



Telecom Order CRTC 2022-173

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Ottawa, 27 June 2022

Public record: Tariff Notice 1137 and Tariff Notice 1137A

Northwestel Inc. – Increased speeds and usage caps for Terrestrial Internet Services

Summary

The Commission **approves on a final basis** Northwestel's Tariff Notice 1137 and Tariff Notice 1137A to increase speeds and usage caps for certain Terrestrial Internet Services.

Application

1. The Commission received an application from Northwestel Inc. (Northwestel), Tariff Notice (TN) 1137, dated 19 August 2021, in which the company proposed changes to its General Tariff. Specifically, Northwestel proposed revisions to Item 1735, Terrestrial Internet Services.
2. On 21 February 2022, the Commission received an amendment to Northwestel's application, TN 1137A, which the company indicated was made in light of the Commission's determinations in Telecom Order 2022-16.¹
3. In its applications, Northwestel proposed to
 - increase the download and upload speeds associated with its unlimited usage cable and fibre-to-the-premises (FTTP) residential and business Internet packages;
 - increase the upload speed for some capped business Internet packages;
 - increase the usage cap for some of its cable and FTTP capped residential and business Internet packages; and
 - amend Item 1735.4.(e) Enhanced Wireless Gateway Service to reflect a change in the proposed top speed tier for its residential cable and FTTP Internet services from 250 megabits per second (Mbps) to 300 Mbps.

¹ In Telecom Order 2022-16 the Commission approved Northwestel's TN 1122 and approved on a final basis Northwestel's TN 1099.

4. In addition, the company proposed several housekeeping changes for clarity and consistency.
5. Northwestel also indicated that, due to network limitations, residential customers in Fort Nelson, British Columbia would not be able to reach speeds greater than the existing 125 Mbps download. For this reason, Northwestel would continue to offer the existing unlimited and capped 125 Mbps residential speed tiers for cable Internet packages to Fort Nelson customers only.
6. Further, Northwestel indicated that FTTP communities served by microwave transport instead of fibre transport are unable to support speeds, in a capped or unlimited usage package, above 50 Mbps, due to inherent limitations on the transport network. For this reason, Northwestel would continue to offer the existing unlimited 50 Mbps speed tier in these communities only, and has reflected in its tariff that, once a community is upgraded from microwave to fibre transport, customers will be automatically upgraded to the 100 Mbps Internet package, which is offered at the same price as their current 50 Mbps Internet package. Once the upgrade of the transport is completed, customers would also be able to subscribe to the higher speed tiers that are offered. Northwestel noted that the communities affected by this transport issue are Aklavik, Délı̄ne, Dettah, Fort MacPherson, Nahanni Butte, Tsiigehtchic and Tuktoyaktuk, Northwest Territories; and Faro and Ross River, Yukon. Northwestel stated that it will be upgrading the transport in Dettah, Faro and Ross River in 2023.
7. The Commission granted interim approval to TNs 1137 and 1137A in Telecom Order 2022-90.
8. The Commission received interventions regarding TN 1137 from the Council of Yukon First Nations (CYFN);² the Northern Rockies Regional Municipality (NRRM); Daniel Sokolov; and SSi Micro Ltd., doing business as SSi Canada (SSi); and an intervention regarding TN 1137A from Sean Nardella.

Positions of parties

Intervenors

9. Daniel Sokolov submitted that TN 1137 does not seek to reduce monthly fees nor overage charges, and fails to reduce the cost of the least expensive unlimited business package, but rather triples the bandwidth. He noted that, as a result, businesses would need to pay for a speed of at least 150 Mbps if they want unlimited Internet access.
10. Daniel Sokolov also submitted that Northwestel failed to address the underlying inequities in its tariff regime and made several requests, among which were requests regarding overage fees, refunds, and data volume. In particular, he submitted that

² While the CYFN filed its intervention about TN 1137 after the close of record on 25 October 2021, it was accepted and added to the public record.

“unlimited” options for lower bandwidth services would seriously improve the situation, especially for low income households and single-person households.

11. The NRRM submitted that, although Northwestel attests to the adequacy of service at speeds of 50 Mbps download/10 Mbps upload, and offers download speeds that reach 125 Mbps in its service package, user experience in Fort Nelson indicates that, in practice, levels of service delivered to the premises fall well below that. The NRRM submitted that service levels and affordability for its residents and businesses appear not to be a priority for Northwestel.
12. The NRRM further submitted that Northwestel has proposed no relief for the network limitations that it cited as the reason for being excluded from receiving the proposed broadband speeds. The NRRM added that its interests have been neglected by the company and that this impacts the economic and social development of the North.
13. The NRRM also submitted that the current wholesale rate structure under which Northwestel operates is an effective barrier to the entry into the NRRM for any competitors and nothing in TN 1137 suggests that consideration was being given to this issue.
14. SSi submitted that TN 1137 exacerbates the serious anti-competitive implications of Northwestel’s proposed introduction of unlimited Internet access services over monopoly-controlled access facilities. SSi urged the Commission to deny TN 1137 until the regulatory framework that applies to Northwestel allows sustainable competition to gain a foothold in the markets where Northwestel continues to enjoy dominant market position.
15. According to SSi, the Commission must ensure that Northwestel’s offer does not confer on the company an undue preference or unfair advantage. SSi added that the integrity of the Commission’s regulatory framework demands that the competitive issues raised in its intervention, such as i) initiating mandatory wholesale access to Northwestel’s monopoly-controlled terrestrial cable and FTTP access facilities and ii) mandating reductions to the wholesale rates for both the transport and access facilities Northwestel uses to offer unlimited wireline terrestrial Internet access services, be addressed before Northwestel is permitted to implement the enrichments it now proposes.
16. The CYFN supported a timely decision on TN 1137. It submitted that the pandemic, coupled with the need for distance learning and for conducting significant activities online, have underscored the fact that Internet connectivity is a critical utility for citizens of Yukon First Nations.
17. The CYFN highlighted that, in Yukon, the normal mechanism for ensuring Internet service affordability and competition is generally absent or minimal in the marketplace. The CYFN indicated that, with a median income that is 67% of the median income of non-aboriginal Yukoners, Yukon First Nations citizens are disproportionately impacted by the monthly prices of Internet services, which are 60% to 250% higher than comparable packages in Vancouver. The CYFN submitted

that it welcomes all initiatives, including those by incumbent providers, to address elements the CFNY has included among its principles of telecommunications.³

18. Regarding TN 1137A, Sean Nardella supported Northwestel's proposed change, provided it is part of a strategy to bring parity with rates in southern Canada.

Northwestel's reply

19. Northwestel submitted that Daniel Sokolov's requests are unrelated to the proposals it made in TN 1137 and are beyond the scope of its application. Northwestel submitted that Daniel Sokolov did not provide demonstrable evidence that business customers do not want or require additional speeds or increased data allowances, or that options for lower speeds and usage should be made available, which are not consistent with the requests it receives from its customers. In TN 1137, Northwestel is addressing those requests within the regulatory framework under which it operates. Northwestel submitted that the changes proposed in TN 1137 are just and reasonable, based on the support it has provided for those proposals.
20. Northwestel acknowledged the NRRM's disappointment with network limitations, but disagreed with any characterization of its actions as neglect or disinterest in the needs of customers in Fort Nelson. Northwestel indicated that it has met with the NRRM on a nearly weekly basis since the second quarter of 2021 to discuss its issues and concerns and that this level of engagement demonstrates its commitment to work with the NRRM. However, Northwestel maintained that, although customers in Fort Nelson may not have access to higher speed packages due to network limitations, this does not mean that rates should be lowered for existing packages. Northwestel indicated that the Commission has already approved those rates for the service being provided, and that they are therefore just and reasonable and do not require adjustment.
21. Northwestel submitted that the SSi has linked its concerns with the wholesale regulatory framework to Northwestel's TNs 1137 and 1137A, and that the proceeding initiated by Telecom Notice of Consultation 2020-367 (the Northwestel review) would be the appropriate forum in which to discuss those concerns. Northwestel was of the view that there is no principled basis to deny customers an improvement in speed and/or the usage cap on services that have been shown to comply with the Commission's pre-determined rate regulation rules. Northwestel submitted that it is responding to the needs that customers have expressed and that SSi's objections have nothing to do with improved services for customers.

Commission's analysis

22. In Telecom Order 2022-16, the Commission approved the retail Internet services rates in Northwestel's TN 1099 on a final basis, and approved the rates in Northwestel's TN 1122. In making its determination on the rates, the Commission considered, among other things, that the use of uniform prices in Northwestel's territory, based on

³ For more details on those principles, see the CYFN's [intervention](#) on the record of this proceeding.

the blending of costs of fibre and cable, 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. The Commission recognized that it is important to reduce barriers to entry into the market and to support competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service provider in the area they serve. In addition, the Commission determined that an annual capital unit cost change assumption of minus 26.4% should be used in the price floor test.⁴

23. As a result, in TN 1137A, Northwestel modified its initial application to ensure that those determinations were respected. While the main purpose of Northwestel's applications was to increase speeds and usage allotments for certain retail Internet service packages, the rates must still pass the price floor test, based on the revised assumptions. The Commission considers that the proposals set out in TN 1137A comply with the Commission determinations in Telecom Order 2022-16 and pass the price floor test. Accordingly, the Commission considers them to be just and reasonable.
24. The Commission is of the view that Daniel Sokolov did not provide adequate support for his assertion that the proposed business packages would not meet the needs of business customers. The Commission received no interventions from business customers that would support that claim. Additionally, many of Daniel Sokolov's requests are, in the Commission's view, beyond the scope of this proceeding.
25. With respect to the CFYN's intervention, the Commission acknowledges the importance of Internet for First Nations citizens in Yukon, and that they can be disproportionately affected by higher Internet prices in the North. The Commission has maintained that Canadians living in the North should have access to telecommunications services that are comparable, as far as possible, to those available to Canadians living in the south. The Commission considers that the increased Internet speeds and usage caps proposed in TNs 1137 and 1137A could be a positive step in that direction. The Commission considers that increased data speeds and usage caps will help to ensure that Yukon First Nations, and other Canadians living in the North, do not fall behind in accessing opportunities that are available to other Canadians.
26. The affordability of telecommunications services for Canadians living in the North, and the question of whether telecommunications services in the North should be subsidized, is currently being assessed as part of the Northwestel review. The concerns raised in this proceeding by interveners such as the NRRM about network infrastructure and levels of service delivered would be better addressed in that context.

⁴ The price floor test establishes a minimum price threshold to ensure that rates are just and reasonable, and not unjustly discriminatory.

27. With regards to concerns raised by both the NRRM and SSi that limitations of the wholesale services offered by Northwestel would create barriers to competition, the Commission notes that they were similar to those raised by SSi in relation to Northwestel's TNs 1099 and 1122. When the Commission approved those applications in Telecom Order 2022-16, it acknowledged SSi's competitive concerns. Specifically, the Commission recognized that competitors do not have the access to facilities 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. In that decision, the Commission acknowledged that this could be considered a preference, insofar as Northwestel would be providing a unique service offering at a competitive rate that SSi might not be able to match, but did not consider the preference undue because the proposed rates met the price floor test.
28. The changes proposed in the current application continue to meet the price floor test. Accordingly, the Commission considers that, although SSi may not be able to match Northwestel's offerings, the preference is not undue. Also, while SSi's concerns regarding the state of competition in the North are valid, the Commission considers that those are larger issues that go beyond the scope of this proceeding. The Commission notes that SSi has filed an application regarding third-party Internet access to Northwestel's facilities. It would be more appropriate to consider those issues as part of that proceeding, or in the context of the Northwestel review.

Conclusion

29. In light of all the above, the Commission **approves on a final basis** Northwestel's TN 1137 and TN 1137A. 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 Directions

30. The 2019 Policy Direction⁵ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
31. 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. The Commission considers that the approval of these applications on a final basis is compliant with the 2019 Policy Direction, because it will promote (i) consumer interests by increasing the speeds and the data allowance of some Internet services; and (ii) innovation by ensuring that

⁵ 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

consumers have access to high-quality telecommunications services as a result of receiving increased speeds and data usage allowance.

32. Further, in compliance with paragraph 1(b)(i) of the 2006 Policy Direction,⁶ approval of these applications on a final basis will advance the policy objectives set out in paragraphs 7(a), (b) and (h) of the *Telecommunications Act*.⁷

Secretary General

Related documents

- *Northwestel Inc. – Tariff Notice 1099 and Tariff Notice 1122, Terrestrial Internet Service*, Telecom Order CRTC 2022-16, 27 January 2022
- *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

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁷ 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; 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 7(h) to respond to the economic and social requirements of users of telecommunications services.