

**Addendum to Intervention to
Northwestel's Tariff Application 1099
for Terrestrial Internet Services
Tariff CRTC 3001 - Item 1735**

by Daniel Sokolov

Table of Contents

What Northwestel's Economic Evaluation Report reveals.....	3
1. The "unlimited" use options/plans are designed to be a minority program.....	3
2. Lack of "unlimited" options for tariffs with less bandwidth than 50/10 leads to inefficiencies.....	3
Effects of #1099.....	6
1. Option: Pay a Lot More.....	6
2. Option: Pay for More than Needed.....	7
Ineligible Cost Elements.....	8
Excessive Cost Elements.....	9
Requests.....	10
Thank You.....	11

This is an addendum to my earlier Intervention in this proceeding,¹ following the release of the Abridged version of Northwestel's Economic Evaluation Report.² This addendum is not meant to limit, revoke, or reduce in any way my earlier Intervention and the Requests contained therein.

Internet resource locators included in this submission were accessed November 22 to 24, 2020, unless otherwise noted.

1 Intervention #29 to Public process number: 1099 : 8740-N1-202006775, Daniel Sokolov, 19 November 2020

2 Abridged Report on the Economic Evaluation for Terrestrial Cable Internet Service, NWTel, 13 November 2020

What Northwestel's Economic Evaluation Report reveals

NWTEL's Report³, although heavily redacted, proves two important elements of the company's strategy:

1. The "unlimited" use options/plans are designed to be a minority program.

NWTEL's projected revenue for the study period shows that the company expects to have less than 6,000 households and only 375 businesses signed up to its "unlimited" options within five years.⁴ At that time, NWTEL's commitment to offer "unlimited" options will have ended.

6,000 households will be about 20% of the market in the seven communities relevant to the study.⁵ That means, NWTEL expects to keep most of its clients on limited plans – which is not surprising, given that NWTEL restricts the "unlimited" options to its high bandwidth/high cost plans, placing them out of reach of too many households.

This weak outcome from NWTEL's first commitment under the \$62 million subsidy from the Broadband Fund is disappointing to Northerners, and not compatible with the Universal Service Objective of the Broadband Fund, and not in line with the federal government's Connectivity Strategy.

2. Lack of "unlimited" options for tariffs with less bandwidth than 50/10 leads to inefficiencies.

Added costs for Usage Based Billing and related bad debt result in inefficiencies which not only harm customers but also violate the Telecommunication Act's "just and reasonable" requirement.

Contrary to NWTEL's statement, the Economic Evaluation Report does not show that the tariffs are just and reasonable. The overall revenue may or may not be reasonable compared to NWTEL's overall cost – the redactions in the publicly available Abridged version prevent such assessment – but no argument is offered to how **every** rate charged is reasonable, **nor how it could be just to withhold "unlimited" data options** from lower bandwidth tiers.

3 Abridged Report on the Economic Evaluation for Terrestrial Cable Internet Service, NWTEL, 13 November 2020

4 Demand forecast for the 62 months from November 2020 to the end of 2025 calculated from the five year revenue forecast in Table 2 of NWTEL's Report

5 In 2016, the 7 communities included in NWTEL's revenue projections had about 24,000 private dwellings (2016 Census, Statistics Canada). That number is much higher today. In Whitehorse alone, about 250 new housing developments are started on average every year, the vast majority being multi-dwelling (Housing Market Outlook - Northern Housing, Canada Mortgage and Housing Corporation, 2019 <https://assets.cmhc-schl.gc.ca/sf/project/cmhc/pubsandreports/housing-market-outlook-highlights/northern-housing/housing-market-outlook-northern-65446-2019-en.pdf>). The Yukon's population has been growing faster than the Yukon Bureau of Statistics 2018 Population Projection had expected even in its High Growth scenario (<https://yukon.ca/sites/yukon.ca/files/ybs/fin-population-projections-2018-2040.pdf>). The Kwanlin Dün First Nation in has passed its Lands Act *Nan kay sháwthän Däk'anúta ch'e*, under which land will be allocated to Kwanlin Dün citizens for free; that is expected to trigger a significant increase in new housing developments (see <https://www.kwanlindun.com/heritage-lands-and-resources/land-management/> and "A real advantage for citizens: 5 things to know about Kwanlin Dün's new Lands Act", CBC North, 1 November 2020 <https://www.cbc.ca/news/canada/north/kdfn-lands-act-need-to-know-1.5777806>). These developments and the population growth will further increase the number of private dwellings and thus NWTEL's market by 2025.

The Supreme Court of Canada has described "just and reasonable" in 2015:

*"The just-and-reasonable approach to recovery of the cost of services provided by a utility captures the essential balance at the heart of utilities regulation: to encourage investment in a robust utility infrastructure and to **protect consumer interests**, utilities must be allowed, over the long run, to **earn their cost of capital, no more, no less**. In order to ensure the balance between utilities' and consumers' interests is struck, just and reasonable rates must be those that ensure consumers are paying what the Board expects it to cost to **efficiently provide the services** they receive, taking account of both operating and capital costs. In that way, consumers may be assured that, overall, they are **paying no more than what is necessary for the service they receive**, and utilities may be assured of an opportunity to earn a fair return for providing those services."*⁶

Specific to the *Telecommunications Act*, the Supreme Court of Canada has, expressively by quotation, endorsed this part of a Judgement by the Federal Court of Appeals (Sharlow J.A.):

*"Because of the combined operation of s. 47 and s. 7 of the Telecommunications Act ..., the CRTC's rating jurisdiction is not limited to considerations that have traditionally been considered relevant to **ensuring a fair price for consumers** and a fair rate of return to the provider of telecommunication services. S. 47 of the Telecommunications Act expressly requires the CRTC to consider, as well, the **policy objectives listed in s. 7 of the Telecommunications Act**."*⁷

The Objectives listed in s. 7 of the Telecommunication Act include, i.a., "(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;" and "(h) to respond to the economic and social requirements of users of telecommunications services".

The economic and social requirements of Northern users are the availability of affordable "unlimited" internet options. Recognizing that has lead the Commission to give more than \$62 million from the Broadband Fund to NWTel.⁸

At the same time, most household do not need the high or can not afford the bandwidths NWTel wants to offer "unlimited" options for, otherwise these households would have subscribed to these high bandwidths already. After all, the value-for-money is less bad on NWTel's more expensive plans.⁹

6 Supreme Court of Canada in Ontario (Energy Board) v Ontario Power Generation, 2015 SCC 44, [2015] 2 S.C.R. 147
7 Bell Canada v CRTC, 2008 FCA 91 (CanLII), as quoted in Bell Canada v Bell Aliant Regional Communications, 2009 SCC 40, [2009] 2 S.C.R. 764, emphasis added

8 "Funding the project will (...) respond to the social and economic needs of consumers. In doing so, this decision will implement the telecommunications policy objectives, including those set out in paragraphs 7(a), (b), and (h) of the Act." Telecom Decision CRTC 2020-257 para 26; also 2020-258 para 26; also 2020-259 para 28; also 2020-260 para 26

9 Among the reasons these high bandwidths of 50/10 and above are needed less in the Yukon is that the Yukon has the second highest share of one-person households (32.2%) of all Provinces and Territories. Calculated from Statistics Canada's 2016 Census Profile <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=60&Geo2=&Code2=&SearchText=Yukon&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=60&type=0>

As the Supreme Court has laid out, the legal mandate that **all** rates charged must be just and reasonable¹⁰ includes the requirement to ensure that clients are only paying for **efficient** provision of the service.

Denying "unlimited" options to less costly access lines with less - yet sufficient - bandwidth inherently leads to inefficiency, which the clients have to pay for, thus violating the efficiency requirement that is part of the just-and-reasonable mandate.

¹⁰ s. 27 (1) Telecommunications Act; emphasis added

Effects of #1099

If NWTel's tariffs were to be approved as per Application #1099, cable and FTTH clients who need more data allowance than NWTel wants to include in its "limited" packages have only two options:¹¹

1. Option: Pay a Lot More

Clients can pay very expensive overage charges,¹² which most consumers find hard to grasp or estimate. At the same time, clients seem to be required to shoulder NWTel's costs for Usage Based Billing and related customer service, including overage-fee-induced calls to the call centre. If a client is happy with a bandwidth below 50/10 but would be able to add an "unlimited" option, they would relieve NWTel of the litany of costs related to Usage Based Billing:

"In addition to the billing invoice production costs, costs associated with handling billing inquiries specific to Internet usage were included in the cost study. A study was performed to derive the average annual number of calls and average duration per call per customer. These metrics were multiplied by the labour unit cost to derive an annual billing inquiries cost per subscriber."

"Billing costs associated with the Usage Based Billing (UBB) system that are used for monitoring and measurement of the usage associated Cable Internet services (...) include the labour costs associated with the monitoring, maintenance and trouble shooting of the UBB system, including report generation functions, maintenance of the database, database space allocation, database backups, server patches, server space allocation and regular maintenance and monitoring activities. In addition, the costs associated with using an external vendor to provide ongoing maintenance to the tool including programming changes and table maintenance are included."

*"Billing expenses also include one-time labour costs associated with product set-up for billing for this service (...)."*¹³

Overage charges bring additional costs for bad debt, as families are surprised by excessively high bills they did not expect and can not pay. That is another cost "unlimited" options would reduce. NWTel states that it has not calculated how much of its bad debt is connected to overage charges, which is a surprising lack of strategic business and tariff planning.¹⁴

Offering unlimited options with packages with lesser bandwidth than 50/10 would help NWTel avoid all of those costs, thus increasing efficiency. Yet, with its tariff Application #1099, NWTel continues to create "Usage Based Billing" and related bad debt costs for clients who do not want Usage Based Billing but can't afford \$160.95 a month.¹⁵ That is **inefficient** provisioning of internet access service.

11 NWTel's DSL clients have additional options: Buying an overage package, and/or subscribing to a second DSL line, which can be hundreds of dollars cheaper every month than paying overage charges. This is another example of how NWTel's tariff structure leads to inefficiencies. Cable and FTTH clients, however, do not have that option.

12 \$2 per GByte in most cases

13 NWTel's Report on the Economic Evaluation for Terrestrial Cable Internet Service, 13 Nov. 2020, para 41, 23, 24

14 "We do not have the disaggregated data for measuring bad debt across various segments", NWTel Reply to Request for disclosure on the public record of certain information filed in confidence regarding the introduction of unlimited Terrestrial Internet packages – Northwestel Tariff Notice (TN) 1099, Dec 3 2020, para. 4

2. Option: Pay for More than Needed

Clients who need additional data volumes can, if they have the financial means to do so,¹⁶ subscribe to the "unlimited" "Internet 50+" service service at \$160.95 a month.¹⁷ That comes with 50/10 bandwidth. But that means these clients must pay for costs related to 50/10 bandwidth although they may be fine with, for example, a 20/3¹⁸ bandwidth - if only they wouldn't have to worry about ruinous overage fees.

At the same time, NWTel would have to provide the additional infrastructure necessary for each client upsold to "unlimited" internet with at least 50/10 bandwidth, simply because NWTel can not know which clients actually want and use 50/10, and which clients will have only subscribed to 50/10 for the "unlimited" option. The additional costs must be born by all of those clients, including those who do not aspire to 50/10 bandwidth.¹⁹

With the increased prevalence of adaptive video and audio codecs, faster access lines automatically lead to increased data volumes. Video and audio platforms usually test the bandwidth to and from the client and adjust streaming quality accordingly. Thus, more bandwidth begets higher data volumes, whether that is of any use to the user or not.²⁰ That causes further inefficiencies and cost increases, often without tangible benefit to the client.

The lack of "unlimited" data options for bandwidths below 50/10 reduces the efficiency of internet access as required by NWTel's clients. NWTel seeks to push clients who seek "unlimited" data but not high bandwidth into inefficient arrangements. As a result, the #1099 tariff, **as applied for, would violate the efficiency requirement** that comes with the just-and-reasonable mandate.

15 The perennially looming threat of high overage charges is, by far, the leading reason NWTel is so widely loathed by its clients. The public record with tariff applications #1084 and #1099 speaks volumes.

16 For the (lack of) affordability, see page 4 of my Intervention #29 filed in this proceeding on 19 November 2020.

17 Businesses have to pay \$299.95 for "Business 50+".

18 "Business 20" has a bandwidth of 20/2, yet costs \$149.95 a month.

19 Theoretically, a user on a 20/3 line could transfer up to 7.21 TByte, while a use on a 50/10 line could transfer up to 18.8 TByte in a month: 260% the theoretical data volume of a 20/3 user.

20 These algorithms do not take into account if the user's peripheral equipment, such as loudspeakers, headphones, projectors, screens, etc. can even reproduce the additional audio and video details provided in the additional data. The same goes, of course, for the level of the users hearing or sight. As a result, the quality added through higher data volumes is often wasted, resulting in needlessly higher costs and additional inefficiencies.

Ineligible Cost Elements

I respectfully invite the Commission to investigate whether NWTel's Economic Evaluation Report includes elements which are not eligible. Such findings should require a reduction of various NWTel tariff rates, because **all** rates charged must be just and reasonable, not just those NWTel wants to introduce with Application #1099.

I noticed that NWTel includes costs for paper billing in its Report:

*"Billing costs are associated with producing, processing, **printing and mailing a unique invoice** based on the current contract with the billing vendor. A monthly equivalent cost was developed on a per invoice basis."²¹*

However, s. 27.2 of the Telecommunications Act says:

"Any person who provides telecommunications services shall not charge a subscriber for providing the subscriber with a paper bill."

Although there is no separate "paper bill fee" in NWTel's tariffs, NWTel is, in fact, charging subscribers for the costs of printing and mailing invoices. The law is clear: It does not prevent merely an itemized fee or a separate rate, it outlaws charging in any way.

Worse, as NWTel has admitted, it spreads those costs over all of its subscribers,²² whether they decide to receive paper bills or not. That would be at odds with the requirement that only "cost(s) to efficiently provide the services they receive"²³ are allowable under the just-and-reasonable mandate. Clients must not be forced to pay for services they have chosen not to receive.

In effect, the costs for paper billing should be covered by NWTel out of its profit and not be part of the costs accepted by the Commission in its determination whether tariffs are reasonable in relation to NWTel's costs. The good news for NWTel is that this part of the billing cost "represent(s) an insignificant amount",²⁴ so the impact on the company's profit margin from reducing the rates charged accordingly will be insignificant as well.

21 NWTel Report on the Economic Evaluation for Terrestrial Cable Internet Service, 13 November 2020, para. 41; emphasis added

22 "We also note that we spread these costs across all the demand", NWTel Reply to Request for disclosure on the public record of certain information filed in confidence regarding the introduction of unlimited Terrestrial Internet packages – Northwestel Tariff Notice (TN) 1099, Dec 3 2020, para. 11

23 Supreme Court of Canada in Ontario (Energy Board) v Ontario Power Generation, 2015 SCC 44, [2015] 2 S.C.R. 147

24 NWTel Reply to Request for disclosure on the public record of certain information filed in confidence regarding the introduction of unlimited Terrestrial Internet packages – Northwestel Tariff Notice (TN) 1099, Dec 3 2020, para. 11

Excessive Cost Elements

I respectfully invite the Commission to investigate whether NWTel's Economic Evaluation Report includes elements which are excessive. Such findings should require a reduction of various NWTel tariff rates, because **all** rates charged must be just and reasonable, not just those NWTel wants to introduce with Application #1099.

For example, in Table 3, NWTel discloses a Return on Equity of 11%. While that may have been approved by the CRTC in the past, it seems excessive today. **11% return is 44 times the Bank of Canada's Policy Rate.** The Bank of Canada has indicated to keep that rate at that level for at least another three years.²⁵ The long term real return on bonds fell negative in March and has been consistently negative since July, 2020.²⁶

Most business, large or small, are suffering from the economic outfall of the COVID-19-Pandemic. Many had to close.

It is neither just nor in the public interest, to protect an 11% return rate for a monopole utility through rate regulation. Like most Canadians, NWTel's shareholders, have to adjust their return expectations to a reasonable rate in today's investment environment, too. After all, they would not object to a higher return rate, should the market provide for it.

Another example of excessive costs elements could be NWTel's costs for advertisement and promotions. Is NWTel paying market prices to third parties? Are they taking advantage of common discounts, kickbacks, or other rebates? Are those (potential) savings fairly reflected in NWTel's Report? How much is NWTel paying to advertise on it's own cable-TV advertisement channels?²⁷ How much does NWTel pay to advertise in and around media owned or controlled by other entities of the BCE conglomerate?

Answers to these and similar questions are important to ensure that NWTel clients get a fair deal.

25 Monetary Policy Report October 2020, Bank of Canada, available at <https://www.bankofcanada.ca/wp-content/uploads/2020/10/mpr-2020-10-28.pdf> - accessed December 5, 2020

26 <https://www.bankofcanada.ca/rates/interest-rates/canadian-bonds/> - accessed December 5, 2020; see the blue "Real return bond – long term" line in the attached Bank of Canada Chart.

27 <https://nwtel.ca/tv-advertising> – accessed December 3, 2020;

Requests

1. Remedy

I respectfully ask the Commission to amend the tariff proposed in Application #1099 with either of the remedies proposed in my original Intervention in this proceeding,²⁸ which is hereby included by reference.

To rehash: The remedy is to add "unlimited" options for all of NWTel's cable and FTTH plans with less bandwidth than 50/10 at the price of \$10 that NWTel promotes in its public relations communication²⁹ (screenshot attached). An alternative remedy is a protection clause that would limit overage fees such that access with less bandwidth can never cost more than access with more bandwidth and "unlimited" data allowance.

2. Correction and Refund of Paper Billing Costs

I respectfully ask the Commission to deduct the amounts for paper billing included in rate calculations from all rates in the Final Approval. NWTel's has described these costs as "insignificant",³⁰ so it should not be burdened by this rate reduction. I further ask the Commission to order NWTel to refund all clients accordingly.

3. Rate Reductions and Refunds

I respectfully ask the Commission to reduce all NWTel rates by all amounts excessive or not allowable, and order NWTel to fully refunded all affected clients, whether they choose an "unlimited" option/plan or not. No provider must be allowed to charge any rate that is not just and reasonable.

28 Intervention #29 to Public process number: 1099 : 8740-N1-202006775, Daniel Sokolov, 19 November 2020

29 <https://twitter.com/northwestel/status/1331338843795185665>

30 NWTel Reply to Request for disclosure on the public record of certain information filed in confidence regarding the introduction of unlimited Terrestrial Internet packages – Northwestel Tariff Notice (TN) 1099, Dec 3 2020, para. 11

Thank You

Please accept my gratitude for the scrutiny and effort invested by the Commission and its staff.

I recognize that "Create" and "Connect" are two of the three pillars of the CRTC's Mission Statement. Affordability is paramount to connect the North and "strengthen the social and economic fabric of Canada".³¹ This fabric is significantly strained as it pertains to the North. Few Canadians have been to the North, and as Northerners regularly experience in customer service interactions, Southern Canadians often do not even recognize words like Yukon or Inuvik as Canadian place names.

The CRTC's first pillar, Create, only has meaning when the goals of Connect are realized. Content creation has come a long way since the CRTC's Three-Year Plan 2014-2017 was drawn up. No longer a domain solely of broadcasting entities, content Creation has become a bottom-up network. The North is blessed with a high share of artists, not least among First Nations and Inuit.

However, NWTel's overage fees often prohibit creative Northerners from sharing their content, and, no less important, from collaborating with other creators online. As Southern artists lose out, too, the lack of affordable "unlimited" data options impacts Canadian Content Creation everywhere.

Your decision in this matter will make a significant difference to Canadian lives.

Daniel Sokolov

31 CRTC Three-Year Plan 2014-2017, page 2