



Telecom Decision CRTC 2012-102

PDF version

Ottawa, 16 February 2012

Northwestel Inc. – Application for forbearance from the regulation of services related to teleconferencing, the rental of single-line terminal equipment, and the rental and maintenance of multi-line and data systems equipment

File number: 8640-N1-201104736

In this decision, the Commission forbears, with some conditions, to the extent set out in this decision, from regulating Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife.

Introduction

1. The Commission received an application from Northwestel Inc. (Northwestel), dated 15 March 2011, requesting that the Commission forbear from regulating Northwestel's services related to (i) teleconferencing, (ii) the rental of single-line terminal equipment, and (iii) the rental and maintenance of multi-line and data systems equipment.¹ Specifically, Northwestel requested that, pursuant to section 34 of the *Telecommunications Act* (the Act), the Commission refrain from exercising its powers and performing its duties under sections 24, 25, 27, 29, and 31 of the Act with regard to the above-noted services.
2. The Commission received comments from the Utilities Consumers' Group (UCG) and Yukon Government (YG) regarding this application. The public record of this proceeding, which closed on 3 June 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
3. The Commission has identified the following issues to be addressed in this decision:
 - I. Should the Commission forbear from regulating Northwestel's teleconferencing services?
 - II. Should the Commission forbear from regulating Northwestel's services related to (i) the rental of single-line terminal equipment and (ii) the rental and maintenance of multi-line and data systems equipment?

¹ Northwestel also requested forbearance from the regulation of inside wire services. This aspect of the application will be dealt with in a separate decision.

III. What should be the extent of forbearance of Northwestel's services?

IV. Are the determinations in this decision consistent with the Policy Direction?²

Background

4. Subsection 34(1) of the Act provides that the Commission may refrain from regulating a service or class of services where it finds that such forbearance is consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act, while subsection 34(2) of the Act requires it to forbear where it finds that the market for the service or class of services in question is, or will be, subject to sufficient competition to protect the interests of users. Subsection 34(3) of the Act provides that the Commission shall not forbear if it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.
5. In Telecom Decision 94-19, the Commission established a framework for considering whether to forbear from regulation of a service. In making a finding regarding whether to forbear from regulation, the Commission assesses factors such as market share, supply and demand conditions, barriers to entry, and evidence of competitive presence for the service in question.

I. Should the Commission forbear from regulating Northwestel's teleconferencing services?

6. Northwestel submitted that the teleconferencing market in its operating territory is dominated by large national providers whose platforms are typically accessed through a toll-free number, and provided evidence of a number of these alternative service providers. Northwestel submitted that rivalrous behaviour exists in the market such that two of its largest customers are using the teleconferencing services of competitors at rates which are considerably lower than Northwestel's own rates for such services.
7. Northwestel stated that it offers both operator-assisted and reservationless teleconferencing services. Northwestel submitted that the market demand for its operator-assisted teleconferencing calling service has all but vanished. Northwestel also submitted that, based on its estimated share of the total number of teleconferencing minutes, it is not a dominant provider in the market.
8. The UCG submitted that deregulation will cause teleconferencing rates to increase and that Northwestel should apply to lower its rates to compete with lower-priced offerings.

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Commission's analysis and determinations

9. The Commission considers that there are no regulatory or legislative barriers to entering the market for teleconferencing services in Northwestel's operating territory and technical barriers to entry, through the toll network, are low. The Commission notes that in terms of market supply in Northwestel's territory, teleconferencing services are available in all communities and there are numerous alternative providers currently offering teleconferencing services.
10. The Commission further considers that Northwestel does not have significant market power in the teleconferencing services market as evidenced by its declining revenues for these services and its estimated share of total teleconferencing minutes.
11. Accordingly, as set out more fully below, the Commission considers that it would be appropriate to forbear from regulating teleconferencing services provided by Northwestel throughout its operating territory.

II. Should the Commission forbear from regulating Northwestel's services related to (i) the rental of single-line terminal equipment and (ii) the rental and maintenance of multi-line and data systems equipment?³

i) Rental of single-line terminal equipment

12. Northwestel submitted that the market for single-line terminal equipment, which is comprised of equipment for both residential and business customers, is highly competitive, the company does not possess any market power, and its share of this market is very small. In addition, Northwestel submitted that most communities in its operating territory have access to inexpensive local supplies of terminal equipment from a number of local major retail stores or online. Northwestel also submitted that its residential and business terminal rentals have declined significantly over the past 10 years.
13. YG submitted that outside of Whitehorse, the telecommunications market is widely dispersed and the opportunity to attract competitive suppliers is very limited in small communities. Further, in most cases, Northwestel is the only realistic source for both equipment rental and maintenance services. The UCG submitted that online shopping is not feasible for those who speak only their native tongue and for many of the poor, as they often lack computer knowledge.

ii) Rental and maintenance of multi-line and data systems equipment

14. Northwestel submitted that a number of local and national providers sell, rent, and maintain key telephone systems and private branch exchange (PBX) systems throughout the North, and that customers generally prefer to purchase rather than

³ In Telecom Decision 94-19, the Commission stated that the terminal market included the sale, lease, and maintenance of terminal equipment.

rent multi-line or data equipment. In addition, the total maintenance revenues on multi-line equipment sold by the company or by others is small and indicative of a competitive market.

15. Northwestel also submitted that in small remote communities, the typical user of multi-line telephone systems is able to conduct price comparison research in order to obtain the best price. Northwestel noted that while it is the incumbent local access provider in small remote communities in its operating territory, it does not have a significant competitive advantage over other multi-line and data systems providers in those communities. Northwestel noted for example, that it will typically have to send a technician from one of its larger centres to install a telephone system in a remote community, just as a competitor would.
16. The UCG submitted that in small northern towns, a competitive market cannot dictate what is affordable and it remains necessary to regulate prices in order to keep them affordable. The UCG also submitted that it is less costly for Northwestel to install and maintain equipment in remote communities than it is for other companies, as Northwestel can schedule other work at the same time.
17. YG submitted that its multi-line systems in Watson Lake and Dawson City are maintained by Northwestel and that no other local provider is available in either location to service these systems. YG further submitted that if forbearance is approved, the Commission should ensure continued access to Northwestel multi-line rental and maintenance services while maintaining current pricing levels.

Commission's analysis and determinations

18. The Commission notes that there are no regulatory or legislative barriers to entering either the single-line terminal equipment market or the multi-line and data systems equipment market in Northwestel's territory. The Commission also notes that demand for these products has declined significantly as evidenced by Northwestel's reduced revenues. Further, Northwestel only participates in a segment of the single-line terminal equipment market as it does not sell the equipment and only provides maintenance on equipment rented from the company.
19. The Commission considers that in Whitehorse and Yellowknife⁴ specifically, the record of this proceeding indicates that entry by several alternative suppliers has already been established such that customers have numerous options other than Northwestel for single-line terminal equipment and multi-line and data systems equipment. As such, the Commission considers that Northwestel lacks market power in Whitehorse and Yellowknife in the provision of services related to single-line terminal equipment and multi-line and data systems equipment.

⁴ Refers to all wire centres in the exchanges of Whitehorse and Yellowknife.

20. Accordingly, as set out more fully below, the Commission considers that it would be appropriate to forbear from regulating Northwestel's services in Whitehorse and Yellowknife related to the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment.
21. With respect to the provision of these services in the other communities in Northwestel's operating territory, the Commission considers that there is a lack of evidence on the record of this proceeding of sufficient competitive alternatives to Northwestel. Accordingly, the Commission considers that it would not be appropriate to forbear from regulating Northwestel's services related to the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in locations other than Whitehorse and Yellowknife.

III. What should be the extent of forbearance of Northwestel's services?

22. In light of the above considerations, pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that refraining from exercising its powers and performing its duties, to the extent set out in this decision, with respect to Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, is consistent with the Canadian telecommunications policy objectives, specifically those set out in paragraphs 7(c), (f), and (h) of the Act.⁵
23. In addition, pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife are subject to competition sufficient to protect the interests of users and therefore should be forborne to the extent set out in this decision.
24. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that refraining from regulating Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, to the extent set out in this decision, is unlikely to impair unduly the continuance of a competitive market for these services.

⁵ The cited policy objectives of the Act are

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.

Extent of forbearance

25. In light of the above findings, the Commission sets out below 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

26. The Commission considers that it is appropriate to retain its powers to impose conditions, pursuant to section 24 of the Act, so as to ensure that the confidentiality of customer information continues to be protected. The Commission notes that Northwestel's Terms of Service, which ensure the confidentiality of customer information for regulated services, do not apply to forborne services. This being the case, the Commission directs Northwestel, as a condition of providing services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, to abide by the existing conditions regarding disclosure of confidential customer information to third parties with respect to these services.
27. The Commission also directs Northwestel, on a going-forward basis and as a condition of it providing services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, to incorporate, where appropriate, the existing conditions regarding disclosure of confidential customer information to third parties into all contracts and any other arrangements for these services.
28. The Commission also considers that it is appropriate for it to retain sufficient powers under section 24 of the Act to specify possible future conditions with respect to Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, should it prove appropriate to do so.

Section 25

29. In light of its finding that Northwestel does not have market power with respect to services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, the Commission considers that requiring Northwestel to obtain prior Commission approval for rates and terms for these services would not represent efficient and effective regulation. Accordingly, the Commission considers that it would be appropriate to refrain from the exercise of all its powers and the performance of all its duties under section 25 of the Act with respect to these services.

Section 27

30. The Commission notes that subsections 27(2) and (4) of the Act relate to unjust discrimination and undue or unreasonable preference or disadvantage. The Commission considers that it would be inappropriate to refrain from exercising its powers or performing its duties under these provisions in respect of Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, in order to allow the Commission to address any potential complaints that may arise regarding these services.
31. Accordingly, the Commission considers it necessary to retain its powers and to perform its duties under subsections 27(2) and (4) of the Act with respect to the services noted above. The Commission will, however, refrain from the exercise of all its powers and the performance of all its duties under subsections 27(1), (3), (5), and (6) of the Act with respect to these services.

Sections 29 and 31

32. The Commission considers it appropriate that Northwestel no longer be required to obtain prior Commission approval to enter into agreements or arrangements with other telecommunications common carriers regarding Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife. Accordingly, the Commission will refrain from the exercise of all its powers and the performance of all its duties under section 29 of the Act with respect to these services.
33. The Commission also considers it appropriate that Northwestel be able to limit its liability regarding its services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, in the same way as an unregulated service provider. Accordingly, the Commission will refrain from the exercise of all its powers and the performance of all its duties under section 31 of the Act with respect to these services.

Declaration of forbearance

34. In light of all the above, the Commission declares, pursuant to subsection 34(4) of the Act, that sections 24, 25, 27, 29, and 31 of the Act do not apply to Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, except with respect to
 - the conditions set out in this decision pursuant to section 24 of the Act with respect to the confidentiality of customer information;

- any future condition that the Commission may impose, pursuant to section 24 of the Act; and
- the Commission's powers under subsections 27(2) and (4) of the Act to guard against possible unjust discrimination, undue or unreasonable preference, or undue or unreasonable disadvantage.

35. The Commission directs Northwestel to issue revised tariff pages that reflect the determinations in this decision by **16 March 2012**.

36. Forbearance takes effect on the date of this decision.

IV. Are the determinations in this decision consistent with the Policy Direction?

37. The Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the Canadian telecommunications policy objectives. The Commission considers that forbearance from the regulation of Northwestel's services related to (i) teleconferencing throughout its operating territory, and (ii) the rental of single-line terminal equipment and the rental and maintenance of multi-line and data systems equipment in Whitehorse and Yellowknife, as set out in this decision, would be consistent with subparagraph 1(a)(i)⁶ of the Policy Direction.

38. Consistent with subparagraph 1(a)(i) of the Policy Direction, where the Commission has maintained regulation of Northwestel's services in this decision, it has done so because market forces alone cannot be relied upon to achieve the telecommunications policy objectives set out in section 7 of the Act.

39. Consistent with subparagraph 1(a)(ii)⁷ of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are efficient and proportionate to their purpose, and minimally interfere with market forces.

40. In accordance with subparagraph 1(b)(i)⁸ of the Policy Direction, the Commission considers that its determinations to maintain regulatory measures in this decision advance the telecommunications policy objectives set out in paragraphs 7(a), (b), (c),

⁶ 1(a) the Commission should

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.

⁷ 1(a) the Commission should

(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.

⁸ 1(b) the Commission, when relying on regulation, should use measures that

(i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with [the Policy Direction].

(f), (h) and (i)⁹ of the Act. Consistent with subparagraph 1(b)(ii)¹⁰ of the Policy Direction, the Commission considers that its determinations in this decision neither deter economically efficient competitive entry into the above-noted markets nor promote economically inefficient entry.

Secretary General

Related document

- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

⁹ The additional cited policy objectives of the Act are

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

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; and

7(i) to contribute to the protection of the privacy of persons.

¹⁰ 1(b) the Commission, when relying on regulation, should use measures that

(ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.