



Telecom Decision CRTC 2014-379

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Northwestel Inc. – Application to review and vary certain determinations in Telecom Regulatory Policy 2013-711

*The Commission **approves** Northwestel's request to review and vary the Commission's determination in Telecom Regulatory Policy 2013-711 that it would not be appropriate to charge an additional fee for stand-alone digital subscriber line Internet access service. The Commission will consider whether Northwestel's proposed surcharges are appropriate in the proceeding associated with Northwestel Tariff Notice 904. The Commission **denies** Northwestel's request to review and vary Telecom Regulatory Policy 2013-711 to allow rate ranges and rate de-averaging within a rate band.*

Background

1. In Telecom Regulatory Policy 2013-711, the Commission determined that the offering and provision of Northwestel Inc.'s (Northwestel) terrestrial¹ retail Internet access services would no longer be forborne, as the circumstances that justified its original forbearance had changed, and Northwestel now had significant market power. The Commission also determined that retail digital subscriber line (DSL) Internet access service should be available independent of primary exchange service (PES) [stand-alone DSL Internet access service]. The Commission stated that it would not be appropriate to charge an additional fee (surcharge) for stand-alone DSL Internet access service.
2. The Commission further determined that, given the current state of competition in Northwestel's operating territory, providing Northwestel with additional pricing flexibility through the use of rate ranges² or rate de-averaging³ within a rate band (as opposed to at the rate band level) could be detrimental to the development of competition. The Commission considered that rate de-averaging at the rate band level would allow an incumbent local exchange carrier (ILEC) to better price services to recognize cost differences between bands. The Commission therefore

¹ Terrestrial services include services provided using cable and digital subscriber line facilities, but exclude services provided using satellite infrastructure, which remain forborne.

² Rate ranges allow incumbent local exchange carriers (ILECs) to price a regulated service within a range previously approved by the Commission.

³ Rate de-averaging permits an ILEC to price the same regulated service at different levels within an exchange (i.e. at the subscriber level).

allowed Northwestel to de-average its rates for services only at the rate band level for services in specific baskets.

3. During the process leading to Telecom Regulatory Policy 2013-711, Northwestel committed to offering retail stand-alone DSL Internet access service with a surcharge in its terrestrially served communities. The company started offering the service with a surcharge in its high-cost serving areas in October 2013, after the public hearing but before the publication of Telecom Regulatory Policy 2013-711, in which the Commission determined that such a surcharge would be inappropriate.
4. On the day Northwestel filed the review and vary application that is the subject of this decision, it also filed Tariff Notice 904,⁴ in which it proposed to introduce tariffs for terrestrial retail DSL and cable Internet services, as well as terrestrial enterprise Internet access services. The proposed tariffs included a surcharge of \$20 for residential customers and \$30 for business customers for stand-alone DSL Internet access services.

Application

5. The Commission received an application from Northwestel, dated 4 February 2014, in which the company requested that the Commission review and vary certain determinations in Telecom Regulatory Policy 2013-711. Northwestel did not object to the majority of the Commission's determinations in that decision, including its determination that retail Internet access services would no longer be forborne. Specifically, Northwestel requested that Commission review and vary only two aspects of the decision related to (i) the appropriateness of a surcharge for stand-alone DSL Internet access service, and (ii) the ability to use rate ranges and rate de-averaging within a rate band.
6. Northwestel submitted that there is substantial doubt as to the correctness of the Commission's determination that it would not be appropriate for the company to charge an additional fee for providing its stand-alone DSL Internet access service. It submitted that the Commission had erred in fact and in law by failing to appreciate the importance of facts before it, and had decided on an issue that was insufficiently supported by the record of the proceeding.
7. Northwestel also submitted that there is substantial doubt as to the correctness of the decision to deny pricing flexibility through the use of rate ranges and rate de-averaging within a rate band on the basis that this flexibility could be detrimental to the development of competition.
8. The Commission received interventions regarding Northwestel's application from the Government of the Northwest Territories, the Government of Yukon, Ice Wireless Inc. and Iristel Inc. (collectively, Ice/Iristel), and the Public Interest Advocacy Centre (PIAC). The public record of this proceeding, which closed on 20 March 2014, is

⁴ Northwestel later submitted Tariff Notice 904A to include dial-up Internet services.

available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

9. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to one or more of the following: (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
10. The Commission has identified the following issues to be addressed in this decision:
 - Is there substantial doubt as to the correctness of the original decision that it would not be appropriate to charge an additional fee for stand-alone DSL Internet access service?
 - Is there substantial doubt as to the correctness of the original decision that it would not be appropriate to employ rate ranges and rate de-averaging within a rate band?

Is there substantial doubt as to the correctness of the original decision that it would not be appropriate to charge an additional fee for stand-alone DSL Internet access service?

11. Northwestel submitted that the Commission failed to appreciate the importance of facts before it, and decided on an issue insufficiently supported by the record. Northwestel added that no details of the proposal were introduced on the public record to properly conclude that any fee, in and of itself, is inappropriate. It further added that no comments were received concerning the charging of such a fee and that the only issue that was subject to discussion was whether DSL Internet access service should be offered as a stand-alone service, not whether there should be an additional fee associated with offering it in this way.
12. Northwestel also submitted that the Commission failed to appreciate the business model associated with providing DSL Internet access service on a stand-alone basis and that local loop costs in high-cost serving areas cannot be recovered through the retail PES rate alone, which is why the company receives a subsidy. Northwestel indicated that it does not receive a subsidy for PES costs associated with stand-alone DSL Internet access service, and that the surcharge is required because local loop costs associated with the service are too substantial to be recovered by the retail Internet access service rate. Northwestel added that, without a surcharge, it would have to consider raising retail Internet service rates for all subscribers.
13. The Government of the Northwest Territories, Ice/Iristel, and PIAC submitted that Northwestel's application does not meet any of the Commission's review and vary

criteria. Ice/Iristel added that it had filed evidence at the public hearing indicating that a high stand-alone surcharge or loop access fee would prevent most subscribers from being able to use Internet-based competitive voice services. The Government of Yukon also submitted that there was sufficient information on the record for the Commission to reach its decision and that imposing a surcharge would be a disincentive to switch providers.

14. PIAC submitted that Northwestel is currently billing its customers a surcharge that it has no authority to charge, and that it should be ordered to refund this surcharge. PIAC also stated that Northwestel has not provided information to quantify the impact of the shortfall it claims to be suffering because of having to offer stand-alone DSL Internet access service, and that it did not explain why the surcharge should only apply to DSL customers, not cable modem or satellite customers. PIAC added that the impact on competition in a part of Canada in which competition is largely absent is a more than sufficient reason to reject a surcharge.

Commission's analysis and determinations

15. In the proceeding leading to Telecom Regulatory Policy 2013-711, the importance of stand-alone DSL Internet access service being accessible to Northwestel's customers was discussed, and Northwestel committed to offering it for an additional fee. Further, although Ice/Iristel submitted that a surcharge would render the price of stand-alone DSL Internet access service too high to make competitive voice services viable, no amounts were discussed with respect to the possible surcharge.
16. The information that Northwestel provided on the record of this proceeding indicates that there are local loop costs for stand-alone DSL Internet access service, usually recovered by PES rates, and the subsidy for PES in high-cost serving areas that may support the application of a surcharge.
17. The Commission considers that Northwestel has demonstrated that the Commission made its determination that surcharges would not be permitted without having sufficient evidence on this issue before it, and that, therefore, a re-examination is warranted. In light of the above, the Commission finds that there is substantial doubt as to the correctness of the determination that it would not be appropriate for Northwestel to charge an additional fee for retail DSL Internet access service that is purchased independently from PES.
18. However, more detailed costing information in regard to the company's DSL Internet access services is required to determine whether a surcharge is appropriate in this case and, if so, to determine the amount of the surcharge. The Commission will therefore consider whether Northwestel's proposed surcharges are appropriate under the Tariff Notice 904 process.

Is there substantial doubt as to the correctness of the original decision that it would not be appropriate to employ rate ranges and rate de-averaging within a rate band?

19. Northwestel submitted that it is inappropriate for the Commission to deny pricing flexibility on the basis that it could be detrimental to the development of competition, since rate ranges are subject to safeguards that ensure that the ILEC cannot engage in abusive pricing practices.
20. Northwestel stated that the prohibition on the use of rate ranges and rate de-averaging within a rate band prevents the ILEC from competing on pricing, thus harming consumers. It noted that the Commission found on many occasions that there are no competitive concerns to warrant the prohibition of such pricing flexibility, and that this flexibility helps meet the objectives of the Policy Direction⁵ by fostering increased economic efficiency. Northwestel added that small and large ILECs have been permitted to use rate ranges.
21. Northwestel submitted that it is seeking the ability to implement these pricing tools with respect to its business services, which have seen the entry of competitive options since the introduction of its Wholesale Connect Service in 2012. If the Commission were to deny rate ranges and rate de-averaging at the subscriber level, Northwestel requested that, at a minimum, it be permitted to implement rate ranges and rate de-averaging in its retail tariffs for its V-Connect⁶ and EWAN⁷ services.
22. PIAC and the Governments of the Northwest Territories and Yukon submitted that none of Northwestel's arguments were new, that the company had failed to demonstrate that it meets any of the four criteria for review and vary applications, and that the application should be dismissed.
23. Ice/Iristel submitted that the state of competition is much weaker in the North and that Northwestel's argument based on the decisions that allow rate ranges in southern Canada do not apply because (i) local competition only started in 2011; (ii) Northwestel owns most of the cable companies in its operating territory, eliminating terrestrial competition in the Internet access market; and (iii) the company is heavily subsidized, providing opportunity for cross-subsidy.

Commission's analysis and determinations

24. The Commission notes that it fully considered the arguments put forward by Northwestel in its application during the proceeding leading to Telecom Regulatory

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

⁶ V-Connect is a retail business service that is used to create wide area networks by providing site-to-site connections that can cover large geographic areas.

⁷ EWAN is a high-capacity layer 2 service that enables a customer in Northwestel's territory to connect to a second location outside the company's operating territory.

Policy 2013-711. In that decision, it found that since (i) the rollout of competition in the North is likely to be different than in southern Canada, and (ii) Northwestel had significant market power in most of its operating territory, it therefore required a different regulatory approach. The Commission considers that Northwestel did not add any new information in its application that would justify reviewing the original decision.

25. In light of the above, the Commission finds that Northwestel did not demonstrate that there is substantial doubt as to the correctness of the Commission's decision to deny the company's request for additional pricing flexibility on certain retail services through the use of rate ranges and rate de-averaging within rate bands at this time. As Northwestel did not demonstrate that there is cause to review the decision on this issue, the Commission does not need to consider Northwestel's request regarding V-Connect and EWAN.

Conclusion

26. In light of all the foregoing, the Commission concludes that Northwestel has demonstrated that there is substantial doubt as to the correctness of the Commission's determination in Telecom Regulatory Policy 2013-711 that it would not be appropriate for Northwestel to charge an additional fee for stand-alone DSL Internet access service, and **approves** Northwestel's request to vary this determination. The Commission will consider whether Northwestel's proposed surcharges are appropriate in the Tariff Notice 904 proceeding. As Northwestel has not demonstrated that there is substantial doubt as to the correctness of the Commission's determination that it would not be appropriate to employ rate ranges and rate de-averaging within a rate band, the Commission **denies** Northwestel's request to vary this determination.

Secretary General

Related documents

- *Northwestel Inc. – Regulatory Framework, Modernization Plan and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011