



Telecom Order CRTC 2006-342

Ottawa, 19 December 2006

Northwestel Inc.

Reference: Tariff Notice 831

Withdrawal of services – Nanisivik Base Rate Area

*In this Order, the Commission **approves** Northwestel Inc.'s proposal to withdraw from providing telephone services in Nanisivik, Nunavut.*

The dissenting opinions of Commissioners Cram, Langford, and Pennefather are attached.

Introduction

1. Northwestel Inc. (Northwestel) filed an application, dated 14 June 2006, in which it proposed to withdraw from providing telephone services in Nanisivik, Nunavut. Specifically, Northwestel proposed to remove the Nanisivik Base Rate Area from its General Tariff, Message Toll Service Tariff, Private Wire Service Tariff, Base Rate Area Tariff, and Special Services Tariff.

The application

2. Northwestel indicated that its proposal would affect nine customers located at the site of the former Nanisivik mine (the mine) and the small adjacent community, including the company that owned the mine. The company also addressed how it intended to continue to provide service to the seven customers at the Nanisivik airport (the airport).
3. Northwestel submitted that, as of 16 June 2006, it would have notified all affected customers at the mine site of its tariff proposal. Northwestel provided a copy of the letter that it was sending to its customers, which included contact and pricing information with respect to an alternative service provider, InfoSat Communications (InfoSat).
4. Northwestel proposed an approval date of 14 August 2006 with an effective date of 16 October 2006, submitting that this would allow customers sufficient time to transition to alternative services.
5. Northwestel provided, in confidence, a cost and revenue analysis in support of its application.

The mine

6. Northwestel noted that the mine had ceased all operations and that demolition activities had begun in 2004. Northwestel further submitted that no future use would be made of either the mine site or the adjacent community once the demolition process was complete, which Northwestel estimated would occur within 12 to 18 months.

7. Northwestel stated that in addition to the company that owned the mine, it had eight customers, all of whom were temporary residents employed by either the mine or the demolition contractor.
8. Northwestel submitted that, over the last 18 months, it had spent considerable effort and resources to maintain service at Nanisivik. Northwestel indicated that the demolition activities had disrupted telephone service and had resulted in a significant increase to its ongoing expenses to maintain service. In this regard, Northwestel filed an invoice that indicated that two of its buildings at Nanisivik had been demolished. The company also stated that much of its outside plant had been torn up or blasted by the demolition crew. Northwestel submitted that it was no longer viable to keep facilities running in Nanisivik at a reasonable cost and that the company should be permitted to cease providing service while it still had access to the area and a minimum level of infrastructure existed.
9. Northwestel submitted that a more appropriate and economically viable option for the mine customers would be to use the satellite telephone services available in the area, and that the mine owner and the demolition contractor could arrange for such service at a reasonable cost.

The airport

10. Northwestel indicated that it was also providing service to seven customers at the airport, which, unlike the mine site, was expected to remain in operation until it could be relocated. Northwestel estimated that the relocation would occur within three years.
11. Northwestel submitted that it had also experienced significant difficulties in providing services to the airport due to the demolition activities occurring at the mine.
12. Northwestel noted that it was completing discussions with the airport customers with a view to providing them with an alternative service solution until such time as the airport was relocated. In this regard, Northwestel submitted that it could provide the airport customers with service using an enterprise-grade satellite solution. Northwestel submitted that this solution would meet the needs of these customers at a reasonable cost and was possible because the airport had its own generator and was no longer reliant on power generated at the mine site.

Positions of parties

13. The Commission received a petition signed by 23 residents of Nanisivik, dated 27 June 2006, who submitted that they were dissatisfied with Northwestel's proposal, which in their view would essentially isolate them if approved. These residents requested that Northwestel continue to provide them with telephone service until the end of the demolition project.
14. In a letter dated 20 July 2006 to employees of the mine, Northwestel reiterated that due to the deterioration of the facilities at Nanisivik, it had become difficult and costly to maintain telephone service. Northwestel submitted that after 16 October 2006, the mine owner should be responsible for arranging for the residents to receive telephone service through satellite services.

15. In its responses to Commission interrogatories, filed on 18 August 2006, Northwestel submitted that the discrepancy between the number of customers identified by the company as receiving service and the number of residents (23) who submitted comments on the company's proposal was due to the fact that a number of those identified as residents did not have phone service with Northwestel as they were employed during the summer only. In addition, Northwestel stated that it was possible that some of the persons lived in Artic Bay, a community located 30 kilometres from the mine site.
16. Northwestel submitted that neither its customers nor contributors to the National Contribution Fund (NCF) should subsidize satellite telephone services to the business decommissioning the mine long after normal operations had been shut down. In this regard, Northwestel reiterated its submission that the responsibility of providing telephone service after 16 October 2006 should lie with the mine owner. Northwestel stated that it had made repeated attempts to discuss possible transition plans and alternative services with the management of the mine throughout June and July 2005, but that the mine owner was not receptive to requests to provide the company with input or plans.
17. The Commission received additional comments dated 23 August 2006 from Mr. Jon MacCurdy, an employee of the demolition contractor, on behalf of himself, the residents of Nanisivik, and various business and government organizations. Among other things, Mr. MacCurdy expressed the concern that, if Northwestel's proposal were approved, it might not be possible to communicate with the airlines that provide medical evacuations. In addition, Mr. MacCurdy submitted that the purchase price and time-related charges for satellite service, as proposed by Northwestel, were too expensive for the average person. Mr. MacCurdy also stated that the demolition contractor had offered to provide accommodation and meals for Northwestel technicians, and that a truck could be made available to them on a limited basis.

Commission's analysis and determinations

18. Based on the record of this proceeding, the Commission considers that Northwestel cannot consistently maintain basic service in Nanisivik since its facilities are being disrupted and destroyed by the ongoing demolition activities in the area. The Commission further considers that this situation raises public safety issues with regard to the current land-based wireline service.
19. The Commission notes that Northwestel indicated that it had made several attempts to discuss transition plans and alternative service satellite phone solutions (which, unlike Northwestel's land-based wireline, would not be subject to disruption as a result of the demolition activities) with the mine owner. The Commission also notes that these discussions were not successful.
20. The Commission further notes that Northwestel is not in a position to provide the mine customers with a replacement service, as it does not provide satellite phone services.¹

¹ The enterprise-grade satellite solution proposed by Northwestel for the airport is different from satellite telephone service because it uses the company's existing distribution plant installation at the airport to route calls, which customers at the airport can make and receive using their existing landline telephones.

21. In light of the above, the Commission considers that the only viable solution for the temporary mine customers is to have them subscribe to satellite telephone services provided through InfoSat.
22. The Commission notes that it could direct Northwestel to incur the cost of providing third-party satellite phone service to the mine customers. The Commission also notes that Northwestel receives supplemental funding from the NCF and that such an order would result in the NCF subsidizing the provision of satellite phone service with respect to business operations whose basic purpose is the demolition of a mine. The Commission considers that, in the particular circumstances of this case, this would be an inappropriate use of the NCF.
23. The Commission is of the view that, under these unusual circumstances, the mine owner and the demolition contractor should ensure the safety of their employees by subscribing to a reliable form of telecommunications service for their employees.
24. The Commission notes that, based on the record of this proceeding, it would appear that up to 23 temporary residents at the mine site have been sharing the phone lines provided to the 9 customers at the mine site. The Commission considers that, similarly, they could share the equipment used for the provision of satellite services, thereby reducing the number of satellite phones that would have to be purchased.
25. The Commission notes that the airport customers did not comment on Northwestel's application. The Commission notes that Northwestel indicated that it was in the final stages of discussions with these customers to provide them with an alternative service solution. Northwestel is to provide a solution that is satisfactory to the airport customers and provide details of the solution to the Commission.
26. In light of the above, the Commission **approves** Northwestel's application, effective two months from the date of this Order.
27. The dissenting opinions of Commissioners Cram, Langford, and Pennefather are attached.

Secretary General

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Dissenting opinion of Commissioner Barbara Cram

I agree with my colleagues Commissioner Langford and Commissioner Pennefather as to the precedent nature of this decision and its impact on the long revered concept of the obligation to serve by incumbent telephone companies.

I am deeply disturbed by the analysis of the majority portraying the issue as one between Northwestel Inc. (Northwestel) and the businesses involved. Saying that "the mine owner and the demolition contractor should ensure the safety of their employees by subscribing to a reliable form of telecommunications service for their employees" completely misapprehends and misdescribes the duties and onuses involved. The telephone company has the duty and obligation to provide basic telephone service to people. The Commission has the duty to ensure this obligation is upheld and people in their homes, even if they are employees of a company, have the right to expect the Commission will not approve service withdrawals that could jeopardize their safety.

My view is the obligation to serve is particularly important in remote areas where a telephone is not only a necessity but more importantly it may constitute a matter of life and death. My colleagues' assertion that ordering Northwestel to provide service "would result in the NCF subsidizing the provision of satellite phone service with respect to business operations" is, respectfully, totally wrong headed. This application is for the withdrawal of Residential Services and the National Contribution Fund (NCF) was brought about to ensure that all Canadians, wherever they may live, are entitled to basic telephone service. Further, this community is certainly not the only one company dying town that receives funding from the NCF that may tangentially 'subsidize' a business. Northwestel receives substantial monies from this fund and the amount involved for a reasonable substitute by Northwestel is minuscule in proportion to the total amount it presently receives from the fund.

Unfortunately it appears the relationship between Northwestel and the companies involved is, at best, uncivil. This should not be an issue for the Commission. Nonetheless, it pervades the entire application and regrettably created a sufficient diversion for the majority.

In my view, both Northwestel and my colleagues in the majority have forgotten the people for whom the telecommunications system was built – ordinary subscribers like the people at Nanisivik, whose safety will now be put at risk as a result of approval of this application.

Dissenting opinion of Commissioner Stuart Langford

This is an extremely difficult dissent to write because so much of the pertinent information has been filed by Northwestel Inc. (Northwestel) in confidence. Still, the underlying issues are vitally important and, in my opinion, the precedent set by the majority decision could have far reaching negative consequences for hard-to-serve telephone customers in Canada. Accordingly, I disagree with the majority decision for the following reasons:

The record is confused on any number of key issues. Even at this late date, for example, it is not certain how many people will be affected when Northwestel discontinues service to Nanisivik. Northwestel puts the total at nine, a figure calculated, one assumes, by counting customers billed rather than the number of people who rely on the telephones available. A petition dated June 27, 2006, bore 23 signatures of individuals claiming to be "residents of Nanisivik, Nunavut." They feared being "cut-off from the outside world," if Northwestel's application were approved.

Uncertainty, as well, surrounds the question of precisely how much damage has been done to Northwestel's property and equipment. At one point in its June 14, 2006 request to discontinue service Northwestel states: "Much of Nanisivik's outside plant has been torn up or blasted by the demolition..."

What does that mean, that the central office has been leveled, that circuits and essential wiring are being blown to bits on a regular basis, or that, because buildings are being demolished, naturally enough, the wires serving them, those wires being part of Northwestel's "outside plant", are also being removed? In an August 23, 2006 letter, Jon MacCurdy, General Foreman for Vendetti Construction & Consulting, and a Nanisivik resident, indicates that the last time service was disrupted in Nanisivik the problem was, "a loose connection." This does not sound to me like wanton destruction on a grand scale.

Further on the issue of destruction, paragraph 18 of the majority decision accepts as accurate Northwestel's allegations, as set out in paragraph 8 of that decision, that, "demolition activities had disrupted telephone service and had resulted in a significant increase to its ongoing expenses to maintain service." Paragraph 8 makes specific reference, presumably in describing the extent of wanton destruction, to an invoice filed by Northwestel indicating "that two of its buildings at Nanisivik had been demolished."

I cannot find any support for this inference on the record. Attachment 5 to Northwestel's June 14, 2006 request is an invoice from Nanisivik Mine – CanZinco Ltd in the total amount of \$19,260 for work done demolishing one house and one garage. The invoice has been rubber stamped, "Received Oct. 17, 2005, Accounts Payable." There is nothing on the record indicating that Northwestel disputed this invoice or refused to pay it, nothing indicating the buildings were not demolished at Northwestel's request. It seems far more reasonable to assume, then, that it was an invoice rendered for services requested by Northwestel and obtained.

The question of who instigated demolition of Northwestel's staff house in Nanisivik, is pertinent for another reason. On the record, Northwestel complains of an inability to find lodging in Nanisivik. If lodging is, indeed, scarce, why did they, as in my opinion the record demonstrates that they did, move so quickly to have their staff house demolished?

More questions arise as one attempts to unravel the expense information filed by Northwestel in confidence, and to determine the actual costs of maintaining service in Nanisivik. The figure Northwestel indicates as "Additional Maintenance costs" for the period March, 2005 to March, 2006 is, indeed, high in comparison to revenues from Nanisivik for the same period. Unfortunately, all we are given is a list of categories of expenses (Airfare, Accommodations, Vehicle Rentals, Tech Labour, etc.) and total dollar amounts (filed in confidence). Questions abound.

What annual expenses are normal for Nanisivik? When Northwestel was given an opportunity to increase its revenues by increasing its customer base in Nanisivik, (MacCurdy letter of August 23, 2006, point 4) why did it turn the would-be customer away? Were any of the expenses listed confidentially attributable to work done in Arctic Bay or at the airport? It would seem logical, if a crew were being flown in at great cost, for example, to any one of these three neighboring locations in Northwestel territory, that the crew would take the opportunity to minimize expenses by doing routine maintenance at the other two.

One specific question that I believe I can and must ask, despite confidentiality restraints, is why the \$19,260 paid to demolish the Nanisivik staff house is listed under the category of additional maintenance costs?

The question of how Northwestel operates in the most isolated parts of its territories arises again when one reads the August 23, 2006 intervention letter filed by Mr. Jon MacCurdy on behalf of himself, his employer, Vendetti, and others. He writes: "Recently, Northwestel had 2 employees in Arctic Bay installing new lines. They came over to Nanisivik, but never even checked any equipment in the Northwestel buildings. They were more interested in taking pictures down at the ocean."

One wonders how this trip was expensed. Was it entered, in whole or part, as a Nanisivik expense? Northwestel alleges in its June 14th letter that the 30 km road between Arctic Bay and Nanisivik, "is not regularly maintained." The implication is that travel conditions to Nanisivik make maintenance difficult, uncertain and expensive. How, then, did its two photographer technicians make the trip? Northwestel alleges that, "the last three maintenance visits had to be aborted..." Why? Is this unusual in the far north? Does the photography excursion count as one of the aborted trips?

In his August 23rd letter, Mr. MacCurdy indicated that his employer had made offers intended to ease Northwestel's problems: "Mr. Vendetti supplied a letter to the CRTC and Northwestel stating that we can provide lodging and meals for Northwestel technicians when required." Further, Mr. MacCurdy wrote: "I spoke with Hugh Milmine (a Northwestel supervisor) when he was in Nanisivik on August 18th and 19th and informed him that I was an electronic technician and instrumentation mechanic. I offered to provide minor service and/or inspection of Northwestel equipment if required." Apparently, this offer was deemed unacceptable. One wonders why.

In summary, this record raises more questions than it answers, not the least of which is why a monopoly service provider insists on filing so much information in confidence. What, precisely, is the point of confidentiality when there are no local exchange competitors to benefit from the facts full disclosure in the public interest might provide?

With so many questions left hanging, we arrive at the underlying issues, the impact of the majority decision on Nanisivik residents and the long term impact of such a decision on other expensive-to-serve telephone customers in Canada. Nanisivik is not a suburb of Toronto or of Whitehorse. It is completely isolated, accessible in winter only by aircraft, snowmobile or, I suppose, dog sled. And make no mistake, winter is well-entrenched in Nanisivik and will remain so, complete with life-threatening low temperatures and near-total darkness for months to come. The nearest hospital is in Iqualuit, 1,200 km away.

Telephones truly are lifelines in the far north. That is why Canada has a subsidy scheme in place to help defray the costs of providing them. The majority decision severs those lifelines for the residents of Nanisivik. It dumps on them and/or their employers (people and companies over which the Commission has no authority) the responsibility for finding and financing a substitute. Northwestel takes the position that residents can easily switch to satellite phone service, but in his August 23rd letter, Jon MacCurdy wrote: "... their proposal of using a satellite phone system to provide service, is completely unacceptable. The purchase price and charges per minute for the average person would be impossible to afford."

Affordability raises interesting ancillary questions. Did Northwestel offer to help defray the cost of the satellite phone service they believe their soon to be former-Nanisivik subscribers should now purchase? They did not. Did the majority order them to do so? They did not.

Northwestel managed to find and fund a "satellite solution" for the seven lines at the local airport, but offered to do nothing for the 23 residents of Nanisivik. Northwestel's solution is to cut and run, to put the bottom line above all other considerations. The majority agrees. In my opinion, both Northwestel and the majority want to pray that no one in Nanisivik dies between now and when the town is evacuated for lack of a telephone.

Finally, I worry about what signal the majority decision sends by way of a precedent-setting test for the withdrawal of basic phone service. No matter how one colours Northwestel's reasons, they come down to money. Northwestel thinks it costs too much.

Well, there are lots of places in Canada's vast land mass where services are costly to provide. Today's majority decision, despite attempts to limit its long term impact by using phrases such as, "in light of the above" or "under these unusual circumstances", stands for one proposition and one proposition only. From this day onward, the concept of basic service as a given in Canada and the notion that established phone companies have an obligation to provide such service to Canadians may be gone forever. My reading of the message underlying the majority decision is that access to phone service is only a given if companies are confident it can be provided profitably. In my view, that is not good enough.

Dissenting opinion of Commissioner Joan Pennefather

I do not agree with the majority decision in this matter.

It is a fundamental principle that the obligation to serve remain with the ILEC. In my view, the decision of the majority effectively transfers that obligation to the demolition contractor and the mine owner, setting a dangerous precedent. This particular case is especially illustrative of the importance of this principle since, as noted in the decision, "ensur[ing] the safety of their employees" is clearly involved. In my view, Northwestel should be required to provide a viable alternative solution to maintain basic service to the residents at the mine, as it has indicated it would do for the airport residents, until the end of the project in question.