



**First Mile Connectivity Consortium (FMCC) / <http://firstmile.ca>
Summary of CRTC Telecom Regulatory Policy CRTC 2013-711 (Released Dec 18, 2014)**

Decision: <http://www.crtc.gc.ca/eng/archive/2013/2013-711.htm>

CRTC press release: <http://www.crtc.gc.ca/eng/com100/2013/r131218.htm>

In this decision the Commission has recognized the special conditions and challenges of telecommunications in the north, and that market forces alone are not addressing them. We believe this is a positive outcome in terms of the objectives of the FMCC, and suggest it opens the door for future intervention in the upcoming hearings on the ‘digital economy’ (2014-2015). The main items in the decision that affect northern Aboriginal communities and communications organizations are:

1. **Commitment to additional subsidies.** While the CRTC did not agree to open the National Contribution Fund (NCF) to providers other than Northwestel as First Mile advocated, it did state that it will establish a mechanism to provide capital and operating subsidies as part of its “digital economy” review in 2014.
2. **Recognition of a “digital divide” between satellite and terrestrially-served communities in terms of speed, quality of service, and price.** This divide extends beyond Northwestel’s service area to include other communities. The CRTC stated that it will hold an inquiry into satellite services in 2014, including an examination of Telesat’s pricing. This is the first time that Telesat’s transponder pricing has been examined by the CRTC since 1999.
3. **Recognition that market forces are not working.** The CRTC has recognized that retail (terrestrial) Internet in the North is now virtually a Northwestel monopoly. It has therefore decided to reregulate retail Internet and some other services where there is effectively no competition (the CRTC had previously deregulated retail Internet in 1999).
4. **Affordability.** The decision makes many references to the need for “affordable” services, although affordability is not defined. However, the CRTC clearly understood that Internet and broadband services were not currently affordable for many in Northwestel communities.

In the coming weeks, the FMCC invites suggestions regarding these issues. We invite you to send comments and feedback to our contact Rob McMahon at: rob.mcmahon@unb.ca

In the following pages are detailed comments on First Mile’s positions, referencing the relevant sections of the decision. They are organized around the specific recommendations that the FMCC put forward.

1. Open the NCF: As a first step, the CRTC should open the NCF in Northwestel's territory to competition from any provider able to provide the required services, including Aboriginal providers. They suggested a mechanism of competitive bids for least-cost subsidies could be used.

At the hearing, First Mile and Eeyou (among others) suggested that the NCF be used to fund broadband Internet and that the subsidy should be portable. The CRTC decided that existing residential primary exchange services¹ (PES) subsidy should only be made available to Northwestel, since the company has the obligation to serve all customers in a given HCSA. Therefore, the subsidy for residential PES will not be available to competitors in Northwestel's operating territory (para 98).

However, the Commission considered whether it is appropriate to modify the existing subsidy regime for funding telecommunications services in the north. It noted that many parties advocated for broadband infrastructure funding, while others suggested deferring this question to the 'digital economy' proceeding in 2014 (para 107-108).

As an outcome of the hearings, the Commission will “establish a mechanism, as required, to support the provision of modern telecommunications services in Northwestel's operating territory that are responsive to the economic and social needs of Canadians in the North” and include capital investment in transport facilities and operational costs (para 125; emphasis added). This mechanism will complement and not replace other public and private investments.

The Commission noted that other communities in Canada – not just satellite-served communities – are facing challenges in achieving the CRTC's broadband target (5mbps down / 1mbps up by 2015) (para 130). It stated: “This broader issue should be reviewed in the [upcoming] proceeding to determine what services are required by all Canadians to fully participate in the digital economy and whether there should be changes to the subsidy regime and national contribution mechanism to ensure access to reliable and affordable telecommunications services of high quality for all Canadians” (para 131).

2. Guarantee Open Access: The CRTC should guarantee Open Access to transport infrastructure. A regulatory framework that encourages open access to publicly subsidized transport facilities is in the best interest of local communities.

The Commission included this direct quote in its decision, attributed to a point raised by FMCC: “a regulatory framework that encourages open access to publicly subsidized transport facilities is in the best interest of local communities that can leverage this infrastructure in various ways” (para 113).

¹ The service and equipment required for telephone communication between primary exchange services of the same exchange or local-service area, and between such service and the associated toll office.

Regarding Wholesale Connect Service, the Commission determined revised tariffs and directed Northwestel to issue them by 15 January 2014.

Regarding satellite services, the CRTC noted the lack of information available on transponder pricing. It will conduct a satellite inquiry in 2014 on this issue. Telesat will face investigation of its rates for the first time since 1999. This is potentially good for Nunavut (also satellite-served communities in NWT, Nunavik, B.C., etc).

The CRTC is requiring Northwestel to resume construction of the fibre backbone in the Yukon (NWTel got a partial deal but not everything they said they needed to cover their investment).

- 3. Require Consultation: Meaningful and documented consultation with Aboriginal communities should be required as a condition for approval of any revised version of Northwestel's plan. The group draw attention to the FCC's requirements in the US that providers receiving subsidies to serve tribal lands must "meaningfully engage" with tribal governments.**

The CRTC made no mention of consultation in this Decision.

- 4. Broadband Availability: The CRTC should require that Northwestel meet the Commission's national requirements of providing *actual* download speeds of 5 mbps and upload speeds of 1 mbps by the end of 2014 in all the communities in its service area including those served by satellite.**

Reference to the CRTC's targets (5/1 by 2015) is noted several times in the decision. The CRTC also recognizes that both satellite and non-satellite communities face challenges in meeting these targets. It noted the digital divide between satellite/non-satellite communities in the north.

- 5. Quality of Service: The CRTC should require more thorough monitoring of Northwestel's quality of service. Regular monitoring of actual upload and download speeds and services outages should be required.**

At first read, it did not appear that the decision includes a distinction between advertised and actual speeds in the criteria of monitoring of the plan (para 278). However, the CRTC's targets (5/1 by 2015) may refer to actual and not advertised speeds.

- 6. Develop Pricing Benchmarks: Rates for telecommunications services in Northwestel's service area should be reasonably comparable to national averages. The CRTC should designate one or more baskets of services to be used for comparing prices between Northwestel's service area and other regions.**

The Commission makes many references to "affordable" services - a key point ignored in previous decisions.

Given evidence of market failure (lack of competition in retail terrestrial Internet) the Commission will re-regulate retail (terrestrial) Internet. This is after it previously forbore² the service in 1999. This very rarely happens - it means that NWTel now has to file tariffs and is subject to oversight about appropriate pricing, etc (paras 215-222).

The presence of a competitor in satellite retail Internet services indicates that customers have an alternative to Northwestel – so those services will continue to be forbore (para 214).

The Commission noted the lack of competition specifically in terms of mobile wireless data services (there is insufficient data to determine whether mobile data are substitutes for terrestrial retail Internet – a point raised by the FMCC as a challenge for northerners). The Commission also noted that services offered by Northwestel affiliates (Bell Mobility, Latitude Wireless) are not true alternatives (para 217). Therefore, the offering and provision of Northwestel’s terrestrial retail Internet services will be subject to regulation (para 222). The company must file tariffs and proposal on several items by 4 February 2014.

The Commission also determined that people do not have to subscribe to NWTel basic service to get access to DSL – that is, it must make available “dry loops” (paras 227-228).

7. External Review: The CRTC should require an annual external review or audit to document progress on the plan and specifics on how NCF subsidies have been spent.

Northwestel is to submit a revised Modernization Plan by 31 March 2014 that includes the reinstatement of fibre investment, and a greater focus on investment in transport infrastructure.

The CRTC set out requirements for Northwestel's annual reports regarding its Modernization Plan. The company must file annual reports with Commission for each year of the Plan (specifics outlined by the company in para 278). If it fails to meet a target, the company is to indicate how and when it will meet that commitment. The Commission will “consider taking appropriate action to ensure the Plan is implemented as planned and in a timely manner” (para 289). However, action or penalties are not specified.

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² Forbearance refers to the deregulation of tariffed services once a healthy level of competition is deemed to have been reached in the market. Forbearance grants the incumbent carriers pricing flexibility and the ability to bundle their services, without the requirement to file tariffs with the CRTC (<http://www.mts.ca/mts/about+mts+allstream/regulatory/key+initiatives/forbearance>).