



***"We need to plan holistically and not just in these little Band-Aids of this subsidy here and this Infrastructure Canada grant and that Industry Canada grant and this CRTC grant. We need a coherent plan for the whole thing."***

*Margaret Hollis, speaking for the Government of Nunavut on October 4, 2011, before the CRTC as part of the hearing initiated by Telecom Notice of Consultation 2011-302, "Review of price cap regulatory framework for Northwestel Inc. and related matters", which proceeding led to the issuance of Telecom Regulatory Policy 2011-771*

February 6, 2013

*Filed electronically*

Mr. John Traversy  
Secretary-General  
Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**RE: Telecom Notice of Consultation CRTC 2012-669, "Review of Northwestel Inc.'s Regulatory Framework and Modernization Plan" ("TNC 2012-669") – Intervention of the SSi Group**

Dear Mr. Traversy;

1. In accordance with the procedure established by the Commission in TNC 2012-669 and letters dated January 25 and February 4, 2013, the SSi Group ("SSi") is pleased to submit this intervention as part of the holistic review to examine the communications needs for Canada's North.
2. One of the first Internet service providers in Northern Canada, SSi has deployed and today operates satellite transport and broadband wireless infrastructure in all 25 communities of Nunavut and 26 communities in the Northwest Territories.
3. In June of 2012, SSi was registered by the CRTC as a proposed Competitive Local Exchange Carrier ("CLEC") and authorized to complete arrangements to allow us to provide local switched voice services as a CLEC. We are working to complete those arrangements in the North.
4. As SSi offers broadband wireless service across much of Canada's North, and as we are working to implement local network interconnection and operate as a CLEC in Northwestel's incumbent serving territory, we have an interest in the proceeding initiated by TNC 2012-669. SSi wishes to be considered as an intervener in this proceeding and to appear at the scheduled public hearing, by preference in Whitehorse on June 19, 2013.



## **A. Introduction and Summary**

5. In Telecom Regulatory Policy CRTC 2011-771, Northwestel Inc. – Review of regulatory framework (“TRP 2011-771”) the CRTC stated that:

*The Commission has decided that additional regulatory oversight is required, at least in the short term. This will allow for a holistic review of Northwestel’s telecommunications services, including a plan to modernize its network infrastructure.*

6. Northwestel was effectively put on “probation” by the CRTC and ordered to file the network modernization plan. For the first time ever, in TRP 2011-771 the CRTC also opened up the North to local telephone competition. And, in a separate decision, Northwestel was ordered to justify the extremely high wholesale rates it charges competitors for backbone connectivity services, which services are essential for the development of a dynamic and competitive local communications market<sup>1</sup>.
7. Following this, in TNC 2012-669, which initiated the present process, including the public hearings to be held in June of 2013, the Commission set out at paragraph 6 (emphasis added):

*The Commission hereby initiates a proceeding to conduct the holistic review of Northwestel’s regulatory framework, and **all** of the company’s telecommunications services.*

8. The Notice goes on to request comments on:
- i. The Northwestel Modernization Plan;
  - ii. The regulatory framework for tariffed services;
  - iii. The subsidy regime;
  - iv. The forbearance framework for local services; and
  - v. Services used by competitors.
9. SSI notes that, based on information filed to date by Northwestel – i.e. the amended Modernization Plan dated January 16, 2013 – and despite the Commission’s goal behind this current proceeding, there has so far not been a “holistic” focus to meet the communications needs in the North. Indeed, Northwestel is not even addressing all of its own communications services.
10. The CRTC’s objective to address in a holistic manner the means to address communications needs in the North – *something which is vital at this juncture, and will increasingly be so if we are to avoid a Canadian information society of “haves” and “have-nots”* – should not be undermined by the

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<sup>1</sup> Telecom Decision CRTC 2012-4, “SSi Micro Ltd. – Application regarding Northwestel Inc.’s backbone connectivity services”.

reaction of Northwestel, whose “modernization” plan is decidedly not holistic, nor particularly modern.

11. The key facets of SSi’s intervention can be described as follows:

- i. A truly holistic approach and vision needed: The Commission has concluded that the regulatory framework in place for the North failed to produce expected benefits of choice, reliability and innovation for northern consumers. As the “old ways” of doing things do not work, a new and truly holistic approach is needed to ensure the delivery of affordable and sustainable broadband in the North, and to meet the communications needs of Northerners going forward. This goes far beyond the ability to stream video entertainment or have 3G/4G wireless access. Essential services such as health care, education, banking, policing, emergency response and business support all require a coherent broadband plan for the future. To ensure broadband access is available for all Northern consumers in a sustainable fashion, backbone services – the satellite and fibre transport that link Northern communities to the rest of the world – must be affordable.
- ii. “It’s the transport ...”: SSi recognizes the importance of all the items raised for review in TNC 2012-669. However, we believe the key for a revised regulatory framework will be to focus on long-term solutions for affordable backbone connectivity and the delivery of broadband in the North, within a dynamically competitive local telecoms sector. In this regard, SSi is proposing that a “Utility Backbone” regulatory approach be implemented to ensure open and fair access to the essential “backbone” that connects the North to the rest of the world – and to ensure that dominance in transport infrastructure is not used to constrain downstream retail markets. This will encourage greater choice, innovation and investment in the Northern communications market.
- iii. “Empower the consumer” – The current regulatory framework continues to provide an exclusive contribution subsidy for Northwestel to deliver local phone service, yet even the President of Northwestel recognizes that *“The home phone is becoming a bit of a way of the past”*<sup>2</sup>. The current contribution system must be reformed. Broadband must be recognized as an essential service in the North, part of one’s “basic service”, and must become eligible for contribution subsidies. And as the Commission has previously implemented, the consumer of communications - residential, government or business - should be empowered and able to select and transfer any applicable subsidy to the carrier providing the local service package that is most suitable and attractive.

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<sup>2</sup> Mr. Paul Flaherty cited in “Northwestel scales back planned upgrades”, Yukon News, October 22, 2012



## **B. Modernization Plan**

### ***Broadband is essential***

12. As a backdrop to SSI's Intervention, SSI would like to underscore the importance, indeed, the essential nature, of telecom services to the North, with broadband being an integral component of that essential service.
13. SSI's Final Argument submitted in response to Telecom Notice of Consultation CRTC 2011-302 "Review of price cap regulatory framework for Northwestel Inc. and related matters" ("TNC 2011-302"), stated at paragraph 17:

*A holistic view of the market cannot ignore the importance of broadband. As set out just the week before last by U.S. Federal Communications Commission Chairman Genachowski:<sup>3</sup>*

*"[The] harm from not having broadband—the costs of digital exclusion— already high, are growing every day.*

*"The costs of this broadband gap are measured in jobs not created, existing job openings not filled, and our nation's competitiveness not advanced. The broadband divide means economic opportunities denied for ordinary consumers who lack broadband access; educational opportunities diminished; health care access reduced; and public safety compromised."*

14. It should also be noted that by 2010 the FCC had already established a target for broadband service of 100 Mbps per home for at least 100 million homes, representing over 80% of US households:<sup>4</sup>

*Goal No. 1: at least 100 million U.S. homes should have affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second.*

15. Canada does not have such a coherent or aggressive overall policy goal for broadband. The CRTC's objective of 5 Mbps per home as a universal service target clearly pales in comparison.<sup>5</sup>

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<sup>3</sup> From "Connecting America: A Plan to Reform and Modernize the Universal Service Fund and Intercarrier Compensation System", As Prepared for Delivery, FCC Chairman Julius Genachowski, October 6, 2011, Washington DC, see: <http://www.fcc.gov/document/genachowski-universal-service-fund-reform>

<sup>4</sup> Connecting America: The National Broadband Plan, FCC, March 2010, page 7. Note: US 2011 population was approximately 312 million and there are 2.6 persons per household per the US Census Bureau, meaning there are approximately 120 million households in the US.

<sup>5</sup> One recommendation of the Broadband Commission for Digital Development, launched in May 2010 by the International

16. The gap has grown even larger with other recent considerations: the FCC has now initiated a “Broadband Acceleration Initiative” and the “Gigabit City Challenge” to stimulate development of at least one city per State with Gigabit per second speeds (i.e. 10 times the 100 Mbps objective).<sup>6</sup> This recognizes the increasing needs for speed given continued increases in Internet usage, connections of multiple devices per home and increasingly data-rich content.
17. To bring this back into the TNC 2012-669 proceeding, “Connectedness” is even more important in Canada’s North than elsewhere in the country, given the isolation of many Northern communities and the lack of local “bricks and mortar” infrastructure and related services typically found in the south.
18. The Internet provides a vital lifeline for the North, offering connectivity for much of daily life. Various studies have been done on the impact of broadband on the economy.<sup>7</sup> Increases in economic value due to broadband come from increased employment in ICT sectors, increased participation in the digital economy, increased use of government services, support for incoming investment, benefits to resource sector from availability of services, and increased ability to provide services such as tele-health and distance education.
19. Studies have shown that every increase of 10% in broadband penetration has a positive economic impact in the range of 1% of gross domestic product (GDP). Furthermore, speed also is reported to increase the impact - by another 0.3% for each doubling of Internet access speed.<sup>8</sup>
20. In fact these benefits go to the very heart of the impetus for the present holistic review, as set out by the Commission at paragraph 2 of TNC 2012-669:

*The Commission also recognized that telecommunications is essential to the North, in terms of providing opportunities for people residing in remote areas, supporting Arctic sovereignty and national security, developing resources, and ensuring access to services similar to those available in the South.*

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Telecommunication Union (ITU) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), is that all countries should have a national broadband plan or strategy or include broadband in their Universal Access / Service Definitions by 2015. See: Open Letter from the Broadband Commission to the G20 Leaders Meeting, June 2012.

<sup>6</sup> FCC Release January 18, 2013

<sup>7</sup> Per Lemay-Yates Associates Inc.; for example, in “The Development Impact of Broadband”, World Bank, *infoDev*, June 2009, Figure 1 shows that for every 10 percent increase in penetration of broadband, GDP per capita in high-income economies grows by 1.21%. For low and middle-income economies the impact is higher at 1.38%. More recently in a presentation by IADB Broadband Platform representative, Americas Spectrum Management Conference, Washington DC, October 23, 2012, the impact was identified as 3.19%.

<sup>8</sup> Per research conducted by Lemay-Yates Associates, based on references cited above.

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21. SSI fully concurs with the Commission's view of the importance of telecom and broadband communications to the North. And this is a view that is echoed by many Northern stakeholders. For example:

*"Broadband services are actually the most critical to the smallest communities. [...] When we encouraged the initial broadband investments [...], we insisted that every resident living in any Nunavut community – no matter how small or remote – be able to access broadband services at the same quality and the same price."*<sup>9</sup>

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*"As a resident of the North for the last 19 years and business owner for the last 8 years, Internet has become an essential part of our daily lives. What's Up Yukon magazine has a network of home based offices, and Internet is essential to our production and growth. We are a well-respected company receiving many awards [...]. It is the face of our company on YTG Economic Development trade show banners with the quote " We may live in the Yukon but we're connected to the world", referring to the fact our company is largely reliant on Internet services - but we are also saying substantive, grass-roots economic development in Yukon is a true possibility."*<sup>10</sup>

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*"It is increasingly well understood that the availability of broadband influences socio-economic development. The benefits of easy access to broadband are felt throughout the economy and in many aspects of people's lives: in the education of children and adults, in cultural expression and in the health of a community. And we shouldn't discount the role of social media for communities. Anyone who believes that the social implications of ICT are trivial in Nunavut should look at the Feeding My Family Facebook page and the way it has mobilized public opinion."*<sup>11</sup>

22. A truly forward looking modernization plan for the North – one focused on attaining and maintaining full broadband penetration, with "world class" speeds in a sustainably affordable fashion – could be expected to provide economic benefits in the range of 2.5% to 3% of GDP. *This would represent in the range of \$160 million in annual economic impact for Northern Canada.*

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<sup>9</sup> Darrell Ohokannoak, Chair, Nunavut Broadband Development Corporation (NBDC), 2011.

<sup>10</sup> Tammy Beese, Publisher, Beese Entertainment Publishing, Whitehorse, August 8, 2012.

<sup>11</sup> Bob Long, Deputy Minister of Economic Development and Transportation, Nunavut, October 31, 2012.

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23. The increasing need for speed to capitalize on broadband and the heightened importance of connectivity to Canada's North stand in stark contrast in particular to Northwestel's proposed "Modernization" Plan.
24. Put another way, vividly expressed by the Government of Nunavut in its presentation to the Commission in October of 2011 as part of the TNC 2011-302 process, in assessing Northwestel's future plans for Nunavut:<sup>12</sup>

## Northwestel's Plan for Dealing with Current Unmet Need and Expected Explosive Growth...

Provide "call waiting" in one more community

Raise rates

Maintain its monopoly

Maintain the wholly unacceptable bandwidth and service levels

while demand continues to grow

25. As noted above, the CRTC's objective to address telecommunications needs in the North in a holistic fashion – again, something which is not only vital at this juncture, but will increasingly be so – should not be undermined by the reaction to date of Northwestel, whose "modernization" plans have been decidedly not holistic ... nor particularly modern.

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<sup>12</sup> Submission of the Government of Nunavut, filed as part of CRTC TNC 2011-302, Oral Presentation, October 4, 2011, slides 27 and 28.

26. SSI finds no comfort in reviewing the latest iteration of Northwestel's Modernization Plan – albeit most of which was filed in confidence – that anything has changed or will change for the better.

***“The broadband emperor has no clothes”***

27. Despite the title “modernization”, Northwestel does not even pay lip service to the CRTC's relatively modest universal broadband service objective of 5 Mbps.

28. At paragraph 57 of the Plan, Northwestel states, concerning satellite-served communities that *“the Company can only commit to Internet speeds of 1.5 Mbps down and 384 kbps up.”* And Northwestel then goes on at paragraph 58 to suggest that any improvement to broadband services – terrestrial or satellite – is *“contingent on the Company's successful obtainment of third party funding”*, without providing any long-term plan or proposal for how that may be sustainably attained.

29. According to Northwestel's paragraphs 57 and 58, there is in fact no real objective for broadband service speeds, nor even a commitment to address expansion of broadband deployment. Put another way: *“the broadband emperor has no clothes”*.

***Wrong focus***

30. Rather than address key investments that would help modernize Northern telecommunications, the main focus of the Northwestel plan is on items such as “Advancements in wireless services”. These are summarized at paragraph E15 as meaning the deployment of 3G wireless access technology in up to 67 Northern communities, in addition to the 16 already served by Bell Mobility and Northwestel today. (Of note: Attachment 1 to the Modernization Plan refers to “Northwestel's Wireless Services” being upgraded to 3G even though many communities – including Whitehorse, Yellowknife and Iqaluit – are offered wireless service by Bell Mobility. It is not clear in Northwestel's Modernization Plan if Bell Mobility or Northwestel will be receiving funding for the proposed wireless access infrastructure upgrades.)

31. While exactly which communities are included in the “modernization plan” and in the “contingent” group is not known, since the information was filed in confidence, deploying 3G access technology to 67 communities is certainly in many cases nothing more than a plan to overbuild the existing already modern local access facilities put in place by competitors such as SSI. SSI has broadband wireless infrastructure in place today in 51 Northern communities. And SSI's broadband wireless system is capable of accessing online, on-demand offerings – i.e. it is already more advanced than Northwestel's network in most of SSI's Northern communities.



32. And it also appears that some communities have in fact been “un-modernized” by Northwestel in order to show them as being modernized now.
33. In the first Northwestel Modernization Plan filed on July 3, 2012, Attachment 1, Yellowknife, Whitehorse, Hay River and Fort Smith were identified under “Current Wireless Status” as already having 4G wireless. In the updated Plan filed by Northwestel on January 16, 2013, these communities are now shown with downgraded status as “3G, 4G”. Also, Iqaluit, shown in the July 3, 2012 plan as having 3G is shown in the updated plan as currently having only 2G wireless.
34. Going further, we refer the Commission here to SSi’s August 9, 2012 intervention to Broadcasting Notice of Consultation CRTC 2012-370 (“BNC 2012-370”), concerning Bell’s application to acquire Astral Media, where we stated at paragraph 70:

*“[...] Bell and Northwestel are proposing to build out local wireless infrastructure in the North but with no sustainable plan to provide affordable bandwidth. What happens when you build a network and no one can afford to use it?”*

35. We described in detail in our August 9, 2012 intervention the importance for Northern Canada of quality backbone transport at sustainably affordable pricing, as well as the lack of a sustainable proposal for same put forth by Northwestel at that time in its first attempt at a Modernization Plan. For example:

*“57. The Arctic Communications Infrastructure Assessment (ACIA) Report, released by the Project Steering Committee of the Northern Communications and Information Systems Working Group in April of 2011 ([www.aciareport.ca](http://www.aciareport.ca)) stressed that there is a severe shortage of affordable bandwidth in the North. While there may be more capacity available for purchase, very few can afford to purchase what they need.*

*58. The vast majority of Northern communities already have access to broadband Internet; while Bell and Northwestel propose that the “Astral Component” will allow upgrades to the wireless Internet technology that Bell makes available in the North, Bell and Northwestel make no mention of how using the Internet will become any more affordable to Northern consumers.*

*59. On the contrary, Northwestel actually admits that:*

*[...] the major limitation on what the Company can offer subscribers in any given community is the costs of backhaul transport capacity, particularly in satellite communities.”<sup>13</sup>*

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<sup>13</sup> Paragraph 55 of Northwestel’s July 3, 2012 network modernization plan

36. With Northwestel's second attempt at a Modernization Plan, filed on January 16, 2013, we have a sense of *déjà-vu*, in terms of the company making proposals for access network upgrades, with no plan for sustainability.
37. That is, regardless of the "2G, 3G, 4G" shell game, local wireless access deployment is the wrong focus for investment and in particular for ongoing contribution subsidies. Northwestel itself identifies (as it did in its July 2012 Plan) what the main impediment to the "modernization" of Northern telecommunications is: the cost of backbone transport – NOT local access.
38. At paragraph E17 of the January 16 Modernization Plan Northwestel sets out that: "**the major limitation** on what the Company can offer broadband subscribers in any given community is the cost of backhaul transport capacity, particularly in satellite communities and this is a major cost constraint on service deliverables" (emphasis added).
39. SSI fully agrees that backhaul provided by Northwestel is the major limitation for development of broadband in the North. This was in fact the basis for and premise of SSI's June 23, 2011 Part I Application to the CRTC concerning Northwestel's backbone connectivity services (the "2011 Part I Application").
40. Also set out by SSI in our presentation to the Commission in September 2012 at the public hearing associated with BNC 2012-370:

*The real issue to address is the very high cost of bandwidth transport in the North, provided either via satellite or across Northwestel's monopoly terrestrial backbone. I do not need to remind the Commission that the pricing of Northwestel's monopoly supplied backbone connectivity is another contentious file before you, and it is a file directly tied to the ability of Northern consumers to affordably access Canadian programming online.*

*The bottom line, it is simply not affordable today for Northern consumers to take advantage of "over-the-top" online streaming of content services, regardless of the "last-mile" access network."*

41. Put another way, to paraphrase James Carville, former President Clinton's advisor, as to what matters: "*It's the transport...*".<sup>14</sup>

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<sup>14</sup> Reality Check Point #4: What makes this sustainable? From "Reality Check: A Frank Assessment of Northwestel's Network Modernization Plan", available at [www.ssimicro.com](http://www.ssimicro.com). Note: James Carville in 1992 coined the phrase, "It's the economy, stupid" as a constant reminder to the candidate to focus on the issue voters cared about most (see [http://topics.nytimes.com/topics/reference/timestopics/people/c/james\\_carville/index.html](http://topics.nytimes.com/topics/reference/timestopics/people/c/james_carville/index.html)).

42. Northwestel egregiously overcharges for use of its backbone transport network, thwarting development of competitive alternatives in the downstream “retail” communications market. As set out at paragraph 55 of SSI’s 2011 Part I Application into Northwestel’s discriminatory backbone connectivity pricing:

*“There is no near-term solution to facilities-based alternatives to Northwestel for backbone connectivity services and no alternate provider of terrestrial bandwidth supporting backhaul connections to southern Canada”.*

43. Going back a little further in time, SSI highlighted the following Northern reality in the October 17, 2011 final argument submitted as part of the TNC 2011-302 proceeding:

*17. In the past, a phone line ran across a pair of copper wires put in place specifically for the purpose of providing voice telephony. Today, the access facility – copper, coax, wireless or fibre – supports multiple services, notably Internet, phone service and television delivery. “Local” service can no longer be dealt with in a regulatory “silo”. Indeed, a continued insistence on maintaining the silos can only result in stifling innovation and limiting consumer choice.*

[...]

*19. In addition, a key component of broadband delivery – and by extension, local telephone service – is the backbone connection to the rest of Canada and the world.*

*20. There is one terrestrial broadband backbone in the North and Northwestel owns it. This is unlike the rest of Canada where there are typically at least two providers of backbone connectivity, even in small markets. In the North there are no competitive alternatives to Northwestel.*

*21. Northwestel is thus in the unique position of operating at the retail level in the provision of all forms of “local” services in the North while being the only provider of terrestrial backbone connectivity out of the North.*

*22. In this respect, the Commission should not look at the Northern environment without considering the impact of backbone connectivity services. Northwestel cannot be allowed to use its control over the backbone to stifle competition in the North.<sup>15</sup>*

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<sup>15</sup> The issues of undue preference and discriminatory pricing by Northwestel in its monopoly-supplied backbone connectivity services are the subject of a proceeding initiated by the June 23, 2011 Part 1 Application by SSI. The Part 1 Application came up repeatedly during the two days of hearing in Yellowknife, indicating the relevance of Northwestel’s backbone connectivity services to the matters being dealt with in TNC 2011-302. Consider, for example, the following question posed at the Yellowknife Hearing on October 5, 2011 by Commissioner Simpson and the response by SSI:



44. Given that Northwestel is the only facilities-based provider of terrestrial capacity for backhaul in the North and given that backhaul is the major limitation on development of broadband, the main focus of any truly holistic modernization plan for the North should be on development of affordable broadband backbone facilities.
45. Instead of taking the lead and focusing its plans on this key area, Northwestel only plans to “set aside” an undisclosed amount of capital funds to participate in projects “led by third parties” and

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2481 *That said, my question is this. Why is competition not in its present form existing within Whitehorse?*

2482 *I would like to go back and again ask SSi where the Yukon is fitting into their agenda prior to this hearing, as to why they're not in there now, because it seems to be a sweet spot or a commercial market they could be making a living in. [...]*

2516 *Mr. Philipp, I know that you touched on this point yesterday, but one more time with feeling, if you could tell me what your view is on why you're not in the Yukon now. Just illuminate me, please.*

2517 *MR. PHILIPP: Certainly, Commissioner.*

2518 *I have great experience actually in Whitehorse as we do have a little bit of -- we have spent a little bit of time in the market, in looking at the market, and Whitehorse is certainly on our radar and is a market that, as you pointed out, would be advantageous for us to expand services into.*

2519 *For us it's really a matter of where do we place our investment and where can we get fair access or access to a fair and competitive playing field.*

2520 *Obviously, the Yukon has invested or NorthwesTel. Canada has invested a lot of money in building fibre and terrestrial networks into the Yukon and the Northwest Territories. Unfortunately, those networks are not viable for any competitor to run across because the cost of those networks at the wholesale level is exorbitant.*

2521 *In fact, that is the basis of our Part 1 application, is that it is impossible for us or any other ISP -- and we are the largest ISP -- to compete with NorthwesTel when forced to pay their exorbitant backbone pricing. And it is exorbitant, as you will see in the Part 1.*

2522 *In the case of the Yukon, we have worked with Polarcom and Whitehorse TV before they were acquired by NorthwesTel, and I believe in the case of Polarcom there was also a Part 1 application filed by them years ago in -- what's the word -- Part VII at the time, I guess, in complaint of the backbone pricing then.*

2523 *So I will say that it would be impossible for us or anyone else to compete in the Yukon either in voice because there's no local competition services or in Internet or voice over IP because the backbone pricing (a) is exorbitant and (b) comes with no quality of service guarantees, therefore making it impossible for even a small VoIP provider to be able to offer some competitive service.*

2524 *So the Yukon, we would love to be there and all we ask for is a fair and level playing field to be able to access that network and that customer base on equal terms that NorthwesTel have, and that currently is not possible.*

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furthermore is “not sure exactly which project will come to fruition.” Northwestel even goes on to identify the Commission’s objectives as being “unrealistic and unreasonable”.<sup>16</sup>

46. As the incumbent monopoly facilities-based carrier in the North, this amounts to nothing more than a shirking by Northwestel of its public responsibilities.
47. Northwestel continues to be the sole provider in the North that can access subsidies (ie, contribution) controlled and managed by the Commission. This must change.
48. Northwestel’s approach to “modernization” shows it is not holding up its end of the regulatory bargain in being the ILEC and the provider of last resort, and in developing modern network facilities that support innovation, new services and competitive alternatives.
49. Looking holistically at the North means more than relabeling things and overbuilding competitors’ facilities, and it certainly means more than proposing *“little band-aids of this subsidy here and this Infrastructure Canada grant and that Industry Canada grant and this CRTC grant. We need a coherent plan for the whole thing...”*<sup>17</sup>.
50. Furthermore, even though the company recognizes that there is *“needed capacity in many communities”*, Northwestel essentially has provided no commitment whatsoever to provide it, since *“projects are dependent on partnering with third parties”*.<sup>18</sup>
51. So much for vision, innovation or anything close to a holistic and sustainable approach to address communications needs in the North.

### ***What is being “modernized”?***

52. There are 38 paragraphs in the Northwestel modernization plan that are redacted with claims of confidentiality, and 21 of 23 pages of the Attachments to the plan that were filed in confidence. Comments to the plan absent further disclosure have to rely only on bullet point lists and general discussion.

53. Northwestel’s list of “key projects” in the Modernization Plan is found at paragraph E13:

- Advancements in wireless services;
- Upgrading and expansion of HIS [High Speed Internet];

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<sup>16</sup> Northwestel Modernization Plan, Abridged Version, 16 January 2013, page 27, paragraphs 53 and 66

<sup>17</sup> Presentation of Government of Nunavut at CRTC Hearing in Yellowknife, pursuant to TNC 2011-302, Transcript 4 October 2011 at paragraph 1707

<sup>18</sup> *Ibid*, page 46, paragraphs 137-138

- Completion of ECF [Enhanced Calling Features];
- Strategic switch replacements;
- Upgrading transport;
- Business systems evolution;
- Satellite voice replacements;
- SR500 system upgrades;
- Local Number Portability;
- Fuel storage systems; and
- Wholesale Connect Service.

54. At a high level, without the benefit of the details that Northwestel has filed in confidence, and referring to the above list, SSI notes the following:

- *Deployment of additional wireless access infrastructure* - as set out above, SSI's view is that this is the wrong focus for a holistic and sustainable plan - and Northwestel in many cases is simply planning to overbuild existing facilities put in place or announced by competitors;
- *Upgrading and expansion of HSI and Upgrading Transport* – as noted by Northwestel, upgrades to high speed Internet are dependent on availability of affordable backbone facilities. However Northwestel does not even pay lip service to the CRTC's relatively modest 5 Mbps service objective, and there is no real commitment to upgrading transport facilities, which is all dependent on actions by and leadership of third parties.
- *Switch "modernization"* – Completion of ECF, Strategic Switch Replacements (previously referred to as "timely switch replacements"<sup>19</sup>) and Local Number Portability, while identified as three distinct "projects" all relate to the same thing: replacing aging switches, which are up to 30 years old and which should be replaced as part of the normal course of business.<sup>20</sup> Even though Northwestel filed multiple attachments – all in confidence – for these "projects", the "capex figures of each appendix are not always mutually exclusive".<sup>21</sup> The inflated appendices can only be intended to create the illusion that Northwestel is doing more than the reality demonstrates.
- *Business Systems Evolution* – This category of spending relates to spending on upgrades of information technology, including call centers and billing systems. All telecom companies require ongoing investment in IT systems and this does not constitute "modernization".

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<sup>19</sup> Northwestel Inc. Network Modernization Plan, 3 July 2012, paragraph E7

<sup>20</sup> Switch ages are identified in NWTel(SSi)07Jul11-07 Attachment 1 Revised page 1 of 1, August 17, 2011, filed in the TNC CRTC 2011-302 process, identifies switches in 2011 that were up to 28 years old at that time.

<sup>21</sup> Modernization Plan, *op.cit.*, page 16, paragraph 27

- *Wholesale Connect* – This service offering is a “project” for Northwestel only due to the 2011 Part I Application that SSI filed with the CRTC over 18 months ago. Wholesale Connect has been subject to a very lengthy Tariff process, which is yet to be complete. As indicated in Attachment 8 of the Modernization Plan, Wholesale Connect is proposed to be extended to 27 communities over the period of the Plan relative to what was initially proposed in the Tariff Notice. However, none of the new communities is planned to be served by fibre. Fourteen of the new communities will be Type B and thirteen will be Type C – i.e. served by high and low capacity microwave systems, respectively. This provides added confirmation of the lack of a commitment by Northwestel to upgrade transport facilities.

55. Northwestel’s network will no doubt be more up to date in five years than it is today with the investments noted above, as well as with the proposed satellite voice replacements, SR500 replacement and fuel storage system upgrades, all at an undisclosed level of investment that may amount to \$233 million over five years. Or maybe less.

56. Without further details, parties cannot assess the extent to which Northwestel’s plan actually “modernizes” anything. In aggregate its plan to spend \$233 million over five years – or \$46.6 million per year – represents only a modest 10% increase over historical capital spending of about \$42 million per year.<sup>22</sup>

57. And this level of spending is even in doubt: “[...] *should any of the competitive or regulatory pressures result in significantly lower revenues than the Company currently projects, it is conceivable that the Company might have to scale back CAPEX as a result... in the event that revenues are lower than expected, it may take somewhat longer than five years to deliver all the service objectives set out herein.*”<sup>23</sup>

58. Essentially the new Modernization Plan appears to be nothing more than a new name for a non-exceptional capital expenditure program, in line with what Northwestel has done in the past, but with essentially no commitment other than a commitment to and an unhealthy continued emphasis on thwarting competitors such as SSI. Northwestel does not focus on or propose how to achieve sustainably affordable backbone connectivity – and that is the major limitation to improving the quality, cost and diversity of communications services available to Northerners, and in creating an environment that encourages new investment and innovation.

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<sup>22</sup> Per analysis of Lemay-Yates Associates Inc. and based on Northwestel “Rebuttal”, CRTC Hearing held as part of CRTC NC 2011-302, Yellowknife, October 5, 2011, paragraph 26 – “Cumulative investment in the past ten years has been in excess of \$420 million”.

<sup>23</sup> Modernization Plan, *op.cit.*, page 2, paragraph E6



***What needs to be done instead?***

59. Given the lack of vision demonstrated by Northwestel, reflected in the wrong focus on overbuilding access infrastructure rather than addressing backbone transport, and in submitting a modernization plan that is really just a new name for Northwestel's capital expenditure program, it is clear that a new truly holistic approach is needed for the North.

60. While it is early in the 2012-669 process for parties to propose detailed alternatives to the present system, Northwestel itself offers two suggestions at paragraph 155 of the Modernization Plan:

*Any attempt to regulate shared infrastructure and operations would require a new regulatory framework (e.g. the creation of a split rate base), along with a determination to impose regulation on forborne services (or even non-telecom services).*

61. Consider each of these points, starting first with regulation of shared infrastructure.

62. This echoes SSI's primary concern expressed to the Commission beginning with our 2011 Part 1 Application concerning Backbone Connectivity Services. Northwestel's backbone is indeed shared infrastructure – used to support Northwestel's retail and wholesale services as well as services of retail competitors such as SSI. It is a critical essential service for every stakeholder in the North and an important tool for development of the digital economy, which should serve to benefit everyone.

63. Northwestel is the incumbent monopoly facilities-based carrier in the North, as noted above, and this is likely to remain the case over the period targeted by the Modernization Plan. As Northwestel suggests, another form of regulation for this important shared infrastructure could be warranted.

64. This could take the form of a "split rate base" approach, implying that the "Utility Backbone" portion of Northwestel's operations (and potentially other utility services) would be regulated on a different basis than its competitive retail services.

65. While only one possible solution, a Utility Backbone would imply that all competitors along with Northwestel would have open access to backbone connectivity services with the same technical parameters and at the same cost-based rates.

66. The second point in Northwestel's paragraph 155 – that the Commission would have to impose regulation on forborne and potentially non-telecom services – goes hand-in-hand with this.

67. As SSI has demonstrated time and again, Northwestel exploits its position as a retail provider by egregiously overcharging for wholesale services. The Commission agreed with SSI in Telecom Decision CRTC 2012-4 that Northwestel's V-Connect service had not actually been forborne and required Northwestel to file Tariffs and an associated cost study.



68. So, yes, SSI agrees with Northwestel that the Commission would have to re-regulate certain services, and this is entirely normal when those services are subject to monopoly supply, as is the case with Northwestel's backbone connectivity services.

### **C. Regulatory Framework for Tariffed Services and Subsidy Regime**

69. A Modernization Plan proposal was required of Northwestel, among other things, in order to facilitate the examination of the existing regulatory framework (as set out in TNC 2012-669 paragraph 13), thus regulatory issues are intertwined with the elements of the Modernization Plan. This is evident especially when considering the importance of essential monopoly supplied transport backbone facilities as discussed above.

70. Although as also noted above, it would be premature at this point in the process to provide detailed suggestions about the exact regulatory regime. Clearly, if alternatives to price cap regulation are considered, then the service basket structure would also have to be modified or replaced with a different system. For example, under a split rate base regime, which we view favourably, services would be treated differently if they were "utility" services – such as backbone transport – or "competitive" services – such as retail Internet.

71. The Modernization Plan and regulatory framework are also intimately related to the subsidy mechanism.

72. There is no doubt that building telecom facilities in the North is more expensive than the south and subsidies may be required in certain situations. However, the present subsidy mechanisms are antiquated and only provide for subsidies to flow to one player – Northwestel, regardless of whether its plans and projects are the most innovative or cost effective.

73. The current regulatory framework continues to provide an exclusive contribution subsidy for Northwestel to deliver local phone service, yet even the President of Northwestel recognizes that *"The home phone is becoming a bit of a way of the past"*<sup>24</sup>. The current contribution system must be reformed. Broadband must be recognized as an essential service in the North, part of one's "basic service", and must become eligible for contribution subsidies.

74. Under Northwestel's Modernization Plan, Northwestel and its parent company Bell are proposing to expand the scope of contribution eligible activities, BUT ALSO to perpetuate and extend their exclusivity to those subsidies, to the detriment of competitors. We noted in our August 9, 2012

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<sup>24</sup> Mr. Paul Flaherty cited in "Northwestel scales back planned upgrades", Yukon News, October 22, 2012

intervention to Broadcasting Notice of Consultation CRTC 2012-370, concerning Bell's application to acquire Astral Media that:

*Bell and Northwestel are proposing to modify the CRTC's contribution subsidy regime in order to have subsidies applied to wireless and broadband services in Canada's North. To be frank, this is an approach that SSi fully advocates, provided that the modified regime is competitively neutral: subsidies must be portable. Service providers freely set their rates and offers, and the consumer selects his or her service provider of choice, who then receives the subsidy to allow for consumer rates to be affordable.*

75. The subsidies afforded to Northwestel that are under the jurisdiction of the Commission are (1) the ongoing PES subsidy for Band H NAS, (2) the ongoing annual support for the SIP I program and (3) the implicit subsidies buried in rates paid by other carriers to Northwestel, notably via the CAT rate for long distance termination.
76. This system of subsidies requires modernization and needs to also be more "holistic". Subsidies should be used to support new and innovative service and infrastructure development – most notably to help defray the cost of delivering broadband connectivity to northern consumers – be that residential, government or business consumers. Ensuring that this occurs, and ensuring the end customer truly benefits, implies that subsidies should be portable. In other words, parties that can offer a competitive alternative to Northwestel should also be eligible to receive subsidies.
77. Competition for subsidy funding is more likely to stimulate innovation and new investment than the existing approach that embeds subsidies behind the walls of "Band H", "SIP" and "CAT".
78. There is already a "made in Canada" solution for all this. The Commission does not have to reinvent the proverbial wheel.

In this regard, SSi advanced the following in our October 17, 2011 final argument submitted as part of the TNC 2011-302 proceeding:

***"An empowered consumer is a good thing – subsidies should be "portable"***

*32. The regulatory framework should not continue to reward the "carrier of last resort" with contribution subsidies, even if the quality of service demanded of that carrier is not met and network investments and upgrades are never made.*

*33. Stepping back, from a holistic level, a non-responsive or failing "carrier of last resort" should be incited into making service improvements and investing and upgrading in infrastructure if the consumer can leave - and take the service subsidy with him or her. And not only can this*

*solution be readily implemented by the Commission, it already has been: in Telecom Decision CRTC 97-8. As was contemplated and implemented in that decision, the Commission should identify the proper amount of contribution-eligible subsidy per consumer in the North, and let the consumer select the service provider's "bill" to which that subsidy will be applied.*

*34. So, in the case of the framework for local competition in the North, SSi submits that service subsidies should not be attached to Northwestel to the exclusion of others. A regulatory framework where subsidies are not transferable serves to benefit the incumbent and punish the consumer. The consumer should be empowered and be able to select and transfer any applicable subsidy to the carrier providing the local service package that is most suitable and attractive for the consumer."*

79. In sum, to effectively allow sustainable and affordable broadband connectivity as well as competitive alternatives and facilities to develop, a reformed contribution subsidy regime must: be competitively neutral; be expanded to include subsidies for broadband connectivity; allow all consumers – residential, government and business – to gain access to subsidized broadband connectivity; allow for portability so that other operators can compete equitably with Northwestel.

80. The mechanisms are already in place for the solution – it is the policy that needs to be amended.

#### **D. Forbearance framework for local services**

81. Given the nascent state of local competition in the North it would be highly premature to consider local service forbearance anywhere in the Northern territories.

82. Many aspects of local competition are not even fully developed, including: local number portability ("LNP") and trunk side access that are not yet in place in many communities; the proposed deployment of fixed wireless switches that - if approved - would not provide for equal access (paragraph 81 of the Modernization Plan); the unknown dates of implementation and switch types per community due to extensive claims of confidentiality that impede potential competitors from planning deployment, etc.

83. In addition to specific service and capabilities that are required to support competition the forbearance framework also needs to include other measures and processes that protect consumers and competitors as competition develops. At paragraph 24 of TNC 2012-669 the Commission references key decisions that set out the forbearance framework for ILECs elsewhere in Canada.

84. Of note, for example, rules need to be put in place concerning "winback". In Telecom Decision 2006-15 at paragraph 486, the Commission set out that:

*“... an ILEC is not to attempt to win back a business customer with respect to primary exchange service or local VoIP service, and in the case of a residential customer of local exchange service (i.e. PES or local VoIP service), with respect to any service, for a period commencing at the time of the local service request and terminating three months after that customer's primary local exchange service or local VoIP service has been completely transferred to another local service provider, with one exception: ILECs should be allowed to win back customers who call to advise them that they intend to change local service provider.”*

85. In addition, elsewhere in Canada, considerable effort was expended by industry in CISC processes focusing on business processes, emergency services, numbering, access to structures, network planning and others. The forbearance framework needs to account for development of these processes, as they would apply to Northwestel as well as to safeguards such as winback rules.

86. Also, at paragraph 26 of TNC 2012-669 the Commission notes it is looking for input on a forbearance framework considering the “current and future status of local competition”. The development of future competition relies on the availability of backbone connectivity services. Local competitive alternatives – whether for PES or for other local access capabilities – rely on competitors being able to connect local areas to the rest of world in a viable cost effective manner.

87. That is, once again, “It’s the transport...”.

### **E. Services used by Competitors**

88. In TNC 2012-669 at paragraph 35 (f), the Commission requested comments from parties on:

*...whether any changes are required for services used by Northwestel’s competitors to provide retail services to their customers, including:*

- 1. whether Northwestel should be required to file tariffs setting out the rates, terms, and conditions for the provision of I-Gate service or other services required by competitors;*
- 2. whether interconnection on the basis of LIRs in Northwestel’s operating territory is appropriate in light of the expected changes to Northwestel’s network infrastructure resulting from the Modernization Plan, and, if so, when and on what basis LIRs should be established; and*
- 3. whether there are other services that Northwestel should be providing to competitors in order to facilitate the implementation of local competition.*



89. SSI's comments on these items are summarized below.

***Backbone Connectivity Services and I-Gate***

90. As a result of different processes and decisions, the Commission's treatment of Northwestel's backbone connectivity services comes with three different regulatory approaches. There are three Northwestel services that have some differences but each can be used by competitors for backbone connectivity, notably:

- V-Connect is a Layer 3 MPLS service offered by Northwestel to both retail and wholesale customers. Northwestel was required to file Tariffs for V-Connect following Telecom Decision CRTC 2012-4;
- Wholesale Connect is a Layer 3 MPLS service offered only to wholesale customers and which is under review by the Commission following Northwestel Tariff Notice 883, filed in May 2012 and not considered to be within the scope of the 2012-669 proceeding; and
- I-Gate is a managed Internet service with gateway functionality, providing Internet Service Providers (ISP) with wholesale Internet connectivity - I-Gate had been treated by Northwestel as if it were forborne, but this is now being reviewed in the present 2012-669 proceeding.

91. The three backbone services provide differing levels of functionality for wholesale customers and have different service options, however all three are similar in that they provide Internet-protocol based backbone connectivity and all three share the same underlying physical transmission facilities, consisting of Northwestel's fiber, microwave, and in some cases satellite, links.

92. The three are in the same product market, as confirmed by the Commission.

93. In Decision 2012-4 the Commission decided to require filing of Tariffs for V-Connect, which "as a result, the Commission determined that it was not necessary at that time to require Northwestel to file Tariffs for its I-Gate service."<sup>25</sup>

94. It almost appears from this that the Commission believes having a regulated price for V-Connect could limit Northwestel's ability to unduly raise or lower prices for I-Gate and take advantage indirectly of its monopoly on backbone connectivity.

95. SSI notes however that in the Tariff Notice filing for V-Connect, Northwestel filed a range of prices with the minimum price filed in confidence "due to the competitive nature of the service".<sup>26</sup>

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<sup>25</sup> TNC 2012-669, paragraph 28

<sup>26</sup> Letter from Northwestel to the CRTC, accompanying Tariff Notice 891, January 14, 2013

96. Thus, despite the Commission's ruling that V-Connect does not meet the conditions of forbearance<sup>27</sup>, and despite the subsequent confirmation of this in the rejection of Northwestel's Part 1 Application with the Commission's denial of Northwestel's request for forbearance<sup>28</sup>, Northwestel continues to pretend that there are competitive alternatives to its terrestrial backbone connectivity services and wishes to continue to price essential backbone services with impunity.
97. The only "competitor" to V-Connect that Northwestel is able to identify is its own proposed Wholesale Connect service – since "*other service providers are able to offer services in competition to the Company's V-Connect Service by utilizing the Company's Wholesale Connect Service*".<sup>29</sup>
98. The reality of the situation as described by Northwestel is in fact exactly why it is necessary for the Commission to regulate, and to require tariffs and cost studies, for all of Northwestel's backbone connectivity services. Northwestel cannot be allowed to continue to set with impunity prices at retail while controlling essential upstream services and facilities.
99. While neither V-Connect nor Wholesale Connect are considered by the Commission to be within the scope of the present proceeding, SSI submits that I-Gate falls into the same product market as confirmed by the Commission.
100. There are no competitive alternatives to Northwestel's terrestrial backbone connectivity services and parties can have no assurance that the Commission's assumption holds: that by regulating one service this constrains Northwestel in its pricing of another.
101. This is very evident since the three services also share one other common attribute: they are all subject to usurious pricing by Northwestel. As set out in SSI's Part I Application at paragraph 32:

*While backbone connectivity is only one component of cost of service, Northwestel's retail IS offerings presumably make use of the same backbone infrastructure as is used for its wholesale offerings, including I-Gate and V-Connect. Accordingly, it does not stand to reason that backbone connectivity from Northwestel would cost thirteen (13) to thirty (30) times what it costs in the south, while retail Internet services are priced at less than two (2) times the rate of equivalent retail services in the south...*

102. Northwestel makes use of the same backbone connectivity and equivalent services to provide its own retail Internet offerings. It does not stand to reason that Northwestel is able to freely

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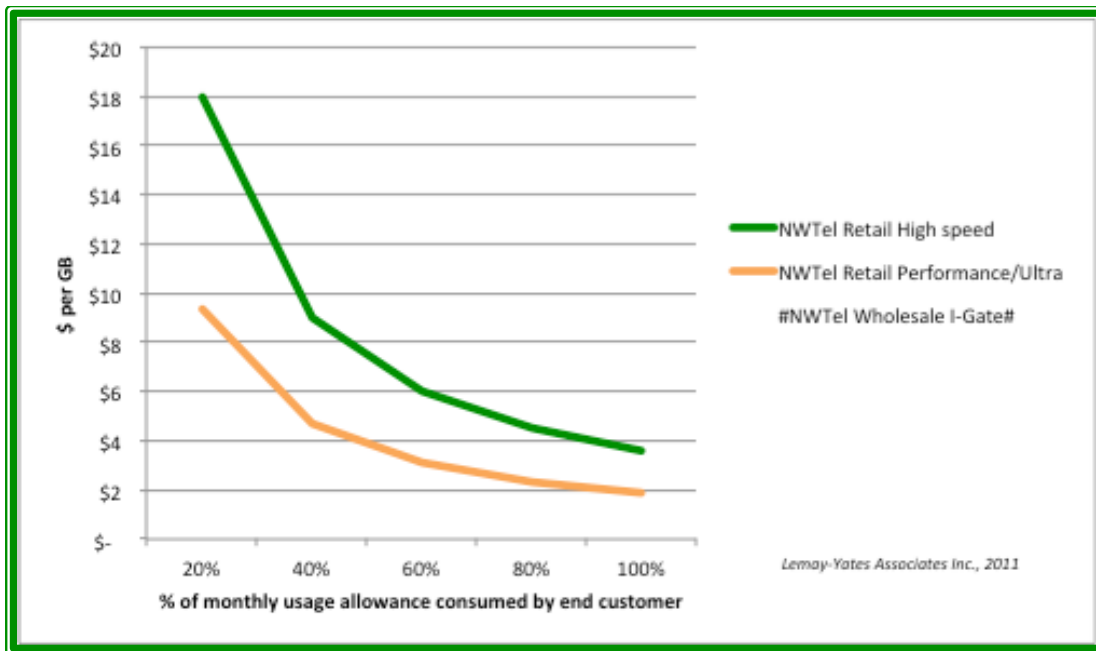
<sup>27</sup> Telecom Decision CRTC 2012-4, paragraph 20

<sup>28</sup> Telecom Decision CRTC 2012-644

<sup>29</sup> Letter from Northwestel to the CRTC, *op.cit.*, page 3

compete with SSI and other competitors at retail, while egregiously pricing services as the monopoly provider of the upstream wholesale services on which these same competitors rely.

103. SSI has long been a customer of Northwestel I-Gate service and can attest to the difficulty of competing with Northwestel at retail while being subjected to its wholesale pricing practices. The figure below, from page 15 of SSI’s Part 1 Application (abridged version), shows how pricing declines per GB as consumer usage increases (based on Northwestel pricing in mid-2011).



104. I-Gate on the other hand is relatively flat-priced across usage levels, unlike Northwestel’s retail offerings. This means that for high customer usage levels, the wholesale I-Gate price per GB can be higher than the retail price. Clearly Northwestel could not offer retail services in this way if it had to pay itself the same rates as it charges competitors for wholesale service.

105. Per SSI’s Part 1 Application, paragraph 53:

*Northwestel is in a position to “manage” and ultimately thwart competition in IS in the North. The mechanism to manage competition – high-priced, essentially flat-rate backbone connectivity – provides a mechanism to control competitor consumption and manage growth in usage since it favours competitors with lower usage; even forces competitors into lower usage plans.*

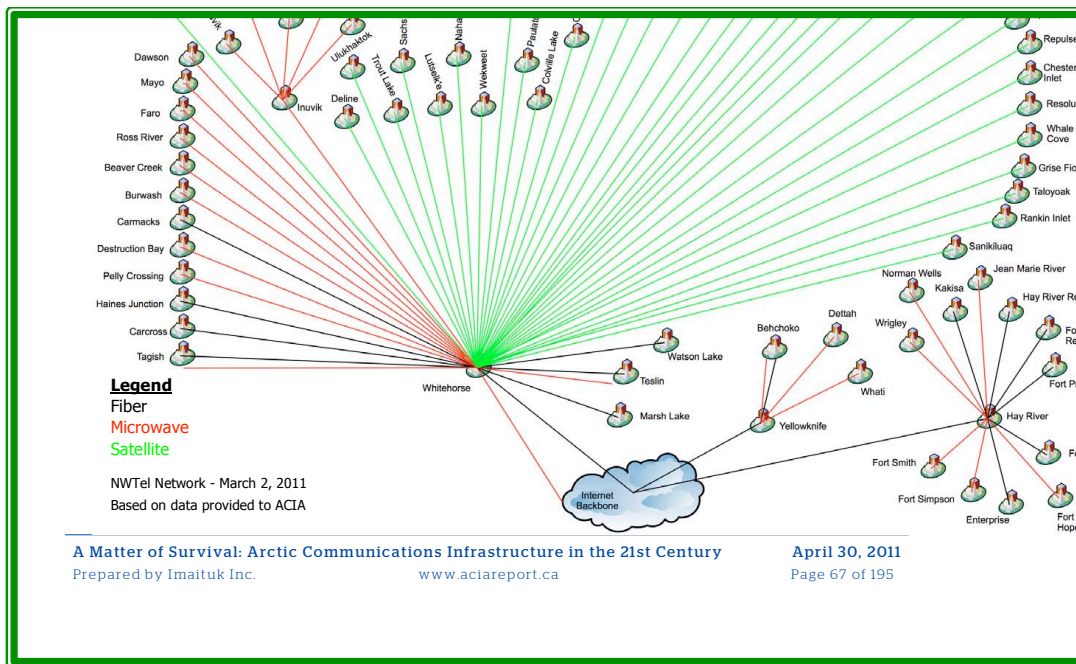


106. This issue is the same for I-Gate as it is for other backbone connectivity services, and therefore I-Gate pricing should be regulated and Northwestel should be required to file tariffs and a cost study for I-Gate for the Commission’s approval and to ensure that rates are just and reasonable.

**Local interconnection regions (LIRs)**

107. SSI has previously filed its views on LIRs as part of the process initiated in Telecom Notice of Consultation CRTC 2011-206, “Proceeding to review network interconnection matters” (“TNC 2011-206”).

108. The issues for LIRs in the North can be seen clearly in the following figure that shows Northwestel’s “logical” network – i.e. how traffic flows across Northwestel’s network.<sup>30</sup>



109. Of note, essentially all of the traffic generated in Yukon and Nunavut pass through Whitehorse where there is a connection to the south. This also applies to satellite communities in the Northwest Territories. Terrestrially served communities in Northwest Territories are connected via Yellowknife or Hay River, which are both also physically connected to the south.

110. This network structure – while clearly prone to nodal failure particularly in Whitehorse, a “modernization” issue that Northwestel does not address – implies that a competitor could

<sup>30</sup> ACIA Report, April 30, 2011, page 67



interconnect with Northwestel in Whitehorse and Yellowknife for the purpose of exchanging local-local traffic for all the Territories.

111. However, for example, this also means that a Northwestel subscriber in Cape Dorset calling a CLEC customer also in Cape Dorset would pass through Whitehorse in order for the connection to be made. This of course is how the Northwestel network appears to work, as illustrated above, for connections between its own customers located in different satellite served communities.
112. SSI believes that the service quality may not be sufficient under this double-hop satellite scenario of traffic routing.
113. In responding to Interrogatories on August 19, 2011 as part of the process TNC 2011-206, SSI set out at paragraph 28:

*...in the north there are a number of remote communities served by satellite only. In these communities, it may be that a point of interconnection between ILEC and a competing carrier will be more efficient and cost effective even if it is in a smaller area than an LIR region. This is because the backhauling of all traffic via satellite for transfer to another carrier at a remote LIR point can be costly and inefficient. It may thus be appropriate for POIs serving areas smaller than an LIR to be established in certain remote communities.*

#### **Other services used by Competitors**

114. SSI will comment further on other services used by competitors at a later date in this proceeding, as appropriate.

#### **F. Summary Responses to Commission Questions from TNC 2012-669**

115. In conclusion, and to facilitate the Commission's review of our intervention, we respond briefly below to each of the specific questions asked by the CRTC at paragraph 35 of TNC 2012-669:

*a) "Whether the Modernization Plan appropriately addresses the concerns raised in Telecom Regulatory Policy 2011-771, including the needs of northern residents"*

116. As noted above, the new Modernization Plan appears to be nothing more than a new name for the normal capital expenditure program, with essentially no commitment and with a continued emphasis on thwarting competitors such as SSI and while not focusing on the "major limitation" to development, which is affordable backhaul. On this basis, the plan will not meet the needs of Northern consumers and it is clear that more regulatory oversight is required.

b) *“Whether price cap regulation continues to be the appropriate form of regulation for Northwestel’s tariffed services, and, if not, what the appropriate form of regulation should be in order to address the concerns raised in Telecom Regulatory Policy 2011-771 and to meet the policy objectives of the Act”*

117. Northwestel is the monopoly provider of terrestrial backbone connectivity in the North and it is in the public interest to ensure that adequate investments are being made to support the large increases in data consumption that consumers of all type - residential, wholesale, government and business - in the North expect.
118. Data transmission and backbone connectivity support economic development across the Territories and are key factors in enabling increased participation in the digital economy, as well as in supporting investments, notably in the resource sector that have large needs for shipping data in and out of the North.
119. Furthermore, market conditions in the North with respect to backbone connectivity have not changed over the period covered by price cap regulation and Northwestel is likely to remain the sole provider of terrestrial backbone connectivity services in the north for the foreseeable future.
120. Northwestel’s monopoly-owned backbone is a common resource supporting all of Northwestel’s retail and wholesale services – regulated and non-regulated – as well as those of competitors including SSI.
121. The backbone is “shared infrastructure” and regulating it in terms of ensuring fair and open access and cost-based pricing may not be realizable under the price cap regime. Certainly to date it is not clear that this is the case.
122. As Northwestel set out at paragraph 155 of the Modernization Plan: regulating shared infrastructure and operations “... would require a new regulatory framework (e.g. the creation of a split rate base), along with a determination to impose regulation on forborne services (or even non-telecom services).”
123. SSI’s view is that a new regulatory framework should not only be considered, but EFFECTIVELY implemented. This could be via a split rate-base regime or another approach – with the objective of treating backbone facilities and services as an essential public utility – a “Utility Backbone”. On this basis, supposedly forborne services that rely on the backbone would indeed have to be regulated.<sup>31</sup>

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<sup>31</sup> As noted above, this was the case for the Commission’s decision with respect to V-Connect service in Telecom Decision CRTC 2012-644

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- c) *“If price cap regulation continues to be appropriate, what changes, if any, should be made to the framework to address the concerns raised in Telecom Regulatory Policy [2011-771](#) and to meet the policy objectives of the Act”*

See answer to (b) above.

- d) *“Whether the existing subsidy regime for telecommunications services continues to be appropriate for Northwestel’s operating territory or whether any modifications to either amount of subsidy or the subsidy regime itself in the North are needed”*

124. The exclusive subsidy that Northwestel receives from the National Contribution Fund puts competitors on an un-level playing field. Northwestel receives approximately \$50 per month for each NAS in Band H areas.<sup>32</sup> Northwestel also receives \$10 million per year for ongoing support of its SIP I program.<sup>33</sup> These subsidies are captive within Northwestel and the existing regulatory regime.

125. The CRTC’s exclusive contribution subsidy regime does not take account of more economically efficient ways of serving consumers, nor does it support consumers in making a choice of supplier. In other words, a consumer switching to a competitor effectively “loses” the subsidy associated with his/her line under the present regime.

126. Again, we proposed at paragraph 93 of our August 9, 2012 intervention to BNC 2012-370 and propose again here:

*“Bell and Northwestel are proposing to modify the CRTC’s contribution subsidy regime in order to have subsidies applied to wireless and broadband services in Canada’s North. To be frank, this is an approach that SSi fully advocates, provided that the modified regime is competitively neutral: subsidies must be portable. Service providers freely set their rates and offers, and the consumer selects his or her service provider of choice, who then receives the subsidy to allow for consumer rates to be affordable. “*

127. To effectively allow sustainable and affordable broadband connectivity as well as competitive alternatives and facilities to develop, a reformed contribution subsidy regime must: be competitively neutral; be expanded to include subsidies for broadband connectivity; allow all consumers – residential, government and business – to gain access to subsidized broadband connectivity; allow for portability so that other operators can compete equitably with Northwestel.

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<sup>32</sup> Band H covers all of the Territories except Whitehorse and Yellowknife. Subsidy for 2012 is identified in Appendix 4(f) Abridged Version, page 1 of 1 Northwestel 13 June 2011 (filed in the TNC 2011-302 proceeding).

<sup>33</sup> *Ibid*, Appendix 4(g)

e) *“What would be the appropriate local service forbearance framework for Northwestel, including the specific criteria for granting forbearance”*

128. As noted above, given the nascent state of local competition in the North it would be highly premature to consider local service forbearance anywhere in the Territories. Many aspects of local competition are not even fully developed, including: LNP and trunk side access that are not yet in place in many communities; the proposed deployment of fixed wireless switches that - if approved - would not provide for equal access (paragraph 81 of the Modernization Plan); the unknown dates of implementation and switch types per community due to extensive claims of confidentiality that impede potential competitors from planning deployment, etc.

f) *“Whether any changes are required for services used by Northwestel’s competitors to provide retail services to their customers, including:*

1. *“Whether Northwestel should be required to file tariffs setting out the rates, terms, and conditions for the provision of I-Gate service or other services required by competitors;*

129. Yes, as noted above, Northwestel should be required to file tariffs and associated cost studies for all of its backbone connectivity services.

2. *“Whether interconnection on the basis of LIRs in Northwestel’s operating territory is appropriate in light of the expected changes to Northwestel’s network infrastructure resulting from the Modernization Plan, and, if so, when and on what basis LIRs should be established;*

130. One LIR per Territory may make sense for terrestrially served areas, but not for satellite served communities due to technical issues and the high cost of satellite bandwidth. Local interconnection at the level of each community needs to be an option for competitors, dependent on the specific circumstances in each community.

3. *“Whether there are other services that Northwestel should be providing to competitors in order to facilitate the implementation of local competition.”*

131. As mentioned above, SSi will comment further on other services used by competitors at a later date in this proceeding, as appropriate.

132. Finally, the Commission also invited detailed comments, with supporting evidence and rationale, on other relevant issues associated with the matters identified in TNC 2012-669. Apart from any other such issues addressed in this intervention, SSi will comment further on other issues at a later date in this proceeding, as appropriate.



## **F. In Conclusion**

133. The Commission has made a very positive step by initiating the current proceeding. A truly holistic approach is needed to solve the problems concerning affordable and sustainable broadband access in the North, and to meet the communications needs of Northerners going forward. Unfortunately, Northwestel's proposed Modernization Plan quite simply does not provide the requisite holistic approach or vision.
134. SSi believes, and this view has been supported in the ACIA Report, by Northern consumers, and by the Territorial Governments: *there is a need to develop long-term solutions for affordable backbone connectivity in the North, and that within a dynamically competitive local telecoms sector.*
135. We greatly appreciate the opportunity to submit this intervention, and look forward to participating further in a proceeding that can prove vital for the future of Canada's North and those of us who live and work there.

Respectfully yours,

THE SSI GROUP OF COMPANIES

[SGD – DEAN PROCTOR]

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