

CRTC 2020-367

Review of the Commission's regulatory framework for Northwestel Inc. and the state of telecommunications services in Canada's North

Reply Comments submitted by the First Mile Connectivity Consortium

1. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers known as "community/regional intermediary organizations." Our associate members are university and private sector researchers and others interested in Indigenous and community communications and telecommunication services for the public good. Our work focuses on innovative solutions to digital infrastructure and services with and in rural and remote regions and communities across Canada. More details about our members and activities are available at <http://firstmile.ca>
2. These Reply Comments highlight several points regarding the current proceedings, as well as our concerns regarding the limited information currently available on the public record from Northwestel in response to requests from the Commission.
3. We also submit that FMCC interventions in other proceedings, including 2019-406 and 2020-366, are relevant to the issues under consideration here.

Lack of Information from Northwestel

4. We note that during these hearings, in a letter dated 2 November 2020, the Commission asked Northwestel to provide specific information about various aspects of its infrastructure, services, and other matters.¹ The Commission then asked for additional information in a letter dated 21 January 2021.² In response to these requests for information, the company filed answers that include information that was not disclosed publicly. Several interveners including Iristel and PIAC filed requests with the Commission to require public disclosure. Northwestel's response to these requests from interveners states that, among other issues, the following information should not be made public:
 - Planned network improvements funded by the CRTC Broadband Fund;
 - The capacity of their regional transport networks or Wholesale access customers;
 - Network reliability (e.g. community-level service outages, average time to restore services in communities);

¹ See: https://crtc.gc.ca/eng/archive/2020/lt201127.htm?_ga=2.192725546.180879330.1616592876-1892028037.1615317712

² See: https://crtc.gc.ca/eng/archive/2021/lt210121.htm?_ga=2.210749589.1084526363.1615310974-1977636137.1610741193

- Number of subscribers to their services;
 - Annual revenues; and
 - Their report on consultation with communities as is required for their Broadband Fund grant.
5. We also note that as of the 24 March 2021 deadline for intervenors to file Reply Comments to these proceedings, none of this information is publicly available. Northwestel has until 30 March 2021 to respond, and that at that time there will be an opportunity for intervenors to file requests for information about what they submit.
 6. We point this out to highlight the information asymmetry present in these hearings and the limitations that it poses to already under-resourced organizations who wish to comment on the state of telecommunications services in the North. Aside from the limited publicly-available research available through the Environics report commissioned by the CRTC³ and a report filed by several NWT-based organizations,⁴ there is very little information about the situation of connectivity in smaller, more rural and remote Northern communities.
 7. The limited information available makes it impossible for the FMCC and other intervenors to address several points raised by Northwestel without access to data which they have claimed is proprietary. **We therefore request that the Commission release as much of this information as possible so that intervenors can review it during the second phase of the proceeding.**
 8. In the sections below, we address the intervention filed by Northwestel as amended on 1 March 2021.⁵ While we agree with the general list of issues Northwestel proposes to be included in this proceeding, we disagree with many of the assertions it makes concerning these issues.

Competition:

9. We agree with Northwestel's comment that "Delivering high-quality services that Northerners want at rates that are just and reasonable must always remain the Commission's focus..." (Northwestel, para 14). However, we disagree with the assertion that competition is being addressed for its own sake, and more specifically that competition could detract from delivering quality services at just and reasonable rates. In fact, many Northerners have commented in this proceeding that they are not getting affordable services and/or reasonable rates from Northwestel, and that they lack an alternative choice of providers.

³ See: <https://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2021/023-20-e/index.html>

⁴ Submission to CRTC 2020-367 filed by Sahtú Renewable Resources Board, Gwich'in Tribal Council, Inuvialuit Regional Corporation, Tłı̨chǫ Government, Smart Communities Society NWT, and University of Alberta.

⁵ Intervention of Northwestel Inc. 20 January 2021; revised 1 March 2021

10. We further disagree with Northwestel's statement that "... there is no need for additional wholesale service" (Northwestel, para 14) and that "to the extent that competition can work, it must be facilities-based." (Northwestel, para 18). While facilities-based competition in the form of optical fibre or various satellite services can provide competitive solutions for some communities, wholesale access to existing transport networks is likely to remain the only means for some smaller providers to extend broadband services. Access to wholesale capacity can also be necessary to establish non-profit, Indigenous and community networks.
11. In general, the costs of connectivity are decreasing, with extensions of fibre and availability of higher bandwidth satellites. However, we note that this does not seem to be the case in rural, remote and Northern regions served by Bell Canada. In fact several FMCC members have experienced higher costs for wholesale bandwidth in recent years. For example, FMCC member Western James Bay Telecommunications Network (WJBTN) states that it paid \$9.33 per MB to Bell Canada in 2010 and \$13.55 per MB (for 2 GB service) to Bell/Ontera in 2020. Whereas the price of wholesale bandwidth has decreased dramatically elsewhere, it increased significantly in that region. At the same time, demand has increased substantially, especially since the COVID-19 pandemic, such that WJBTN now needs 10 GB circuits.
12. As noted by FMCC member K-Net: "It is not possible to meet 50/10 service obligations with the current transport costs. The transport costs consume such a large disproportional share of the total revenue that it is not possible to successfully operate the local distribution networks." The same statement would be true in Northwestel's territory.
13. In general, the Commission should prioritize policies that make it possible for local or regional service providers based in the North to provide services to their communities. Yet without competition or other incentives, transport costs that should be declining are actually increasing for northern ISPs.
14. We also note that Northwestel declined to make publicly available the capacity of their regional transport networks or Wholesale access customers. Based on information we have received about connectivity in Indigenous communities along the Mackenzie River, it appears that Northwestel, which manages the publicly financed Mackenzie Valley Fibre Link (MVFL), has not provided open and affordable access to providers who could serve these communities. The cost and terms of leasing capacity on the MVFL should be made public. Further, the CRTC should establish regulated wholesale pricing for access to the MVFL so that competitive ISPs can offer services using the MVFL backbone.

Network Improvement and Oversight

15. As we noted in our previous submission, any upgrades or extensions of facilities approved by the Commission or funded by public sources including the Broadband Fund should be

carefully monitored, not only through reports filed by Northwestel, but by independent third parties.

16. Some problems with quality of service may be resolved through network improvement. Others may require additional steps such as more frequent maintenance, timely repairs, and upgrades of obsolete equipment.

Obligation to Serve and Substitution of Mobile Services:

17. We believe that ILECs including Northwestel should not be able to waive the obligation to serve. Further, we think it is at best premature to allow mobile service to be substituted for fixed lines, which are still important in northern communities. One mobile device per household is not the same as one fixed line. Research by NWT-based organizations determined that NWT households sometimes subscribe to more than one residential fixed Internet service – to both avoid excessive data overage fees and to support the use of multiple connected devices at home.⁶ We also note the large numbers of residents of many households in the North, with requirements for bandwidth and devices.
18. Pricing becomes critical if mobile is the only service available, and there are numerous consumer complaints about mobile data caps and quality of service. In addition, since Northwestel opposes competition, we would not want mobile only service to prohibit other mobile operators from offering service or providing Northwestel with an excuse to avoid its obligation to serve.

Quality of Service:

19. Quality of Service (QOS), including standards, measurement, monitoring and enforcement should be a specific and separate issue to be addressed in this proceeding. As noted in our intervention, we believe that there should be regular monitoring of QOS conducted or authorized by the CRTC in communities served by Northwestel, including those in northern BC, and that QOS standards should be mandated and enforced.
20. Northwestel declined to make publicly available information about network reliability, including community-level service outages and the average time to restore services in communities. The limited publicly available information available about QOS (such as the report from NWT-based organizations, which presents information from CIRA's Internet Performance Test)⁷ indicates the challenges users experience with regards to issues such as speed and reliability, particularly in smaller, more rural communities. However, it is impossible to assess these issues without access to more data.
21. For these reasons, we recommend more support for user experience data collection in the North. The SamKnows project and the mapping initiatives established by ISED could be accompanied with additional sources to strengthen the base of empirical evidence. As Hambly and Rajabium (2021)⁸ suggest:

⁶ Submission to CRTC 2020-367 filed by Sahtú Renewable Resources Board, Gwich'in Tribal Council, Inuvialuit Regional Corporation, Tłı̨chǫ Government, Smart Communities Society NWT, and University of Alberta.

⁷ Ibid.

⁸ Hambly, H. & Rajabium, R. (2021). "Rural Broadband: Gaps, maps and challenges", *Telematics and Informatics*, 60(1): 1-18. Available at: <https://doi.org/10.1016/j.tele.2021.101565>

“Rural broadband data may be better generated and directly analyzed within regional initiatives like SWIFT, and aggregated to the national level, rather than a top-down national broadband mapping approach. In this respect, local and dynamic elements can be taken into account in the analysis – for example, the relation of connectivity in census rural areas to the types of connections available regionally, which implicate data on urban and suburban communities...” (p.13)

“Whether or not market forces are “likely” to lead to improvements in rural connectivity and support ecosystem services, rural economies and wider social benefit are empirical questions that should be evaluated closely with better and more data, not just based on advertised or “up to” speeds suppliers claim to offer. Further rural broadband research can provide understanding critical for efficient allocation of scarce public funds, monitoring the performance of subsidy recipients, and enabling accountable service quality delivery to consumers in areas where competition is limited and market forces tend to be weak” (p.16).

22. The Commission can play a role in supporting collection of more robust data that includes user experience monitoring. This might include setting standards in QOS monitoring, and opening up opportunities for more parties to be involved in collecting and presenting empirical, publicly available data.

Affordability:

23. Affordability definitely needs to be addressed as a major issue; it is cited repeatedly by northern residents commenting in this proceeding, in the Environics Report on telecommunications services in Northern Canada⁹, and in the research conducted by NWT-based organizations.¹⁰ We therefore disagree that “Northwestel still provides residential Internet service to the North at rates that are affordable for low income Canadians” (Northwestel, para 19). Data on pricing and affordability – including data overage fees - should be thoroughly analyzed during the next phase of the proceeding.

Consultation with Indigenous Communities

24. We emphasize that telecommunications providers have a duty to consult with First Nations and other Indigenous communities before undertaking work on their lands. We note that Northwestel acknowledges that it “operates on the traditional territories of First Nations,

⁹ Environics Research. *Research on Telecommunications Services in Northern Canada*. November 4, 2020.

¹⁰ Submission to CRTC 2020-367 filed by Sahtú Renewable Resources Board, Gwich'in Tribal Council, Inuvialuit Regional Corporation, Tłı̨chq Government, Smart Communities Society NWT, and University of Alberta.

Metis, and Inuit peoples” and that it commits “to moving forward in consultation and collaboration with local communities and governments.” (Northwestel, para 5)

25. However, although Northwestel has received funding for four projects under the Commission’s Broadband Fund (CRTC 2020-367), the company declined to make available their report on consultation with communities, as is required for their Broadband Fund grant. Therefore, there is no publicly available information regarding the details of Northwestel’s consultations with these communities.

Other Issues

26. We reserve the right to comment on other topics including regulation of satellite internet services, price caps and local service subsidies during future stages of this proceeding.
27. Finally, we believe that the Commission should not be deterred by Northwestel’s threats that Third Party Internet Access (TPIA) or any other changes to the current regulatory framework “... could very likely result in us choosing not to invest despite the existence of Commission subsidy” (Northwestel, para 15).
28. There are other providers willing to apply for these funds and to invest in facilities to provide broadband services in the North. As we pointed out in our Final Reply Comments to CRTC 2019-406: If public dollars were awarded directly to the Indigenous community and regional networks instead of the “larger provider” then appropriate decisions could be made effectively addressing local and regional network requirements before providing the funding to upgrade the larger provider's network needs. This model supports the First Mile approach to funding and network development instead of placing these communities as the last point of service development in the ‘last mile’ delivery model used by the larger providers.¹¹
29. We thank the Commission for the opportunity to participate, and intend to provide more detailed comments in future submissions.

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¹¹ CRTC 2019-406. Final Reply Comments of the First Mile Connectivity Consortium, March 8, 2021, para 11.