



Telecom Decision CRTC 2013-40

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Ottawa, 1 February 2013

Ice Wireless Inc. and Iristel Inc. – Request for a cease and desist order in Northwestel Inc.’s serving territory

File number: 8695-J64-201209578

In this decision, the Commission denies Ice Wireless’s and Iristel’s request that it direct Northwestel to cease and desist launching new competitive services and reducing rates for existing services until the Commission has completed all proceedings related to the establishment of the competitive environment in Northwestel’s serving territory.

Introduction

1. In Telecom Regulatory Policy 2011-771, the Commission extended Northwestel Inc.’s (Northwestel) price cap regulatory framework for two years, with some minor modifications, in order for it to undertake a holistic review of the company’s regulatory framework and telecommunications services. As part of the planned review, the Commission directed Northwestel to develop and file a comprehensive plan to modernize its network infrastructure.
2. In that decision, the Commission also decided to introduce local competition in Northwestel’s serving territory. To facilitate the introduction of local competition, the Commission required Northwestel to, among other things, file tariffs for local interconnection and component unbundling no later than 90 days after the date of the decision.

The application

3. The Commission received an application from Ice Wireless Inc. and Iristel Inc. (collectively, the applicants), dated 8 August 2012, requesting that the Commission direct Northwestel to cease and desist launching new competitive services and reducing rates for existing services until the Commission has completed all proceedings related to the establishment of the competitive environment in Northwestel’s serving territory.
4. The applicants also proposed a new approach to financial support for telecommunications services in Northwestel’s serving territory, including proposed changes to Northwestel’s subsidy regime.
5. On 23 August 2012, Commission staff issued a letter informing the applicants, as well as the parties to the proceeding initiated by Telecom Notice of Consultation 2011-302, that it would be premature to consider changes to

Northwestel's subsidy regime prior to the review of the company's regulatory framework. As such, this decision only addresses the applicants' request for a cease and desist order. The applicants' proposed new approach to financial support has been incorporated into the holistic review of Northwestel's regulatory framework, initiated by Telecom Notice of Consultation 2012-669, and will be considered in that proceeding.

6. The Commission received submissions from Northwestel, SSi Micro Ltd. (SSi Micro), the Utilities Consumers' Group (UCG), and Yukon Government. The public record of this proceeding, which closed on 20 September 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Should the Commission direct Northwestel to cease and desist launching new competitive services and offering new pricing packages for existing competitive services?

7. The applicants argued that Northwestel, as a result of delays in the implementation of key elements of its regulatory framework, has had a head start on competition, thereby giving itself an undue preference contrary to subsection 27(2) of the *Telecommunications Act* (the Act). The applicants were of the view that Northwestel's recent introduction of a new long distance service and rate reductions for a high-speed Internet service were examples of the company taking advantage of its head start.
8. The applicants claimed that Northwestel delayed the implementation of local competition. To support their claim, the applicants pointed to the fact that approvals for numerous Northwestel tariffs, such as the Local Network Interconnection Tariff¹ and the tariff for wholesale connect service,² have involved lengthy processes, including significant revisions to the tariff proposals initially filed by Northwestel.
9. The applicants submitted that, as a result of the aforementioned delays, competitors and customers are uncertain about components of the future competitive environment in Northwestel's serving territory. The applicants claimed that the delays have, for example, increased the risk to competitors of undertaking new investments in Northwestel's serving territory and made customers more hesitant to change service providers.
10. The applicants also considered that Northwestel's proposed Modernization Plan³ has created an element of uncertainty for competitors.
11. In requesting that the Commission deny the application, Northwestel submitted that no other incumbent local exchange carrier had been subject to the restrictions

¹ Northwestel's proposed Local Network Interconnection Tariff (Tariff Notices 884 and 884A) was approved, with changes, in Telecom Order 2012-401.

² See Northwestel Tariff Notices 883 and 883A, dated 8 March 2012 and 22 May 2012 respectively.

³ Northwestel filed its Modernization Plan with the Commission on 3 July 2012.

requested by the applicants. Northwestel stated that it met the deadlines for the implementation of competition that were established in Telecom Regulatory Policy 2011-771.

12. Northwestel submitted that the long distance and high-speed Internet services referenced by the applicants are competitive services that are not regulated. Northwestel further submitted that regulated services do not require additional safeguards because they are subject to a price floor set at cost, which prevents anti-competitive pricing.
13. While SSi Micro and UCG supported the application, Yukon Government was concerned that approval of the application and the requested relief could result in precluding customers from obtaining the benefits of new service offerings.

Commission's analysis and determinations

14. The Commission's analysis of an allegation of undue preference or unreasonable disadvantage under subsection 27(2) of the Act is conducted in two phases:
 - a) The Commission first determines whether the conduct in question constitutes a preference or a disadvantage to a person; and
 - b) Where it so determines, it then decides whether the preference or disadvantage is undue or unreasonable.
15. The burden is on the applicant to demonstrate that the conduct is preferential or disadvantages a person. Pursuant to subsection 27(4) of the Act, the respondent has the burden of proving that any preference or disadvantage is not undue or unreasonable.
16. The Commission considers that the applicants did not provide evidence to support their claim that Northwestel delayed the implementation of local competition in its serving territory. The Commission notes that Northwestel filed its proposed tariffs and implemented local number portability in the prescribed regions as required by Telecom Regulatory Policy 2011-771, and therefore complied with the requirements set out in that decision.
17. With regard to the Northwestel services referenced by the applicants, the Commission notes that it has refrained from regulating rates for long distance services and high-speed Internet services because the Commission has determined that sufficient competition exists in those markets to protect competitors and consumers. The Commission also notes that competitors are not restricted from responding to the market in those services by introducing or changing their own service offerings.
18. In light of the above, the Commission considers that the applicants have not demonstrated that Northwestel's actions constitute a preference for the company.

19. Therefore, the Commission considers that it is not necessary to determine whether a preference and/or disadvantage is undue.
20. Accordingly, the Commission **denies** the applicants' request that it direct Northwestel to cease and desist launching new competitive services and reducing rates for existing services until the Commission has completed all proceedings related to the establishment of the competitive environment in Northwestel's serving territory.

Secretary General

Related documents

- *Review of Northwestel Inc. 's Regulatory Framework, Modernization Plan, and related matters*, Telecom Notice of Consultation CRTC 2012-669, 6 December 2012
- *Northwestel Inc. – Local Network Interconnection Tariff*, Telecom Order CRTC 2012-401, 25 July 2012
- *Northwestel Inc. - Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 2011
- *Review of price cap regulatory framework for Northwestel Inc. and related matters*, Telecom Notice of Consultation CRTC 2011-302, 6 May 2011, as amended by Telecom Notice of Consultation CRTC 2011-302-1. 22 June 2011