



Telecom Order CRTC 2025-159

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Gatineau, 27 June 2025

Public record: Tariff Notice 1241

Northwestel Inc. – Tariff Notice 1241 – Addition of Speed Option for Special Assembly #4 Layer 3 IP/VPN Service

Summary

Northwestel Inc. (Northwestel) services a particular customer in the Far North using a dedicated fibre Internet link. Northwestel now proposes to add a new speed option of 40 megabits per second for certain communities. Because this service is provided in the Far North, where telecommunications services remain regulated, Northwestel requires the Commission's approval of the new speed option and the associated rates.

The affected customer agrees with Northwestel's proposal, and the Commission did not receive any interventions for this application. Accordingly, the Commission approves Northwestel's application.

A dissenting opinion by Commissioners Bram Abramson and Claire Anderson is attached to this order.

Application

1. On 24 January 2025, the Commission received an application from Northwestel Inc. (Northwestel) in which the company proposed changes to Item 755 of its Special Services Tariff, Special Assembly #4 Layer 3 IP/VPN Service. Specifically, Northwestel proposed to add an additional speed option of 40 megabits per second (Mbps) for Type W sites.¹
2. This service provides a customized Layer 3 IP/VPN [Internet Protocol/virtual private network] service with class of service options, a service level agreement, and associated equipment to an initial 19 terrestrial sites within Northwestel's serving area.
3. Northwestel proposed a monthly rate of \$20,000 for the new speed option.

¹ Type W sites are located in areas that are not covered by types X, Y, and Z and where smaller bandwidth requirements are needed. The Type W sites are located near or in the communities of Mayo, Yukon; Nahanni Butte, Northwest Territories, and Fort Nelson, British Columbia.

4. Northwestel noted that the new speed option is being offered to meet the customer's requirements, and that the customer agrees with the proposed rate.
5. While Northwestel currently only has a single customer for this service, it indicated that the service, including the additional speed option of 40 Mbps for Type W sites, would be available to other customers in similar circumstances, but has forecasted the demand for the service to be very low. It also indicated that the proposed service has elements that are unique to this arrangement and are not available under its General Tariff. These include custom speed options and serving locations, and a total capacity amount commitment that must be maintained for the life of the contract. For these reasons, Northwestel submitted that it would be appropriate to offer the proposed service under its Special Services Tariff, and not its General Tariff.
6. As the service is a customer-specific arrangement (CSA), Northwestel indicated that it is categorized as an uncapped service and that, therefore, the proposal would have no impact on its price cap indices.
7. The company filed a price floor test, which demonstrated that the proposed rates for the new speed option meet the requirements of that test.
8. Northwestel requested an effective date of 10 February 2025.
9. The Commission did not receive any interventions with regard to the application.

Commission's analysis

10. Based on the results of Northwestel's cost study, which was filed in confidence, the Commission considers that the proposed rates and charges for this service, which have been agreed to by the customer, meet the requirements for Type 1 CSAs set out in Telecom Decision 2005-27. They also meet the revised price floor test guidelines for Type 1 and Type 2 CSAs set out in a Commission [letter](#) dated 13 June 2005.
11. The new speed option will provide the customer with the telecommunications services it requires to reliably provide services to northern Canadians. The Commission therefore considers that Northwestel's proposed changes to its Special Assembly #4 Layer 3 IP/VPN Service tariff are reasonable and comply with regulatory policies.
12. The Commission considers that approval of this application would advance the policy objective set out in paragraph 7(h) of the *Telecommunications Act*.²

Conclusion

13. In light of all of the above, the Commission approves on a final basis, by majority decision, Northwestel's application.

² The cited policy objective is the following: 7(h) to respond to the economic and social requirements of users of telecommunications services.

14. Revised tariff pages are to be issued within 10 calendar days of the date of this order. Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

Secretary General

Related documents

- *Northwestel Inc. – Introduction of winback discount for residential unlimited Internet packages*, Telecom Order CRTC 2025-74, 10 March 2025
- *Telecommunications in the Far North*, Telecom Regulatory Policy CRTC 2025-9, 16 January 2025
- *Broadband Fund—Project funding approval for the Government of Nunavut’s transport fibre project in Nunavut*, Telecom Decision CRTC 2024-149, 4 July 2024
- *Call for comments – Telecommunications in the Far North, Phase II*, Telecom Notice of Consultation CRTC 2022-147, 8 June 2022; as amended by Telecom Notices of Consultation CRTC 2022-147-1, 14 July 2022; 2022-147-2, 24 October 2022; 2022-147-3, 13 October 2023; and 2022-147-4, 24 November 2023
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005
- *Bundling framework developed for customer-specific arrangements*, Order CRTC 2000-425, 19 May 2000
- *Tariff filings related to the installation of optical fibres*, Telecom Decision CRTC 97-7, 23 April 1997
- *Forbearance—services provided by non-dominant carriers*, Telecom Decision CRTC 95-19, 8 September 1995
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994
- *Tariffs for radio and television program channels*, Telecom Decision CRTC 85-6, 3 April 1985
- *Colins Inc. et al. v. Bell Canada*, Telecom Decision CRTC 79-12, 7 June 1979

Dissenting opinion of Commissioners Bram Abramson and Claire Anderson

1. With this application, Northwestel seeks approval for the qualification of what, in southern Canada, would be a relatively common enterprise telecommunications service as a customer-specific special services tariff (SST) subject, on that basis, to neither the standardization that accompanies accommodation through its general tariff, nor the constraint on price increases that would accompany its placement into a non-SST basket. In doing so, Northwestel asks us to find that the rate charged is just and reasonable, notwithstanding a mark-up that would not be achievable in a competitive market.
2. We would have denied that approval and finding for the reasons below, which call for improved robustness, clarity, and market discipline in ways which, in our view, would streamline regulatory review and respond to the economic and social requirements of the Far North.

A tale of two systems

3. Parliament, acting through the *Telecommunications Act* (the Act), tasks the Commission with ensuring that every rate charged by a facilities-based telecommunications carrier in Canada for any telecommunications service is just and reasonable.¹
4. This precautionary principle aims to protect consumer, business, and institutional users from market actors unchecked by disciplining forces save the regulator's—but is incompatible with a competitive environment, or a dynamic one. Indeed, it sits at one end of a continuum whose opposite end is defined by permissionless innovation. Recognizing this, the Act provides the Commission with tools to navigate the continuum between the precautionary principle and permissionless innovation.
5. Key among these tools is the power and responsibility to forbear. Where a service, or class of them, is subject to enough competition to protect users' interests, we are to forbear, to the degree appropriate, from regulating. Even where there is not enough competition, we may still forbear, provided doing so would be consistent with telecommunications policy objectives. We have reached for these tools frequently. For 2023, Commission staff estimated that about 97 percent of Canadian telecommunications revenues were generated from forborne services.²
6. Our vigil over the justness and reasonability of rates for the services generating the remaining three percent is split between two systems.

¹ *Telecommunications Act*, subsection 27(1).

² Canadian Radio-television and Telecommunications Commission, *Canadian Telecommunications Market Report 2025*, [section 2.3](#).

7. The older system follows what might be described as a public switched telephone network (PSTN)³ structural approach. Carriers that are not incumbent local exchange carriers (ILECs) are presumed not to have market power. Outside of basic interconnection obligations and other marketplace rules, they are therefore granted a blanket exception from rate regulation and dubbed “non-dominant carriers”.⁴ ILEC rate regulation under this model is, in turn, organized into two sub-systems:
 - One sub-system is a price caps model. Services are assigned to baskets. The ILEC’s price-setting flexibility is limited by blanket constraints that apply to that basket, as well as more finely-tuned constraints that apply to particular services within a basket. For instance, Northwestel’s services are assigned to one of nine baskets. In the related decision, the Commission stated that this framework “involves individualized basket constraints, as well as, in some instances, specific rate element constraints.”⁵
 - The other sub-system consists of those services not assigned to the price cap, and which are therefore not placed in any basket. Rates are reviewed and regulated for each non-price-capped service on its own.
8. The newer system follows a market power approach. It identifies particular markets, like fixed broadband and mobile services, as priorities. It carves these markets out from the PSTN structural model as exceptions to the blanket non-dominant carriers exception. Rather than presume that the ILEC is dominant and that everyone else is not, market power is analyzed both in the carved-out retail market and in upstream wholesale markets. Based on this analysis, the Commission then considers the minimum viable form of rate regulation necessary to discipline market power across those markets. Generally, this focuses on regulating rates in the upstream wholesale market as a point of leverage, lowering entry barriers, and encouraging competition as a way to discipline downstream market power.
9. The newer system, with its market power approach built on an exception to the exception, is more readily understood. The older system, with its structural presumption and the blanket exception that flows from it, is obscured substantively by an underbrush of PSTN tariffs at various degrees of impending obsolescence, and procedurally by the streamlined opacity in which their regulatory process is encased.⁶

³ The PSTN is the traditional system by which telephone calls and, later, advanced data services were originated, switched, interconnected, and terminated. As the PSTN evolved into an advanced data-first environment, it began to be known as an integrated services digital network—but the term, though technically more accurate, did not catch on as a broad system descriptor.

⁴ Telecom Decision 95-19.

⁵ Telecom Regulatory Policy 2013-711, Appendix 3, paragraph 1. There were eight baskets until Retail Internet Services were separated out into residential and business Internet services, respectively, in Telecom Regulatory Policy 2025-9, paragraph 111.

⁶ See Commissioner Bram Abramson and Commissioner Claire Anderson’s dissenting opinion to Telecom Order 2025-74, paragraphs 11-15.

Yet if higher costs of telecommunications services in the Far North have negative consequences not only for northerners as individuals but also for northern communities, economies, and opportunities,⁷ many of those costs are ones passed on and approved as just and reasonable through the older price-caps-focused system that continues to regulate Northwestel's market power.

10. The Commission's recently-concluded years-long review of Northwestel's regulatory framework considered certain elements of that price caps system raised by Northwestel itself.⁸ Yet a review from first principles of that system, which remains at the heart of telecommunications regulation in the Far North, is still wanting. In our view, decisions such as this one, and the resulting economic impacts on the Far North, are hallmarks of this absence.

Reading today's special

11. A tariff is, in a domestic regulated industries setting, a particular form of standing contractual offer made, and made publicly available, to all eligible comers. It includes all the essential terms and conditions for the offer of a service or facility.⁹ It is a tool for imposing consistency, transparency, and fairness on the supply of a service or facility that, given its supplier's market power, would otherwise be the object of unequal bargaining.
12. SSTs, special assembly tariffs, special facilities tariffs, or customer-specific tariffs, as they are variously known, stand at a curious place within the tariffing repertoire. If the very purpose of a tariff is to standardize and create uniform terms, a customer-specific SST is its undoing—a residual category under which to resist that standardization and uniformity in favour of terms that it negotiates from a position of bargaining power. Regulated carriers are therefore incented to resist a standard tariff in favour of an SST: it is the closest thing to avoiding a tariff altogether.
13. In Northwestel's case, there is a second incentive to prefer delivering a service or facility as an SST rather than as a general tariff item. The Business Services basket is constrained to a 10 percent increase per year. The Other Capped Services basket is constrained to inflationary increases with, within that, a rate element constraint of 10 percent increase per year. But SSTs fall into the Uncapped Services basket.¹⁰

⁷ Telecom Notice of Consultation 2022-147, paragraph 56.

⁸ Telecom Regulatory Policy 2025-9, paragraphs 92-120.

⁹ In Telecom Decision 79-12, at page 21, the Commission defined the term "tariff" as referring "to the publication by the company of the terms and conditions relating to its offering of services and facilities." In Telecom Order 2024-82, at paragraph 3, the Commission noted that "tariff pages are to include the essential terms and conditions of the tariffed services."

¹⁰ Telecom Regulatory Policy 2013-711, Appendix 3; see discussion at paragraph 35 of the dissenting opinion attached to Telecom Regulatory Policy 2025-9.

14. Northwestel's argument for designating as an SST the Layer 3 IP/VPN [Internet Protocol/virtual private network] service at issue in this application—with class-of-service options, service level agreement, and associated equipment, delivered to 19 terrestrial sites including a heretofore-unlisted speed option (40 megabits per second)—is seated in the two types of customer-specific arrangement tariff outlined by the Commission in Telecom Decision 94-19 that may be acceptable “subject to certain conditions”, which include “being generally available to other customers” and “resale being permitted”.¹¹
15. Those two types are (1) where the service provided “involves service features or technology that differ from those covered by the general tariff”; and (2) where it is “a bundle of services tailored to a particular customer's needs, primarily involving elements available from the general tariff, where the purpose is to customize the offering in terms of rate structure or levels in its application”.¹²
16. In our view, it is not clear that this guidance suffices to create an expectation, much less to fulfill such an expectation, that a relatively common telecommunications service, delivered with relatively standard terms to customer sites, ought to qualify as an SST.
17. From a service-delivery standpoint, applying such general guidance to a relatively standard service would have an absurd result. Indeed, were those accounts of the two types of customer-specific arrangement a complete formula as to when an SST ought to be permitted, there would be little to constrain a regulated carrier from always seizing its incentive to structure its services as negotiated SSTs. Is not every service delivered to a customer's premises tailored, in so doing, to that customer's needs? Does the carrier not always have the ability to customize the offering's rate structure and levels in ways that can be said to fall outside what has been included in the general tariff description—indeed, would withholding those rates and levels not, by definition, create the opportunity to hold them back for an SST?
18. However, the Commission has had more to say on the matter, having noted that “as a general principle, services should be offered under general tariffs whenever feasible, since the use of these tariffs ensures that customers of comparable services will be treated uniformly”.¹³ In particular, Telecom Decision 94-19 preceded the foregoing identification of two types of customer-specific arrangement, subject to the conditions noted, with the following reservations:

[C]ustomer-specific tariffs present a greater risk that unjust price discrimination will arise. Even if a policy is adopted that customer-specific tariffs must be available to customers with similar requirements under similar circumstances,

¹¹ Telecom Decision 94-19, section IV.F.

¹² *Ibid.*

¹³ Telecom Decision 85-6, section entitled “The Radio Program Channel Proposal”, subheading (2), cited in, *e.g.*, Telecom Decision 97-7, paragraph 10.

such a policy could result in disputes over, or delays in, the provision of the arrangement to particular customers, given the judgment involved in determining whether there are similar circumstances and requirements. The Commission considers that this aspect of customer-specific tariffs may impede access by customers, and in particular by resellers, to similar tariffs, thereby curtailing the extent to which resale would limit the potential for unjust discrimination. The Commission notes that tariffs that are not customer-specific but rather provide for the general availability of services, by making explicit the conditions necessary to qualify for the service, avoid this problem, even in the case of services that relatively few customers would qualify for or find attractive.¹⁴

19. In our view, a more robust review framework is required in order to distinguish the supply of services and facilities that can and ought to be standardized as general tariff items from those whose unusual character, configuration, and status—including material differences from the services and facilities most commonly made available in competitive markets away from the regulated carrier’s market power—ought to justify SST status. This is all the more true for carriers, like Northwestel, for which this difference in characterization also represents a difference in regulatory price constraints in its favour—to the detriment of the buyer subject to the constrained supply that gives rise to the continued regulation in the first place.
20. Without such a framework, the record is not sufficient to grant the SST. We would not have done so.

Just and reasonable rate

21. While basket assignment of the telecommunications service arrangement before us is part of the decision that the Telecommunications Committee, on behalf of the Commission,¹⁵ was asked to agree with on Northwestel’s application, the more impactful part of that decision is whether to agree that the rate proposed is just and reasonable.
22. In considering that decision, the Telecommunications Committee benefitted from the imputation test the applicant was required to file, demonstrating that the proposed rate would recover the service’s Phase II costs plus a margin,¹⁶ and thereby meeting a price floor that would prevent the arrangement from squeezing out competitive supply. Among other things, the imputation test places on the record information, generally confidential to the applicant and the Commission, as to the mark-up being charged.

¹⁴ Telecom Decision 94-19, section IV.F.

¹⁵ *Telecommunications Committee By-Law No. 10*, paragraph (e) (“Any act or thing done by the Telecommunications Committee shall be deemed to be an act or thing done by the members”).

¹⁶ See Telecom Decision 94-19, section IV.F.; Order 2000-425; Telecom Decision 2005-27, sections VI-VII; *Revised Imputation test Guidelines for Type 1 and 2 CSAs*, Telecom Commission Letter - 8652-C12-200312265, 13 June 2005.

However, the imputation test’s purpose is only to ensure the price floor has been respected. It does not impose any price ceiling or cap on the proposed item.

23. We have elsewhere underlined the importance of taking seriously the commitment not to constrain nascent competition.¹⁷ At the same time, Northwestel’s market power in the Far North—even based on a structural presumption—is the reason it is tariffed. Particularly given the mark-up imputed to the service, which is materially in excess of what one might expect in a competitive market, we saw no evidence that competition is sufficient to protect the interests of enterprise IP/VPN users in the Far North nor, particularly given the economic impact of high telecommunications input costs in the Far North, that failing to constrain this pricing would advance Canadian telecommunications policy objectives. We disagree, therefore, with the majority’s conclusion that supranormal pricing responds to the economic and social requirements of users of telecommunications services, as set out in paragraph 7(h) of the Canadian Telecommunications Policy embedded in the Act.
24. We acknowledge that, in the past, the Commission has frequently adopted a more permissive approach. It has taken a permissive approach to granting the opportunity to act on the incentive to qualify customer-specific arrangements as SSTs—even where the service arrangement would be relatively common or off-the-shelf in competitive telecommunications markets. It has likewise taken a permissive approach to allowing supranormal mark-ups that could not be sustained in a competitive market—in favour of the hope that competition may develop eventually to constrain enterprise pricing. We are not of the view that this permissive approach is the better approach to fulfilling the Canadian Telecommunications Policy, as informed by the policy directions to which the Commission is subject,¹⁸ in the Far North.
25. Nor is the resulting deadweight loss captured by Northwestel in line with the broader interpretation of these policy objectives, including economic reconciliation, for which we are, following the United Nations Declaration on the Rights of Indigenous Peoples, to have regard in the Far North.¹⁹ To be expected to repeatedly confirm as “just and reasonable” rates that apply triple-digit markups to non-forborne services, knowing that these services are essential inputs for the broader economy of the Far North, is surely a problem that needs resolving. Yet with the conclusion in Telecom Regulatory Policy 2025-9 of the Commission’s major policy activity in respect of

¹⁷ Commissioner Bram Abramson and Commissioner Claire Anderson’s dissenting opinion to Telecom Order 2025-74, paragraphs 7-10.

¹⁸ See *Telecommunications Act*, paragraphs 7(a) (“social and economic fabric”), (b) (“affordable”), and (h) (“economic and social requirements of users”); and *Order issuing a Direction to the CRTC on a renewed approach to telecommunications policy*, SOR/2023-23, 10 February 2023, paragraph 2(c) (“affordable access”) and sections 4 (“efficient and proportionate to their purpose”) and 6 (“sound and recent evidence”).

¹⁹ See United Nations Declaration on the Rights of Indigenous People, Article 21 (right to improvement of economic conditions; effective measures to ensure continuing improvement of economic and social conditions). More broadly, see Commissioner Claire Anderson’s dissenting opinion to Telecom Decision 2024-149, paragraphs 52-60 and 69.

telecommunications regulation in the Far North, the issue of the justness and reasonability of uncapped pricing permitted under the PSTN-structural system of regulation in the Far North remains substantially unresolved. Without relief on the horizon, we would tack in another direction.