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March 9, 2017

**Submitted Electronically**

Ms. Danielle May-Cuconato  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

**RE: Response to Request by Northwestel for Forbearance from the Regulation of Wholesale Connect Service in Communities Served by the Mackenzie Valley Fibre Link**

Dear Ms. May-Cuconato:

The First Mile Connectivity Consortium (FMCC) files the attached Comments regarding Northwestel's Application for Forbearance in the Mackenzie Valley Region.

The FMCC is an incorporated independent, not-for-profit national association. Our members are First Nations Internet service providers – what we call “community/regional intermediary organizations” serving First Nation communities and their residents. 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.

The FMCC is seeking means to ensure long-term access to reliable and affordable broadband in northern Indigenous communities, with the engagement of regional and local providers including Indigenous communications organizations in the provision of services for these communities.

We want to ensure that regulatory policies guarantee an even playing field for all parties working in the telecommunications sphere, including local and regional organizations, and that prices are affordable for residents of these communities.

Sincerely,

Rob McMahon  
Coordinator, First Mile Connectivity Consortium  
[info@firstmile.ca](mailto:info@firstmile.ca)

## Introduction

1. The FMCC is an incorporated, independent not-for-profit national association. Our members are First Nations Internet service providers – what we call “community/regional intermediary organizations” – serving First Nation communities and their residents. 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.
2. Below we provide comments on Northwestel’s application for forbearance from the regulation of its ‘Wholesale Connect’ service. FMCC is concerned that the Commission’s approval of Northwestel’s forbearance request could limit the accessibility and affordability of such wholesale bandwidth services for communities and community-based ISPs operating in the Mackenzie Valley over the long term.
3. FMCC member organizations have historically faced both successes and challenges concerning access and affordability of similar wholesale bandwidth services. We are commenting on this proposal to support the interests of local and regional organizations operating in the Mackenzie Valley and the NWT to develop and manage community networks in the long term.

## Forbearance

4. The *Telecommunications Act* states that the Commission may forbear from regulation “[w]here the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition **sufficient to protect the interests of users...**”<sup>1</sup> (emphasis added). As explained below, we believe that the forbearance requested by Northwestel will not adequately protect the interests of users in the communities where its Wholesale Connect service is offered.
5. We also note that the Basic Services decision (CRTC 2016-496) stated...“the Commission will perform a fact-finding exercise to collect more information on the availability of transport services to underserved areas, and will not re-examine the forbearance frameworks for these services at this time” (para 252). We think there should be no consideration of regulatory forbearance of services in the NWT until the Commission has collected and analyzed this information for all the underserved communities of the NWT.

## Northwestel’s relationship to the MVFL

6. Northwestel characterizes the situation as one in which a new competitor (i.e. the Mackenzie Valley Fibre Link, or MVFL) has entered the field within the relevant

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<sup>1</sup> *Telecommunications Act*, Section 34(2)

geographic markets, which it defines as the communities served by the MVFL. However, Northwestel appears to be competing with itself because the company plans to provide services on both the Mackenzie Valley Fibre Link (MVFL) and its existing microwave network. Further, Northwestel is a partner in the MVFL and has a 20-year contract to operate and maintain the MVFL.<sup>2</sup> Northwestel provides more detail in its application:

“Northern Lights General Partnership (‘NLGP’) is a partnership between Northwestel Inc., and Ledcor. NLGP was the successful bidder of the GNWT’s competitive bid process to design, construct, operate and maintain the MVFL. NLGP and GNWT entered into a Project Agreement under which NLGP agreed to design and build the System and to operate and maintain the System for a period of 20 years after the service commencement date of the System”.<sup>3</sup>

7. The essence of Northwestel’s position is that, because the MVFL will offer overlapping service at much lower prices than Northwestel can provide through Wholesale Connect in certain communities, the Commission should unconditionally forbear from regulating the Wholesale Connect service where there is an overlap. We question the extent to which this can accurately be described as a competitive market, for the following reasons.
8. First, the MVFL is maintained and operated on behalf of the Government of the Northwest Territories (GNWT) by the NLGP, which is a collaboration between Northwestel and Ledcor. On its face, this relationship casts significant doubt on whether Northwestel and MVFL are real “competitors”; in our view, it more closely resembles a relationship between affiliates.
9. Second, although the Government of the Northwest Territories is a sophisticated buyer who selected the NLGP to operate and maintain the MVFL under to a competitive bidding process, the criteria are used to determine the rates at which wholesale access to the MVFL will be provided, and indeed the rates themselves, are not transparent to the public. It also is our understanding that the GNWT, as a non-dominant carrier, is not required to file tariffs for service provision over the MVFL. In light of the present application, which focuses on the inability of Northwestel’s Wireless Connect service to compete due to the economics of MVFL’s fibre transport network, it appears that the MVFL will be in a dominant position going forward, with a wholesale pricing model that is not available for public scrutiny.
10. Third, Northwestel states that the rates for the MVFL are set by the NWT government: “... it is important to note that the rates, terms and conditions of all MVFL services sold by NLPG are set by the GNWT. Northwestel has no control or authority to set MVFL service rates, terms, or conditions. NLPG is acting as a sales agent on behalf of GNWT. All MVFL service contracts are between the GNWT as

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<sup>2</sup> See: <http://mvflproject.com/project-details/>

<sup>3</sup> Request by Northwestel for Forbearance From the Regulation of Wholesale Connect Service in Communities Served by the Mackenzie Valley Fibre Link. Note 3, February 6, 2017.

signatory and the end customer”.<sup>4</sup> Although the GNWT is ultimately responsible for establishing the MVFL’s service pricing, we note that it does so within economic constraints of terms offered by the NLGP. These rates would have to be designed to cover the costs of Northwestel’s operation and maintenance contract. Therefore, Northwestel’s revenues for these services must necessarily be included in the prices set by the GNWT.

### **Pricing: Lack of Transparency for Competing Services Used to Justify Forbearance**

11. Northwestel states that its existing Wholesale Connect service cannot compete with the new MVFL service because the current MVFL rates are lower than the proposed new rates. However, the MVFL rates are redacted in the publicly available version of the company’s application. Further, prices are not publicly accessible on the websites of the MFVL or the GNWT.<sup>5</sup>
12. We submit that the rates for the MVFL which are set by the GNWT, a government body, should be publicly available. It is not possible to evaluate Northwestel’s claims about MVFL’s prices without this information. Further, this information is pertinent for users and local ISPs.
13. Any clauses with the 20-year agreement between GNWT and NLGP preventing the public disclosure of rates and charges should also be removed so that other network providers and the public are able to ensure transparency for competing services and their use of the MVFL.

### **Pricing: Reductions without Forbearance**

14. Northwestel has filed revised Wholesale Connect rates as required by CRTC Decision 2016-443. The new rates have been reduced by more than 57 percent per month for 10 mbps and 62 percent per month for 50 mbps<sup>6</sup> (although Northwestel has filed an application to request more limited reductions).
15. We note that these reductions are being implemented for all Wholesale Connect sites *without* regulatory forbearance.

### **Forbearance: Implications in addition to Pricing**

16. **Fairness:** Northwestel is seeking unconditional forbearance. We believe that, at the very least, the Commission should refrain from forbearing from its 27(2) power to address issues of unjust discrimination and/or undue preference. This situation, in

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<sup>4</sup> Request by Northwestel for Forbearance From the Regulation of Wholesale Connect Service in Communities Served by the Mackenzie Valley Fibre Link. Note 3, February 6, 2017.

<sup>5</sup> [www.mvfl.com](http://www.mvfl.com) and [www.gov.nt.ca/newsroom/news/southern-section-mackenzie-valley-fibre-link-mvfl-now-operation](http://www.gov.nt.ca/newsroom/news/southern-section-mackenzie-valley-fibre-link-mvfl-now-operation)

<sup>6</sup> Request by Northwestel for Forbearance From the Regulation of Wholesale Connect Service in Communities Served by the Mackenzie Valley Fibre Link. Attachment 3, Abridged Version. February 6, 2017.

particular, calls for the appropriate retention of this power, in light of the relationship between Northwestel as both a.) a backhaul provider to the MVFL, and b.) a retail provider competing in the affected markets. The MVFL pricing should remain subject to these prohibitions in order to protect downstream providers from potential abuse of dominant position by Northwestel and/or the MVFL against competitors, for instance by favouring its affiliated ISPs or other telecom service providers.

**17. Redundancy:** If the Commission deregulates the Wholesale Connect service, will Northwestel be likely to eliminate this offering in the MVFL communities? Would Northwestel eventually propose to shut down the microwave network leaving the affected communities with only one communication link to the south? There is value in redundancy. As well, across the McKenzie Valley, smaller communities, homes and businesses presently without access to the MVFL still require access to Northwestel's microwave network and must be protected to ensure access to affordable and accessible network services.

## **Conclusion**

18. In conclusion, we are definitely in favour of competition in rural and remote regions, as long as it is fair to all parties that could provide required services. We also support policies that are designed to foster investment in broadband infrastructure in Northern, rural and remote regions. However, we do not believe that granting forbearance as Northwestel has proposed would further these goals.

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