



## Telecom Decision CRTC 2018-465

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Ottawa, 14 December 2018

*Public record: 8661-N1-201800863*

### **Northwestel Inc. – Application to ratify the charging of certain Special Services Tariff rates**

*The Commission **denies** Northwestel's request to ratify the charging of rates other than in accordance with approved tariffs under nine of its Special Services Tariffs. The Commission determines that it will designate, pursuant to section 72.004 of the Telecommunications Act, a person or class of persons with the authority to issue a notice of violation or to accept an undertaking with respect to the non-compliance identified by Northwestel.*

#### **Application**

1. The Commission received a Part 1 application from Northwestel Inc. (Northwestel), dated 8 February 2018, in which the company requested that, pursuant to subsection 25(4) of the *Telecommunications Act* (the Act), the Commission ratify the charging of rates other than in accordance with approved tariffs for services under nine of its Special Services Tariffs (SSTs).<sup>1</sup> The charging of rates otherwise than in accordance with approved tariffs occurred over a time period that varied, depending on the SST, between four months and over seven years, from 1 June 2010 to 13 September 2017 in one case. The SSTs comprise various services, such as Ethernet wide area network (WAN), Internet access, fibre strand, and OC-3 inter-exchange transport services.
2. Northwestel had approved tariffs in place for seven of the nine SSTs. However, it failed to obtain Commission approval for changes to the services offered under these SSTs. The remaining two SSTs were not filed for approval with the Commission upon initial service introduction.
3. Northwestel requested that the Commission ratify the charging of the rates, as well as the terms and/or conditions, for the services that were provided for each of the SSTs, from the time the change in service occurred or upon initial service introduction, depending on the SST, until the tariffs were updated to correct the oversight.

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<sup>1</sup> SSTs are customer-specific arrangements involving service features or technologies that differ from those covered by the company's General Tariff. The nine SSTs in question are SST 732, 748, 752, 753, 755, 756, 761, 776, and 779.

4. Northwestel submitted that it had filed tariff notices with and received approval from the Commission during 2017 for all of the SSTs at issue, and that it had included supporting cost studies as required demonstrating that all the revised SSTs meet the price floor test.<sup>2</sup>
5. Northwestel filed much of the information in its application in confidence.
6. Northwestel noted that in December 2016, while revising one SST customer's network arrangement, the company discovered that other changes had been made to the network that should have triggered tariff filings. The company stated that while investigating the issue, it had identified gaps in its administrative processes that had contributed to these errors. As a result, in early 2017, Northwestel undertook a comprehensive review of all of its SSTs and found errors in the nine SSTs at issue in this proceeding.
7. Northwestel indicated that contributing factors were (i) changes in the regulatory treatment of certain services, the regulatory implications of which were not well understood by certain operational groups; (ii) its affiliate, ARDICOM Digital Communications Inc. (ARDICOM), incorrectly interpreting tariffs and not bringing certain service requests into Northwestel's standard processes for SSTs offered through ARDICOM; and (iii) administrative errors, such as not updating its tariffs for service renewals following contract expiry.
8. The company submitted that safeguards were not in place to detect these administrative errors. However, Northwestel submitted that upon discovering these errors, it implemented a number of process changes and compliance safeguards to reduce the likelihood of compliance errors going forward.
9. Northwestel stated that all the changes to the services at issue were requested and agreed to by the affected customers. The company noted that it had reached out to affected customers (or end-users in cases where Northwestel's services were sold by ARDICOM) to inform them that it had made errors with respect to the SSTs and that it had filed an application with the Commission for rate ratification.
10. The Commission received no interventions regarding Northwestel's application.

**Should the Commission grant Northwestel's request to ratify the charging of the rates other than in accordance with an approved tariff?**

**Commission's analysis and determinations**

11. Subsection 25(1) of the Act states that no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service. Paragraph 25(4)(a) of the Act states that the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is

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<sup>2</sup> Under the price floor test, an incumbent local exchange carrier must demonstrate that the proposed rate(s) for a service would be sufficient to recover the costs of providing the service.

satisfied that the rate was charged because of an error or other circumstance that warrants the ratification.

12. In this case, Northwestel contravened subsection 25(1) of the Act since the rates associated with the nine SSTs at issue were charged not in accordance with a tariff filed with and approved by the Commission. Therefore, the Commission must determine whether the rates in question were charged due to an error or other circumstance that warrants the ratification.
13. Rate ratification requests are generally filed for one-time errors that occur as a result of administrative oversights. Typically, the Commission receives ratification requests promptly and the dollar amounts involved are not significant. However, in this case, Northwestel is seeking ratification for the charging of rates without Commission approval of the relevant tariffs over a significant period of time and for a significant value in revenue. The extensive duration of the non-compliance and the high value of the charges are atypical of standard rate ratification requests.
14. In this case, the Commission considers that Northwestel has demonstrated a clear pattern of non-compliance and a systemic disregard for the company's regulatory obligations and the Commission's authority. Accordingly, the Commission considers that Northwestel's charging of the rates other than in accordance with an approved tariff cannot be properly characterized as simply errors or other circumstances that warrant ratification.
15. In light of all the above, the Commission **denies** Northwestel's request to ratify the charging of rates other than in accordance with approved tariffs for the nine SSTs at issue, on the basis that the request does not meet paragraph 25(4)(a) of the Act.
16. Under the General Administrative Monetary Penalties Scheme set out in the Act, sections 72.004 and 72.005 provide that the Commission may designate a person, or class of persons, with the authority to issue notices of violation,<sup>3</sup> or accept an undertaking,<sup>4</sup> where the designated person believes, on reasonable grounds, that a person has committed a violation. Accordingly, pursuant to section 72.004 of the Act, along with this decision, the Commission has designated a person or class of persons with the authority to issue a notice of violation or to accept an undertaking with respect to the non-compliance identified by Northwestel in its Part 1 application. Designated Commission staff will communicate next steps to Northwestel shortly after the release of this decision.

Secretary General

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<sup>3</sup> Subsection 72.005(2) of the Act provides that, *inter alia*, the notice of violation must include the penalty that the person is liable to pay. Section 72.001 of the Act provides that in the case of a corporation, an administrative monetary penalty not exceeding \$10,000,000 may be imposed for every violation under the Act.

<sup>4</sup> Subsection 72.006(2) provides that an undertaking may contain any conditions that the person who is authorized to accept an undertaking considers appropriate, and may include a requirement to pay a specified amount.