Marcus, The Economic Impact of Internet Traffic Growth on Network Operators, October 24, 2014 (referred to in this proceeding as the Scott Report)

market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service provider. In the context of this proceeding, the Commission has determined that it was not appropriate for Northwestel to blend its FTTP and cable technologies in the calculation of the price floor test.

40. As a result, for both TN 1099 and TN 1122 Northwestel should have used an annual capital unit cost change assumption of minus 26.4% and assessed costs by technology (i.e., not using a blending approach). Accordingly, the Commission used an annual capital unit cost change assumption of minus 26.4% and assessed costs by technology to conclude that the new Internet packages and rates proposed by Northwestel pass the price floor test.

Does the introduction of the new Internet packages and rates harm competition and constitute an undue preference?

Positions of parties

SSi

41. SSi argued that TN 1099 has significant anti-competitive implications. It added that permitting Northwestel to implement TN 1099, or any similar services or packages, does not comply with stringent safeguards intended to prevent Northwestel from granting itself an undue preference and will have the irrevocable and undesirable effect of eliminating Internet competition and existing competitors long before the Commission can conclude its examination of the state of competition in the North.
42. SSi stated that Northwestel's provision of the unlimited services proposed in TN 1099 results in two instances of undue preference that must be addressed:
- The services being offered over terrestrial access facilities (cable and FTTP), to which Northwestel's competitors do not have the access required in order to offer competing services of comparable capacity and quality.
 - The limitations inherent to Northwestel's only wholesale transport service being such that even if competitors had their own access facilities capable of supporting unlimited Internet access services, they would not be able to offer competing services of adequate quality or capacity based on the transport provided by Northwestel pursuant to its Wholesale Connect tariff (Wholesale Connect).
43. SSi noted that Northwestel attested that the proposed rates pass the price floor test and that they would continue to do so if Wholesale Connect were imputed for the transport element. However, SSi stated that even if the Phase II cost study was based on the imputation of Wholesale Connect rates, this would not address the undue preference that Northwestel is providing itself by introducing the TN 1099 unlimited Internet packages. SSi stated that a competitor that must rely upon Wholesale Connect service for transport cannot offer an unlimited Internet package to compete

with Northwestel's proposed TN 1099 packages, at any price. SSi added that although the Commission has come to rely upon tests such as the price floor test to assess whether incumbent rates are just and reasonable, this does not fully discharge the Commission's statutory responsibility with respect to services offered by the incumbents. SSi urged the Commission to look beyond the rates.

44. SSi suggested that the only way to redress the undue preference is to implement the following three measures as soon as possible:
- a) Approve SSi's third party Internet access application, including the proposal to establish interim rates for that service at a significant discount from the retail rates Northwestel has proposed in TN 1099, so that competitors have access to Northwestel's cable and FTTP facilities.
 - b) Reduce the approved rates for the Wholesale Connect service by a significant margin, starting at 40%, so as to permit competitors reliant on this transport service to purchase sufficient capacity to be able to compete in the design and offering of unlimited Internet packages to their own end-customers.
 - c) Independently of paragraphs 44(a) and (b), make the Wholesale Connect rates, terms, and conditions interim so that when the Commission is able to complete its adjudication of these matters, options exist for adjusting the service from a date relatively close to Northwestel's introduction of the services proposed in TN 1099.

45. SSi also submitted that TN 1122 exacerbates the anti-competitive implications by enhancing Northwestel's unfair head start over actual and potential competitive Internet access providers within the incumbent local exchange carrier's serving area.

Northwestel's reply

46. Northwestel disagreed with SSi's submission that the introduction of unlimited Internet packages for its customers is somehow anti-competitive and built on undue preference, and that a review of wholesale services is required prior to approval of TN 1099. Northwestel stated that the packages pass the price floor test. Northwestel added that it assessed the impact of imputing Wholesale Connect rates and determined that the proposed rates for unlimited Internet packages would continue to meet the price floor test if Wholesale Connect were imputed for the transport element. Northwestel noted that Wholesale Connect is available to competitors, including SSi, that may want to utilize it to provide service to current and potential end-users.
47. Northwestel submitted that SSi's objections in regard to Wholesale Connect and service level agreements are entirely outside the scope of TN 1099 and that SSi's request concerning third party Internet access services would be more appropriately addressed in the context of Telecom Notice of Consultation 2020-367. As for SSi's objections to Northwestel's proposed rate reductions in TN 1122, Northwestel stated that SSi ignored the fact that its proposals comply with the Commission's requirements associated with retail tariff filings, and respond in a real way to the desires of its customers.

48. Northwestel submitted that since the price floor test has been met, the proposed rates are not anti-competitive and should be considered just and reasonable. Northwestel argued that given that the proposed rates pass the price floor test, its application is sufficient to meet the requirements set out by the Commission for retail tariff filings, contrary to SSi's suggestion.
49. Northwestel was also of the view that SSi is trying to link its concerns with respect to the wholesale regulatory framework in the North to TN 1122 and that the appropriate forum to discuss such concerns is Telecom Notice of Consultation 2020-367.

Commission's analysis and determinations

50. Third party Internet services, the Wholesale Connect service, and wholesale high speed Internet access are being reviewed under SSi's third party Internet access application and Telecom Notice of Consultation 2020-367. The solutions proposed by SSi in this process are outside the scope of the TNs under review in this proceeding. Further, SSi did not provide any evidence as to the extent of the harm it would suffer. If the packages did not meet the price floor test, this could potentially indicate a negative effect on competition; however, for both TNs the rates proposed meet the price floor test.
51. However, the Commission acknowledges SSi's competitive concerns, specifically that competitors do not have the access required in order to offer competing services of comparable capacity and quality and that, even if competitors had their own access facilities capable of supporting unlimited Internet access services, it could be difficult to compete with Northwestel's rates. While this could be considered a preference, insofar as Northwestel would be providing a unique service offering at a competitive rate that SSi may not be able to match, the preference is not undue since the proposed rates meet the price floor test.
52. The burden of proof for claims of undue preference rests on the party alleged to be providing this preference. The Commission considers that Northwestel has demonstrated that any preference is not undue, given that its rates meet the price floor test, a key methodological tool by which the Commission ensures just and reasonable rates for telecommunications services. Any larger issues concerning the state of competition in the North go beyond the scope of TN 1099 and TN 1122. It would be more appropriate to consider such aspects in the course of SSi's third party Internet access application and the proceeding initiated by Telecom Notice of Consultation 2020-367.

Should subscribers to the packages introduced by TN 1099 be granted a refund if TN 1122 was to be approved?

Positions of parties

53. Daniel Sokolov was of the view that if the new prices are just and reasonable now, they would have already been just and reasonable a few months earlier when the unlimited packages were introduced. Daniel Sokolov therefore proposed that

Northwestel refund the rate difference between the old and new prices to residential clients of the Internet 50+, 125+, and 250+ unlimited plans.

Commission's analysis and determinations

54. While the rates in TN 1099 have been approved on an interim basis only, any reduction of rates with final approval would not necessarily mean that the rates approved on an interim basis were not just and reasonable as initially approved. Rates can vary due to a number of reasons, depending on the circumstances. For instance, when a company determines that it can offer services to consumers at more advantageous rates, the Commission could consider such rates at the final approval stage even if more expensive services were approved on an interim basis. This is what occurred in this instance. With its TN 1122 proposal, Northwestel has adjusted some rates first presented in the TN 1099 process and this has resulted in rates that will be more affordable for the consumer, while at the same time passing the price floor test. In light of the above, the Commission considers that no refunds should be granted.

Other matters

55. With regard to the other aspects of TN 1099, the Commission considers that the inclusion of the provisions identifying the potential use of ITMPs and the housekeeping changes are appropriate. Further, the promotion regarding the order processing charge, which was approved on an interim basis, has ended.

Conclusion

56. Given all of the above, the Commission **approves on a final basis** Northwestel's TN 1099 to introduce new Internet packages for residential and business customers in its areas served by FTTP and cable facilities and **approves** TN 1122 to (i) reduce rates for certain unlimited residential Internet packages, and (ii) provide unlimited data to previously capped residential Internet packages. Revised tariff pages are to be issued within 10 calendar days of the date of this order. Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

Policy Direction

57. The 2019 Policy Direction² states that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.

58. The Commission has reviewed the applications in light of the 2019 Policy Direction and has considered their aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. While the Commission notes that the

² *Order issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interest and Innovation, SOR/2019-227, 17 June 2019*

approval of the applications could have an impact on competition, the Commission is nevertheless of the view that the approval is compliant with the 2019 Policy Direction as it promotes (i) affordability by offering some Internet services at lower rates, (ii) the interests of consumers by providing customers unlimited data usage allowances, and (iii) innovation by ensuring consumers have access to high-quality telecommunications services as a result of receiving a significantly increased data usage allowance.

Secretary General

Related documents

- Telecom Order CRTC 2020-378, 24 November 2020
- *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
- *Northwestel Inc. – Application to review and vary certain determinations in Telecom Decision 2016-443 regarding Wholesale Connect service*, Telecom Decision CRTC 2017-287, 17 August 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117, 31 March 2016
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009