



Telecom Order CRTC 2023-42

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Ottawa, 23 February 2023

Public record: Tariff Notice 1156

Northwestel Inc. – Introduction of Disaster Waiver

Summary

The Commission **approves with changes** Northwestel Inc.'s application to introduce a Disaster Waiver to its General Tariff.

Application

1. The Commission received an application from Northwestel Inc. (Northwestel), dated 11 July 2022, in which the company proposed to introduce Item 1701 – Disaster Waiver to its General Tariff CRTC 3001.
2. The Disaster Waiver would permit Northwestel to suspend services, waive charges, provide services at a reduced rate or free of charge, or provide other such relief as may be appropriate to residential and/or small business customers affected by a qualifying disaster event (i.e., an event beyond the reasonable control of the customers that requires evacuation of the customer premises for safety reasons, for a period greater than 48 hours).
3. The company indicated that, in recent years, communities in the North have been affected by large-scale events such as wildfires (e.g., in the High Level, Alberta area in 2019) and flooding (e.g., in various communities, such as Hay River, Northwest Territories, in 2022), which have disrupted lives and damaged homes, businesses, and community infrastructure. The company submitted that when these types of events occur, it would like to support the recovery efforts of communities and individuals by providing reasonable relief where needed. This relief could include, for example, waiving data overage charges, suspending services in premises under an evacuation order, or waiving reconnect fees when service has been disrupted and subsequently restored.
4. The company further submitted that the proposed tariff item would give it the ability to provide such relief only when specific conditions are met, and to tailor the relief to meet the needs of customers affected by each unique qualifying disaster event.
5. Northwestel argued that, while such relief would not meet a price floor test, the Disaster Waiver is similar to a short-term promotion, since both the geographic area where the relief is granted as well as the duration of the relief, as set by the length of a

qualifying disaster event, are pre-defined, in this case by an appropriate government entity rather than by the company itself.

6. Northwestel further argued that the very narrow circumstances that could give rise to the proposed Disaster Waiver coming into effect ensure that, though rates may temporarily no longer meet the price floor test, there is neither anti-competitive intent nor effect. The company added that this approach is reasonable and will provide needed relief to residential and small business customers in challenging situations.
7. Further, the company submitted that such relief is consistent with the policy objectives set out in the *Telecommunications Act* (the Act); specifically, objective 7(h) to respond to the economic and social requirements of users of telecommunications services.
8. Northwestel proposed that the new service be categorized as an Uncapped Service and submitted that the proposal does not impact the price cap indices.
9. The company requested an effective date of 26 July 2022.
10. The record of the proceeding closed on 29 September 2022. The Commission did not receive any interventions in relation to the company's proposal.

Commission's analysis

11. The Disaster Waiver will provide benefits to consumers in situations where they could be unduly impacted by events that could require the type of relief proposed by Northwestel.
12. The Commission has considered that below-cost pricing in the case of market trials and promotions is generally not anti-competitive. In Telecom Decision 94-13, the Commission determined that market trials and promotions are exempt from the application of the retail price floor test on the condition that sufficient information is provided by the telephone companies to demonstrate that the offering is a legitimate market trial or promotion of limited duration.
13. Much like promotions, the benefits resulting from the application of Northwestel's proposed tariff item would be of limited duration. Given that Northwestel is proposing to waive certain charges, the results would not pass a price floor test. However, the Commission is of the view that under the circumstances set out by the company, this would be acceptable.
14. Further, in the case of Northwestel's proposed tariff, the Commission considers that the intent is not to increase demand but rather to offer relief to consumers during certain circumstances. The Commission is of the view that this intent would not result in anti-competitive behaviour from the company.
15. Regarding the company's proposal to limit the proposed tariff item to only residential and small business customers, the Commission considers that this approach is

reasonable since providing remedies to enterprise customers can be achieved through specific relief directed to such customers. This is consistent with the company's past practices,¹ as indicated in response to Commission staff requests for information.²

16. Currently, the proposed tariff wording is as follows:

In cases where a residential or small business customer is affected by a Qualifying Disaster Event as defined in (b) below, the Company may, at its discretion, provide one or more of the following:

- Suspension of services at the affected premises at no charge;³
- Waiver of Internet data overage charges;
- Waiver of voice and/or Internet monthly recurring charges;
- Reference of calls and/or call forwarding services for voice services;⁴
- Reconnection of service(s) at no charge; and/or
- Other such relief as the Company may deem reasonable and that best addresses the needs of the customer(s).

17. With respect to the phrase "at its discretion," the Commission is of the view that use of this phrase would provide the company with too much flexibility in determining when to extend the identified remedies. The Commission considers that more specific wording would ensure that customers clearly understand when such remedies will be provided to them and limit unwarranted flexibility. Additionally, such remedies should benefit the specific needs of the customer. Accordingly, the Commission is of the view that the phrase "at its discretion" should be replaced with "based on the unique needs of the customer and/or community resulting from the event" and the phrase "remedies that best benefit and address the needs of the customer" be added to the end of the phrase. The Commission **directs** Northwestel to apply the remedies, to the greatest extent possible, consistently and in a non-discriminatory manner among

¹ For example, in connection with the wildfires in High Level in 2019, the company filed Tariff Notice 1050 which provided, on a temporary basis, peering and transiting functionality and the use of Border Gateway Protocol (BGP) allowing wholesale and retail enterprise customers to exchange routing and reachability information between autonomous systems on the Internet.

² On 22 August 2022 and 29 September 2022, Commission staff issued requests for information to Northwestel to clarify certain aspects of its application.

³ Northwestel's General Tariff provides provisions for "Suspension of Services" in Items 901 to 904. Under this section, service can be suspended upon the request of the customer. During the suspension period, the customer's local exchange service rates are reduced by 50%. Service charges apply for suspending and restoring services.

⁴ Reference of calls and call forwarding services permit customers to have incoming calls transferred to another telephone number.

similarly situated customers (e.g., all impacted Internet customers would have overage charges waived).

18. The Commission is concerned that the company's proposal to suspend service without prior consent could potentially result in customers losing access to essential connectivity during an emergency event. Unilaterally suspending a customer's service without prior consent during an emergency event has clear worrisome implications that supersede the rationale for suspending these services. Suspending service in this way assumes that a customer has the means to evacuate their home and has done so, which may not always be the case during emergencies. In such an event where a customer remains in their home, they would greatly benefit from having their services remain intact; however, certain customers may prefer the protection provided by suspension of service. The Commission considers that requiring customer consent prior to suspending service would alleviate potential concerns regarding continued access to services. Accordingly, the Company **directs** Northwestel to specify that such suspension would be subject to the customer's consent.
19. With respect to the reference of calls and call forwarding services, the Commission **directs** that the words "at no charge" be added to clarify the company's intention to provide these features at no charge, which the company specified in its response to the requests for information.
20. As for the phrase "other such relief as the Company may deem reasonable and that best addresses the needs of the customer(s)," the Commission is of the view that this phrase is fairly vague and broad and should focus on the needs of customers in relation to the remedies provided as well as identify possible options, such as replacement of inside wire as cited by the company in its response to the Commission's requests for information. It is important that tariff terms clearly specify what remedies could be expected by consumers. Accordingly, the Commission **directs** that the phrase "as the Company may deem reasonable and that best addresses the needs of the customer(s)" be replaced with "that benefits the customer and best addresses the needs of the customer and/or community resulting from the event (for example, replacement of inside wire, waiving of charges for other services not listed above, or the provision of new services) with the consent of the customer." Further, where a remedy not previously identified is provided in relation to more than two events, the Commission **directs** Northwestel to file an amendment to the tariff to include such remedies in the list of options in order to clearly identify what remedies could be offered in relation to eligible events.
21. With respect to Northwestel's proposed assignment of the service to the Uncapped Services category, pursuant to Northwestel's price cap regulatory framework⁵ this category generally includes competitive services (e.g., toll-free service, Centrex), special assembly services that are developed with regard to long-term customers'

⁵ The most recent framework, which is currently under review, was set out in Telecom Regulatory Policy 2013-711.

commitments, and services where the rates are calculated based on a Commission-approved formula, such as late payment charges. The proposed Disaster Waiver does not fall into any of the types of services that would be assigned to this category. However, the Other Capped Services category includes most other retail services, including optional features. The Disaster Waiver would more appropriately be assigned to this category. The Commission therefore **directs** Northwestel to assign the proposed Disaster Waiver to the Other Capped Services category.

Conclusion

22. The Commission **approves with changes** Northwestel's Tariff Notice 1156, effective the date of this order. The Commission **directs** Northwestel to make the following changes to the Tariff Notice:
 - Item 1701.1.(a) is to be modified to state the following: "In cases where a residential or small business customer is affected by a Qualifying Disaster Event as defined in (b) below, the Company may, based on the unique needs of the customer and/or community resulting from the event, provide one or more of the following remedies that best benefit and address the needs of the customer:";
 - Item 1701.1.(a)(1) is to be modified to state "Suspension of services, with the customer's consent, at the affected premises at no charge";
 - Item 1701.1.(a)(4), is to have the words "at no charge" added at the end of the sentence; and
 - Item 1701.1.(a)(6) is to be modified to state the following: "Other such relief that benefits the customer and best addresses the needs of the customer and/or community resulting from the event (for example, replacement of inside wire, waiving of charges for other services not listed above, or the provision of new services) with the customer's consent."
23. The Commission **directs** Northwestel to apply the remedies, to the greatest extent possible, consistently and in a non-discriminatory manner among similarly situated customers.
24. The Commission also **directs** Northwestel to, where a remedy not previously identified is provided in relation to more than two events, file an amendment to the tariff to include such remedies in the list of options in order to clearly identify what remedies could be offered in relation to eligible events.
25. The Commission further **directs** Northwestel to assign the Disaster Waiver to the Other Capped Services category.

Policy Directions

26. The 2019 Policy Direction⁶ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
27. 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 approval of this application, with the recommended wording changes, is compliant with the 2019 Policy Direction, since it promotes consumer interest by ensuring that appropriate relief in relation to telecommunications services is available to customers during times of disaster.
28. Further, in compliance with subparagraph 1(b)(i) of the 2006 Policy Direction,⁷ approval of this application advances the policy objective set out in paragraph 7(a) of the Act.⁸
29. The Commission therefore considers that Northwestel's proposal, with the Commission's recommended wording changes, is reasonable and complies with existing regulatory policies.

Secretary General

Related documents

- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *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

⁶ *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

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁸ The cited policy objective is 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.