



Telecom Decision CRTC 2012-174

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Ottawa, 23 March 2012

Northwestel Inc. – Application for forbearance from the regulation of residential and business inside wire services

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 residential and business inside wire services 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 the installation, maintenance, and repair of inside wire (inside wire services) provided by Northwestel to both residential and business¹ customers. 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 these services.²
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 inside wire services, and, if yes, to what extent?
 - II. Are the determinations in this decision consistent with the Policy Direction?³

¹ Business inside wire can be either single-line for a small business or multi-line in the case of a large business.

² In its application, Northwestel had also requested forbearance from the regulation of its 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. These aspects of the application were dealt with in Telecom Decision 2012-102.

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Background

4. The Commission has generally forbore from the regulation of rates, terms, and conditions for single-line residential and business inside wire services in the serving territories of incumbent local exchange carriers (ILECs) based on the conditions that (i) responsibility for inside wire has been transferred to customers, (ii) customers have been adequately informed of their rights and obligations, (iii) appropriate demarcation devices⁴ have been installed, and (iv) a competitive market has been established for inside wire services.
5. In Telecom Regulatory Policy 2012-83, the Commission determined that all ILECs, who have transferred responsibility of single-line inside wire to their residential and business customers, are to provide free diagnostic service to those customers who do not have a jack-ended demarcation device. The Commission also determined that in these circumstances ILECs are required to install a jack-ended demarcation device following provision of a diagnostic service at a customer's premises and ILECs are permitted to charge for repair service on the same visit.
6. With respect to business multi-line inside wire services, the Commission forbore in Telecom Decision 94-19 from the regulation of these services for the ILECs subject to that decision (except for Northwestel).

I. Should the Commission forbear from regulating Northwestel's inside wire services, and, if yes, to what extent?

7. Northwestel submitted that forbearance should be granted for all inside wire services since a) the inside wire market for all residential, multi-line business, and single-line business services is highly competitive, b) there are no significant economic barriers to enter into the market, and c) there are no regulatory or legislative barriers that would inhibit a supplier's entry.
8. Northwestel submitted that, with respect to single-line residential and business inside wire services, the required materials are readily available in electrical or home improvement stores, customers can perform the work themselves, and most manufactured homes come pre-wired in the North. Northwestel also submitted that it has only a very small portion of the market for the installation of inside wire in new dwellings and its revenues for installation, maintenance, and repair of inside wire have decreased since 2006.
9. With respect to business multi-line inside wire services, Northwestel submitted that it is similar to the business multi-line terminal equipment market which is highly competitive in the North. Northwestel indicated that it competes with a number of local and nationally based suppliers for these services.

⁴ A demarcation device refers to the equipment that connects the inside wire of the customer's premises to the ILEC's network. Demarcation devices that are jack-ended include a test jack or demarcation jack that allows customers to verify whether a transmission problem is on the inside wire or on the telephone network.

10. The UCG submitted that forbearance should not be granted for Northwestel's inside wire services since many small communities in the North do not have competitors providing services unless they are brought in from the larger centres at great expense.
11. YG submitted that, in most cases, Northwestel is the only realistic source for maintenance service and that if forbearance is approved, the Commission should ensure continued access to Northwestel maintenance services while maintaining current pricing levels. YG also submitted that outside of Whitehorse, the telecommunications market is widely dispersed and the opportunity to attract competitive suppliers is very limited in small communities.

Commission's analysis and determinations

12. 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 telecommunications policy objectives set out in section 7 of the Act. Subsection 34(2) of the Act requires the Commission 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.
13. The Commission considers that there are no regulatory or legislative barriers to entering the inside wire services market in Northwestel's territory. The Commission also considers that the demand for inside wire services has declined significantly. In addition, the Commission notes that the responsibility for inside wire has been transferred to customers⁵ in Northwestel's territory and that customers have been adequately informed of their responsibility for inside wire via Northwestel's website and telephone directory information.
14. The Commission considers that the record of this proceeding demonstrates that customers in Whitehorse and Yellowknife⁶ have numerous options and alternative suppliers for all inside wire services. As such, the Commission considers that Northwestel lacks market power in the provision of all inside wire services in Whitehorse and Yellowknife.
15. The Commission notes that, in Telecom Decision 2012-102, it has refrained from the regulation of Northwestel's multi-line and data systems equipment services in Whitehorse and Yellowknife. The Commission considers that, consistent with

⁵ Responsibility for both single-line and multi-line inside wire was transferred to customers in Telecom Order 95-913.

⁶ Refers to all wire centres in the exchanges of Whitehorse and Yellowknife.

Telecom Decision 94-19,⁷ Northwestel's business multi-line inside wire services are integral to multi-line and data systems equipment services, and therefore are part of the same market. Consequently, the Commission considers that it would also be appropriate to forbear from the regulation of business multi-line inside wire services in Whitehorse and Yellowknife.

16. In light of the above, the Commission considers that forbearance from regulation would be appropriate for all inside wire services provided by Northwestel in Whitehorse and Yellowknife.
17. With respect to the provision of inside wire services in the other communities in Northwestel's operating territory, the Commission considers that there is inadequate evidence to establish that competition would be sufficient to protect the interests of users. For example, the Commission notes that there is no evidence on the record of this proceeding of any competitive alternatives to Northwestel in almost all of these communities. The Commission considers that community-specific evidence, such as of confirmed providers of inside wire services (rather than just possible alternative providers) and market share data, would be needed in support of forbearance for communities outside of Whitehorse and Yellowknife. Accordingly, the Commission considers that it would not be appropriate to forbear from the regulation of inside wire services offered by Northwestel outside of Whitehorse and Yellowknife.
18. Accordingly, 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 all inside wire services provided by Northwestel in Whitehorse and Yellowknife, is consistent with the telecommunications policy objectives, specifically those set out in paragraphs 7(c), (f), and (h) of the Act.⁸
19. In addition, pursuant to subsection 34(2) of the Act, the Commission finds as a question of fact that all Northwestel's inside wire services 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.
20. Pursuant to subsection 34(3) of the Act, the Commission finds as a question of fact that refraining from regulating all Northwestel's inside wire services 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.

⁷ In Telecom Decision 94-19, the Commission stated that the competitive terminal market included the sale, lease, and maintenance of terminal equipment.

⁸ 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

21. 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

22. 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 inside wire services in Whitehorse and Yellowknife, to abide by the existing conditions regarding disclosure of confidential customer information to third parties with respect to these services.
23. The Commission also directs Northwestel, on a going-forward basis and as a condition of providing inside wire services 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.
24. The Commission also considers that, as an ILEC that has transferred responsibility for inside wire to its customers, the regulatory measures set out in paragraph 25 of Telecom Regulatory Policy 2012-83⁹ with respect to single-line residential and business inside wire services for customers with no jack-ended demarcation device, should continue to apply to Northwestel in Whitehorse and Yellowknife. This being the case, the Commission directs Northwestel, as a condition of providing inside wire services in Whitehorse and Yellowknife, to abide by the conditions set out in paragraph 25 of Telecom Regulatory Policy 2012-83.
25. The Commission further 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 all Northwestel's inside wire services in Whitehorse and Yellowknife, should it prove appropriate to do so.

⁹ In the provision of residential and business single-line inside wire services, all ILECs subject to Telecom Regulatory Policy 2012-83 are required to a) provide free diagnostic service for customers with no jack-ended demarcation device, and b) install a jack-ended demarcation device free of charge following diagnostic service during the same visit.

Section 25

26. In light of its finding that Northwestel does not have market power with respect to all inside wire services in Whitehorse and Yellowknife, the Commission considers that requiring Northwestel to obtain prior Commission approval for rates, terms, and conditions 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

27. 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 also notes that, in Telecom Decision 2012-102, it did not refrain from exercising its powers or performing its duties under subsections 27(2) and (4) of the Act with respect to Northwestel's rental and maintenance of multi-line and data systems equipment services in Whitehorse and Yellowknife. Consequently, 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 business multi-line inside wire services in Whitehorse and Yellowknife, in order to allow the Commission to address any potential complaints that may arise regarding these services.
28. 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 Northwestel's business multi-line inside wire services in Whitehorse and Yellowknife. 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.
29. With respect to all single-line residential and business inside wire services in Whitehorse and Yellowknife, given the conditions put in place for single-line inside wire services in this decision, the Commission will refrain from the exercise of all its powers and the performance of all its duties under section 27 of the Act with respect to these services.

Sections 29 and 31

30. 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 all inside wire services 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.

31. The Commission also considers it appropriate that Northwestel be able to limit its liability regarding all inside wire services 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

32. 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 all Northwestel's inside wire services in Whitehorse and Yellowknife, except with respect to

- the conditions set out in this decision pursuant to section 24 of the Act;
- 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 with respect to business multi-line inside wire services to guard against possible unjust discrimination, undue or unreasonable preference, or undue or unreasonable disadvantage.

33. The Commission directs Northwestel to issue¹⁰ revised tariff pages that reflect the determinations in this decision by **23 April 2012**.

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

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

35. 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 all inside wire services in Whitehorse and Yellowknife, as set out in this decision, would be consistent with subparagraph 1(a)(i)¹¹ of the Policy Direction.
36. 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.

¹⁰ Northwestel may submit to the Commission the updated tariff pages without a description page or a request for approval; a full telecom application is not required.

¹¹ 1(a) the Commission should

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

37. Consistent with subparagraph 1(a)(ii)¹² 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.
38. Consistent with subparagraph 1(b)(i)¹³ 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), (f), (h), and (i)¹⁴ of the Act. Consistent with subparagraph 1(b)(ii)¹⁵ 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 documents

- *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*, Telecom Decision CRTC 2012-102, 16 February 2012
- *Regulatory measure associated with single-line inside wire services provided by incumbent local exchange carriers to customers with no jack-ended demarcation device*, Telecom Regulatory Policy CRTC 2012-83, 9 February 2012
- Telecom Order CRTC 95-913, 17 August 1995
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994

¹² 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.

¹³ 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].

¹⁴ See footnote 8. 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.

¹⁵ 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.