



## Telecom Decision CRTC 2015-522

PDF version

Ottawa, 24 November 2015

*File number: 8640-N1-201502493*

### **Northwestel Inc. – Forbearance from the regulation of retail directory assistance services**

*The Commission forbears from regulating the retail directory assistance (DA) services provided by Northwestel, to the extent set out in this decision. Forbearance is conditional on Northwestel (i) retaining its DA service charge exemptions, such as local DA service requests from residential customers aged 65 and over who have requested an exemption from the charge and provided the company with suitable proof of age, and (ii) offering a free DA blocking service if it chooses to implement an access charge for its retail DA services. The Commission also directs Northwestel to (i) inform its customers, in an effective manner, of the regulatory change regarding the company's retail DA services and the exemptions from its retail DA service charges, and (ii) report back to the Commission, within 60 days of the date of this decision, on the means used by Northwestel to inform its customers.*

#### **Application**

1. The Commission received an application, dated 10 March 2015, from Northwestel Inc. (Northwestel), in which the company requested that the Commission refrain from exercising its powers and performing its duties under sections 25, 27, 29, and 31 of the *Telecommunications Act* (the Act) in relation to the company's retail directory assistance (DA) services,<sup>1</sup> and new or future applications and similar services characterized as DA services.<sup>2</sup>
2. Northwestel provides retail local and long distance DA services with exemptions from charges for the following:
  - requests from a public pay telephone;
  - requests from a patient calling from a registered hospital;

---

<sup>1</sup> Northwestel's retail DA service provides, upon a customer's request, information related to local and long distance telephone listings, such as the address and telephone numbers of residential and business subscribers as listed in the telephone directory.

<sup>2</sup> These services include automatic directory assistance call completion service, which enables the company to complete a call following a DA service inquiry, and alternate billed DA service, which enables DA service charges to be billed to a calling card, a third-party telephone number, or a credit card, instead of the account associated with the telephone number from which the DA service call is made. Northwestel does not currently offer these services, but requested that they be part of its forbearance application.

- requests from a Manual Mobile telephone;<sup>3</sup>
  - requests from a person who has a disability that impedes their use of telephone directories (e.g. persons who are blind or partially sighted, or those who are functionally illiterate);
  - requests from a person declaring a state of emergency;
  - requests for emergency numbers;
  - requests from residential customers aged 65 and over who have provided the company with suitable proof of age (only for local DA service); and
  - requests to obtain toll-free numbers through toll-free DA service (only for long distance DA service).
3. Northwestel requested that forbearance be granted under the same conditions as those applicable to the large incumbent local exchange carriers (ILECs) in Telecom Regulatory Policy 2009-243,<sup>4</sup> as varied by Telecom Regulatory Policy 2009-717, and the small ILECs in Telecom Regulatory Policy 2014-213. Conditions established in those decisions include requirements to (i) retain the company's exemptions from retail DA service charges, and (ii) offer a free DA blocking service if it chooses to implement an access charge for its retail DA services.
4. The Commission received no interventions regarding Northwestel's application. The public record of this proceeding, which closed on 11 June 2015, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

## Issues

5. Telecom Decision 94-19 sets out the Commission's framework for assessing forbearance applications. Consistent with the criteria set out in Telecom Decision 94-19, in order to assess whether the Commission should forbear from Northwestel's retail DA services, the Commission has identified the following issues to be addressed in this decision:
- How are DA services defined?
  - What is the relevant market?

---

<sup>3</sup> Manual Mobile telephones enable customers to make telephone calls from fixed or mobile radio units via an operator. This service has been withdrawn as of 31 October 2015 in Telecom Order 2015-336.

<sup>4</sup> In Telecom Regulatory Policy 2009-243, the Commission forbore conditionally from the exercise of its powers and the performance of its duties under sections 25, 29, and 31, and subsections 27(1), (5), and (6) of the Act regarding the retail DA services provided by Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc.; Saskatchewan Telecommunications; Télébec, Limited Partnership; and TELUS Communications Company.

- Does Northwestel have market power with respect to retail DA services?
- Should the Commission forbear from the regulation of Northwestel's retail DA services?

### **How are DA services defined?**

6. Northwestel submitted that the Commission-approved definition of retail DA services applicable to the large and small ILECs should apply to it, namely that DA services consist of local DA service, long distance DA service, automatic directory assistance call completion service, future enhanced DA services, and any similar services that the company may offer in the future.

### **Commission's analysis and determinations**

7. At the time of Northwestel's forbearance application, its retail DA services were, and remain, similar to those provided by the large and small ILECs. Therefore, the definition of retail DA services established for the large and small ILECs is also appropriate for Northwestel.

### **What is the relevant market?**

8. As set out in Telecom Decision 94-19, the relevant market is defined as the smallest group of products and geographic area in which a provider with market power can profitably impose a sustainable price increase.
9. Northwestel submitted that the product and geographic markets established for the large and small ILECs should apply to it as well, i.e.,
  - that the relevant product market should include online DA services, mobile wireless service providers' DA services, dial-around services, and enhanced DA services; and
  - that the relevant geographic market should be the company's entire operating territory.

### **Commission's analysis and determinations**

#### ***Relevant product market***

10. In Telecom Regulatory Policy 2009-243, the Commission determined that an assessment of the relevant product market for retail DA services involves an assessment of the group of products that consumers would consider to be substitutes for the large ILECs' retail DA services. The Commission considered that such substitutes are characterized by their ability to provide current listed telephone information, their accessibility to the incumbent carriers' customers, their ease of use, and their prices, which should be comparable to the incumbent carriers' retail DA service rates. These principles were confirmed for the small ILECs' retail DA services in Telecom Regulatory Policy 2014-213. Also in those decisions, the

Commission concluded that online DA services,<sup>5</sup> mobile wireless service providers' DA services, dial-around DA services,<sup>6</sup> and enhanced DA services<sup>7</sup> were substitutes for the large and small ILECs' retail DA services.

11. Given that these services could also be substitutes for Northwestel's retail DA services, the definition of the relevant product market established for the large and small ILECs is also appropriate for Northwestel.
12. The Commission finds that, for the purpose of this decision, the relevant product market should include online DA services, mobile wireless service providers' DA services, dial-around DA services, and enhanced DA services.

***Relevant geographic market***

13. In Telecom Regulatory Policy 2009-243, the Commission indicated that to define a relevant geographic market, one must assess whether a customer would be willing to switch from a supplier in one area to a supplier in another area. Further, the relevant geographic market should contain an aggregation of customers to whom the same substitutes are available.
14. In order to assess whether substitutes for Northwestel's retail DA services, such as online and mobile wireless service providers' DA services, are available throughout Northwestel's operating territory, it is appropriate to consider the penetration of (i.e. the number of actual subscribers to) both Internet and mobile wireless services in each territory (i.e. Yukon, Northwest Territories, and Nunavut).
15. According to data gathered by the Commission for the purpose of the Communications Monitoring Report, Internet service penetration is similar in the three territories. However, penetration of mobile wireless services is significantly lower in Nunavut compared to the remainder of Northwestel's operating territory. Consequently, Nunavut represents a distinct market from the remainder of Northwestel's operating territory. As such, it is appropriate to assess these two markets separately.
16. The Commission finds that, for the purpose of this decision, the relevant geographic markets are (i) Nunavut, and (ii) the remainder of Northwestel's operating territory.

**Does Northwestel have market power with respect to retail DA services?**

17. In Telecom Decision 94-19, the Commission adopted the concept of market power to assess whether a market is, or is likely to become, sufficiently competitive to protect the interests of users, therefore enabling the Commission to forbear from regulating a

---

<sup>5</sup> Examples of online DA services include [canada411.ca](http://canada411.ca), [yellowpages.ca](http://yellowpages.ca), [411.ca](http://411.ca), and [whitepages.com](http://whitepages.com).

<sup>6</sup> Dial-around services are long distance services that could be accessed by dialing a 10-10-XXX number. Some dial-around service providers offer DA services.

<sup>7</sup> Enhanced DA services are DA services that provide additional information, such as maps and directions.

specific service. Market power is demonstrated by the ability of a provider to raise or maintain prices above those that would prevail in a competitive market.

18. In Telecom Regulatory Policies 2009-243 and 2014-213, the Commission relied on the criteria set out in Telecom Decision 94-19 to determine whether the large and small ILECs, respectively, possessed market power in the provision of DA services. These criteria included

- the market shares of the dominant and competing firms;
- the demand conditions affecting customer response to a change in the price of the product, including customers' ability to switch to another supplier or to reduce their consumption (e.g. the availability of practical substitutes, switching costs, and the importance of the product to the customer); and
- the supply conditions affecting the ability of other firms in the market to respond to a change in the price of the product (e.g. the likelihood of entry into the market, barriers to entry, and evidence of rivalrous behaviour).

**Market shares of the dominant and competing firms**

19. Northwestel submitted that it does not track the number of visits to leading online DA services and that, therefore, it cannot provide a detailed analysis of the total DA market relative to its customers' DA service usage. However, the company indicated that the number of calls to its local and long distance DA services has declined sharply from 2006 to 2014.

***Commission's analysis and determinations***

20. Northwestel is the dominant wireline voice service provider in the North, and was also the dominant mobile wireless service provider in the North before it sold its mobile wireless division to Bell Canada, its parent company, in 2014.<sup>8</sup> However, it is not possible to assess current market shares in Nunavut and in the remainder of Northwestel's operating territory with respect to retail DA services, given that Northwestel was not able to provide information about the use of alternatives, such as online DA services.

21. While Northwestel provided evidence of a significant drop in the number of both local and long distance DA service calls in its entire operating territory, it indicated that it was unable to provide a breakdown of the number of DA service calls made by territory before 2014. However, given the extent of the decline in the number of calls to Northwestel's local and long distance DA services, it is reasonable to infer that they apply to both Nunavut and the remainder of Northwestel's operating territory, and that the decline was caused in whole or in part by the use of alternatives to the company's retail DA services.

---

<sup>8</sup> Northwestel is also the dominant Internet service provider in the North, except in Nunavut.

22. As such, the Commission finds that Northwestel's retail DA service market shares have decreased significantly in Nunavut and in the remainder of the company's operating territory.

#### **Demand conditions**

23. Northwestel submitted that a major driver for the decline in DA service calls over the last 10 years is the expansion of broadband Internet services across the North. Northwestel argued that 94 of 96 communities in its operating territory have high-speed Internet available, which means that residents have access to online DA services. Northwestel further argued that these services provide a compelling alternative to its DA services, given that the online services are free.

24. Northwestel also submitted that mobile wireless services are now largely deployed across most of the North. Specifically, Northwestel argued that 62 communities and 89% of the Northern population had access to mobile wireless services at the end of 2014, and that 50 communities and 82.4% of the Northern population had access to 4G Internet service.

25. Northwestel further submitted that the availability of Internet and mobile wireless services, in addition to the decline in the number of calls to its DA services, demonstrates that market conditions for retail DA services in the North are similar to those in the South, for which the Commission granted forbearance from regulation for the large and small ILECs.

26. Northwestel stated that customers who do not subscribe to mobile wireless services could access DA services from any pay telephone for free, and that a growing number of locations, such as schools, libraries, and government offices, provide free access to the Internet, through which customers can access online DA services.

#### **Commission's analysis and determinations**

27. With the increasing use of the Internet, more and more people in Northwestel's operating territory have access to online DA services as a substitute for Northwestel's DA services. In addition, mobile wireless service providers' DA services are available as a substitute in Northwestel's operating territory, except in Nunavut.

28. With respect to Nunavut, mobile wireless service providers' DA services are not widely available to Northwestel's customers since the penetration rate for mobile wireless services there is low. As such, mobile wireless service providers' DA services cannot be considered as a substitute in Nunavut. However, this is counter-balanced by online DA services in the territory. The general availability of online DA services in Nunavut and the fact that they are free enable the Commission to conclude that online DA services reasonably compensate for the absence of mobile wireless service providers' DA services as a viable substitute in Nunavut.

29. In light of the penetration rates of Internet and mobile wireless services in Nunavut and the remainder of Northwestel's operating territory, the number of Northwestel's wireline voice service customers who do not also subscribe to either Internet or mobile wireless services is likely low. Accordingly, it is reasonable to infer that a significant number of Northwestel's customers, including those in Nunavut, likely have access to at least one practical and feasible substitute in response to an increase in retail DA service rates.

#### **Supply conditions**

30. Northwestel submitted that competitors would have access to its wholesale DA services (including its basic listing interchange file service and its directory file service). Northwestel further submitted that these services are similar to the offerings of other large ILECs, and that they enable competitors to purchase its customers' directory numbers.

#### ***Commission's analysis and determinations***

31. With regard to evidence of rivalrous behaviour, as noted earlier, there are currently a number of substitutes for Northwestel's retail DA services, and, in the case of Nunavut, at least one suitable substitute.

32. In addition, given the availability of Northwestel's wholesale DA services at Commission-regulated rates in both Nunavut and the remainder of Northwestel's operating territory, there are no significant barriers to entry in the provision of retail DA services in both Nunavut and the remainder of Northwestel's operating territory.

33. The Commission concludes that supply conditions for local and long distance retail DA services in Northwestel's operating territory, including in Nunavut, are such that alternative service providers may readily enter the market in response to any increase in Northwestel's retail DA service rates.

#### **Conclusions**

34. Given Northwestel's declining market share, and in light of the current demand and supply conditions discussed above, Northwestel does not possess market power for local and long distance retail DA services in its operating territory, including in Nunavut.

35. In Telecom Regulatory Policies 2009-243 and 2014-213, the Commission concluded that the large and small ILECs would not possess market power regarding enhanced DA services they may provide in the future since online DA services already offer enhanced DA services, which include additional services, such as maps or directions. The Commission finds that the same conclusion applies for enhanced DA services that Northwestel may offer in the future.

36. Regarding automatic directory assistance call completion services, the Commission noted in Telecom Regulatory Policies 2009-243 and 2014-213 that after obtaining a telephone number through the large and small ILECs' retail DA services, customers have the option of placing the call by dialing the telephone number themselves. Accordingly, the Commission concluded that the large and small ILECs did not possess market power regarding their automatic directory assistance call completion services. This conclusion also applies to Northwestel.

### **Should the Commission forbear from the regulation of Northwestel's retail DA services?**

#### **Determinations with regard to subsections 34(1), (2), and (3) of the Act**

37. In light of all the above, with regard to subsection 34(1) of the Act, the Commission finds, as a question of fact, that forbearance from the regulation of Northwestel's retail DA services, subject to the extent provided for and the conditions set out below, is consistent with the policy objectives set out in section 7 of the Act, specifically those in paragraphs 7(b), (c), (f), and (h).<sup>9</sup>

38. The Commission further finds, pursuant to subsection 34(2) of the Act and as a question of fact, that Northwestel's retail DA services are subject to competition sufficient to protect the interests of users, and that it is therefore appropriate to refrain from the regulation of these services.

39. Pursuant to subsection 34(3) of the Act, the Commission finds, as a question of fact, that forbearance with respect to Northwestel's retail DA services would not likely unduly impair the continuance of a competitive market for these services.

40. Pursuant to the policy objective set out in paragraph 7(h) of the Act, the Commission requires that Northwestel maintain all existing exemptions from its retail DA service charges<sup>10</sup> as a condition of forbearance with respect to its DA services under subsections 34(1) and (2) of the Act.

41. Pursuant to the policy objective set out in paragraph 7(h) of the Act, the Commission requires that if Northwestel chooses to implement an access fee related to its retail DA services, the company is to provide DA blocking service at no charge upon request, as a condition of forbearance with respect to its retail DA services under subsections 34(1) and (2) of the Act.

---

<sup>9</sup> The cited policy objectives are 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; 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

<sup>10</sup> Examples of these exemptions, which are listed in items 405 and 406 of the company's General Tariff, include local DA service requests from residential customers aged 65 and over who have requested an exemption from the charge and provided the company with suitable proof of age, or from persons with an impairment that impedes their use of the telephone directory, including those who are functionally illiterate.

### **Extent of forbearance**

42. In light of the above findings, the Commission must determine the extent to which it is appropriate to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 of the Act.

### **Section 24**

43. The Commission finds it appropriate to retain sufficient powers under section 24 of the Act in order to maintain its ability to impose future conditions as warranted.

### **Section 25**

44. In light of the Commission's finding that Northwestel does not have market power concerning retail DA services in the company's operating territory, including in Nunavut, it is appropriate for the Commission to forbear from the exercise of all its powers and the performance of all its duties under section 25 of the Act.

### **Section 27**

45. There is no need to apply the regulatory standards for just and reasonable rates, as provided for in section 27 of the Act, to rates that are set in a competitive market. Accordingly, the Commission will refrain from exercising any power or performing any duty under subsection 27(1) of the Act in relation to Northwestel's existing DA services and any similar services that it may offer in the future.

46. It is appropriate for the Commission to retain its powers and duties under subsection 27(2) of the Act to ensure that Northwestel does not unjustly discriminate or give an undue or unreasonable preference toward any person in relation to the provision of the company's retail DA services. As a necessary consequence of the retention of its powers and duties under subsection 27(2) of the Act, the Commission should also retain its powers and duties under subsection 27(4) of the Act. Finally, it is necessary for the Commission to retain its powers under subsection 27(3) of the Act to ensure compliance with the powers and duties from which it is not forbearing.

47. Accordingly, the Commission retains its powers under subsections 27(2), (3), and (4) of the Act.

### **Sections 29 and 31**

48. Section 29 of the Act addresses matters that are not relevant to the retail DA service market. Therefore, it is appropriate for the Commission to forbear with respect to its powers and duties under section 29 of the Act.

49. In a competitive market for retail DA services, carriers should be able to establish, through negotiations with their customers, the extent and scope of any limitations on their liability. Accordingly, it is appropriate for the Commission to forbear from the exercise of its powers and the performance of its duties under section 31 of the Act.

However, any provision limiting liability in any existing contracts or arrangements, as of the date of this decision, will remain in force until its expiry.

#### *Notification*

50. To ensure that Northwestel's customers have access to clear and accurate information that enables them to understand the new terms and conditions of the company's retail DA services, these customers should be informed directly about the regulatory change regarding Northwestel's retail DA services and the existing exemptions from the company's retail DA service charges.

51. The Commission therefore **directs** Northwestel to

- inform its customers, in an effective manner (e.g. by way of billing inserts, a message on customers' invoices, and/or information in local newspapers, in conjunction with information on the company's website), of the regulatory change regarding the company's retail DA services and the exemptions from its retail DA service charges; and
- report back to the Commission, within **60 days** of the date of this decision, on the means used by the company to inform its customers about the change and the exemptions to its retail DA services.

#### **Policy Direction**

52. The Policy Direction<sup>11</sup> states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

53. The issues under consideration in this decision relate to whether the market for Northwestel's retail DA services is sufficiently competitive and whether the Commission should forbear from the regulation of these services. Therefore, subparagraphs 1(a)(i) and (ii)<sup>12</sup> and 1(b)(i) and (ii)<sup>13</sup> of the Policy Direction apply to the Commission's determinations in this decision.

---

<sup>11</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>12</sup> Paragraph 1(a) states that "the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives."

<sup>13</sup> Paragraph 1(b) states, among other things, that "the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction], [and] (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry."

54. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act are advanced by the determinations set out in this decision with respect to Northwestel's retail DA services.
55. Consistent with subparagraph 1(a)(i) of the Policy Direction, the Commission has, with respect to Northwestel's retail DA services, relied to the maximum extent feasible on market forces by forbearing from the regulation of these services to the extent set out above.
56. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures set out in this decision (i) are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives; and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. In this regard, the Commission notes that the forbearance conditions and the notification requirement set out in this decision are specifically tailored to the circumstances of those of Northwestel's customers who likely rely more heavily on the company's retail DA services, including those with disabilities or who are senior citizens.

Secretary General

### **Related documents**

- *Northwestel Inc. - Withdrawal of Manual Mobile Service*, Telecom Order CRTC 2015-336, 24 July 2015
- *Forbearance with respect to retail directory assistance services provided by the small incumbent local exchange carriers*, Telecom Decision CRTC 2014-213, 2 May 2014
- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership – Application to review and vary part of Telecom Regulatory Policy 2009-243 regarding directory assistance blocking service*, Telecom Regulatory Policy CRTC 2009-717, 23 November 2009
- *Forbearance with respect to retail directory assistance services provided by the large incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2009-243, 1 May 2009
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994