



**Written Brief to Parliament of Canada  
House of Commons Standing Committee on  
Industry, Science and Technology**

**Study on Affordability and Accessibility of Telecommunications**

***No Community Too Small or Too Remote:  
Competition is the key to improve affordability, quality and reliability  
of telecommunications in Northern Canada***

**February 2, 2021**

## ***Brief Follow-up to Presentation***

1. SSi Micro Ltd., doing business as SSi Canada (“SSi”), greatly appreciates the opportunity to follow up our appearance before the Standing Committee on Industry, Science and Technology (“INDU”, the “Committee”), which took place on January 26, 2021.
2. SSi’s experience, of offering state-of-the-art mobile wireless and internet access services in Canada’s North, leads us to emphasize the essential role of competition in delivering affordable and accessible telecommunications in Canada.
3. Simply put, ***no community is too small or too remote. Competition is the key to improve the affordability, quality and reliability of telecommunications in Northern Canada.***
4. For several years now, SSi has championed the Qimirluk Solution as a way to enable the delivery of high quality and affordable telecom services to remote communities. Qimirluk leverages shared backbone capacity from all sources - current and future satellite systems and fibre networks - by proposing an open gateway facility in each remote community.
5. Qimirluk harnesses competing backbone technologies, and encourages competition by permitting all local service providers to co-locate equipment, share tower space, and access wholesale backbone capacity through the open gateway.<sup>1</sup>
6. When SSi appeared before the Committee, we emphasized simple ways that governments, including the Government of Canada, can support competition and competitors as a way to improve both affordability and accessibility of telecommunications services.
7. Governments should harness their purchasing power by ending sole-source contracting for telecommunications facilities and services.
8. Regulatory agencies need to continue to support the ability of competitive markets and competitors – including in remote and rural areas – to deliver benefits to Canadians.
9. Regulation must continue to be structured to enable competition, but existing pro-competitive rules must be enforced to prevent incumbents from re-monopolizing markets.

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<sup>1</sup> For more information on the Qimirluk Solution, see <http://www.qimirluk.com/solution/> .

10. In this written brief, SSi wishes to expand on three points which appeared to be of greatest interest to Committee members in their questioning, but which could not be explored adequately in the time available:

- SSi’s response to the presentation and position of BCE Inc. (“BCE”);
- Potential contributions to affordability and accessibility of broadband internet access in Canada’s North due to developments in the satellite field; and
- Challenges associated with the current process for allocating licences to use radio spectrum.

11. In all three cases, our focus is on the policy and regulatory implications of these points, in keeping with the challenge that faces the Committee in concluding its study with practical recommendations to the Government of Canada.

### ***Response to BCE***

12. Committee member Ali Ehsassi invited SSi witnesses Jeff Philipp and Dean Proctor to comment on the remarks made on behalf of BCE in the first panel to appear on January 26, 2021.

13. In reply, Mr. Philipp emphasized SSi’s role as a builder of local networks offering service in all 25 communities in Nunavut. He pointed to SSi’s Qimirluk proposal ([www.qimirluk.com](http://www.qimirluk.com)), which is to build openly accessible gateways in remote communities to connect all competing local service providers to the limited backbone facilities available.

14. Mr. Philipp also noted that Bell Canada subsidiary Northwestel Inc. (“Northwestel”), with which SSi competes across Canada’s Arctic territories, has threatened to limit investment in the Northwest Territories in the event that SSi is provided with wholesale access to its monopoly facilities (Third Party Internet Access, or “TPIA”).<sup>2</sup>

15. Mr. Philipp did make a point of agreeing with BCE representatives’ concern that funding decisions are unduly delayed.

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<sup>2</sup> SSi Part 1 Application to Require Northwestel Inc. to Provide Third-Party Internet Access, December 7, 2020. The Application and related interventions received by the CRTC may be accessed here: [https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?S=O&PA=T&PT=A&PST=A&Lang=eng&\\_ga=2.218688857.158390132.1611592990-1448790461.1609879249](https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?S=O&PA=T&PT=A&PST=A&Lang=eng&_ga=2.218688857.158390132.1611592990-1448790461.1609879249) A copy of SSi’s Part 1 Application is also appended to this Brief for ease of reference.

16. In these INDU meetings and in other proceedings, BCE and its subsidiaries, including Bell Canada, are attempting to draw a distinction between “facilities-based carriers” and others, which BCE characterized as “resellers”.
17. In BCE’s binary view of the world, “facilities-based carriers” provide significant investment, where “resellers” employ a “business model ... based on accessing networks that someone else builds, ..., and using those networks to provide service to consumers.” BCE alleges that the existence of “resellers” undermines the willingness of “facilities-based carriers” to invest.<sup>3</sup>
18. This distinction is not only tendentious, in that it appears intended to demonize all but the largest carriers. It is also factually incorrect.
19. BCE’s proposed distinction implies two characterizations, both of which are both factually incorrect and intended to demonize and dismiss competitors:
  - First, that all competitors are nothing but “arbitragers”, in contrast to builders and investors; and
  - Second, that only the largest incumbent operators are “true” facilities-based carriers and able to improve accessibility of telecommunications in underserved parts of Canada.
20. The distinction is reminiscent of the July 1987 *Policy Framework for Telecommunications in Canada* between “telecommunications common carriers”, to which Canadian ownership restrictions would apply, and service providers to which they would not.<sup>4</sup>

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<sup>3</sup> Standing Committee on Industry, Science and Technology, Evidence Number 12, Tuesday January 26, 2021 (Unedited Copy), Exchange between Mr. Robert Malcolmson (BCE Inc.) and Mr. Nathaniel Erskine-Smith (Beaches-East York, Lib.), beginning approximately 1145.

<sup>4</sup> For more on the 1987 Policy, see, for instance, “Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform,” at <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09920.html> The 1987 Policy Framework document itself was provided as an appendix to PIAC’s January 11, 2019 submission to the Government of Canada’s Broadcasting and Telecommunications Legislative Review Panel, and can be found at [https://www.ic.gc.ca/eic/site/110.nsf/vwapi/963\\_PIAAC\\_Appendix.pdf/\\$FILE/963\\_PIAAC\\_Appendix.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwapi/963_PIAAC_Appendix.pdf/$FILE/963_PIAAC_Appendix.pdf) The 1987 Policy Framework distinguishes between service and equipment suppliers, on the one hand, and “telecommunications common carriers”, on the other. Of particular note is the following excerpt (p. 6-7):

*To allow for viable competition in these [telecommunications] markets, government policies should:*

*(a) Create a market environment which allows for open entry and exit for suppliers of services and equipment; and*

*(b) Foster an efficient network infrastructure that permits economic and cost-effective delivery of these products to end users.*

*The first of these objectives can only be realized through the implementation of a nation-wide policy which provides for the interconnection of services and equipment to the network facilities of Canadian telecommunications common carriers.*

21. The technology, industry structure, and policy framework have all evolved significantly since 1987. Yet BCE seems to be trying to revive a distinction that, even if it were accurate nearly thirty-five years ago, is simply ludicrous today.
22. That the distinction is absurd is easily demonstrated. In response to a question from M. Lemire concerning the price at which BCE subsidiary Télébec provides broadband access, Mr. Malcolmson replied:
- I think you're referring to Videotron's perhaps recent entry into the Abitibi-Témiscamingue area, where, **rather than building networks, they've decided to seek access to our networks and resell our networks.** Again, the costs of that access are regulated pursuant to a CRTC tariff. It's not a question of increasing costs, it's a question of providing access to resale at regulated rates.<sup>5</sup>*
23. In this response, Mr. Malcolmson characterizes Videotron as a reseller only of BCE's networks, as though the consequence of Videotron's rational make-or-buy decision in determining how best to offer competitive service to the residents of Abitibi-Témiscamingue is somehow shameful.<sup>6</sup>
24. In reality, Videotron, like SSi, makes rational decisions as to whether it is more cost-effective and otherwise advantageous to build new facilities or to pay for access to existing facilities with every assessment of a potential market.
25. In point of fact, all facilities-based carriers in Canada use a "hybrid" model where, at certain points in their delivery of telecommunications services to end-users, they rely on the facilities of other network operators.
26. Not so ironically, this hybrid model is nowhere more clearly displayed than in the case of BCE itself. For example:
- BCE's Bell Mobility subsidiary relies heavily on utilising – "reselling," in other words – the network assets and facilities of Telus and other carriers to deliver service to their end-user customers, and BCE clearly makes decisions similar to Videotron and SSi as

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*The second goal, that of maintaining an effective and efficient network infrastructure, can best be achieved through policies which acknowledge the role and status of Canada's existing telecommunications carriers and which respect the principal economic characteristics of the telecommunications carriage industry.*

<sup>5</sup> Standing Committee on Industry, Science and Technology, Evidence Number 12, Tuesday January 26, 2021 (Unedited Copy), 1130, Exchange between Mr. Malcolmson (BCE Inc.) and the Chair, providing Mr. Malcolmson with an opportunity to respond to a question posed by M. Sébastien Lemire (Abitibi-Témiscamingue, BQ); emphasis added.

to when and where to deploy facilities and licensed spectrum they control, and when and where to rely on the network or spectrum resources of another operator;<sup>7</sup> and

- BCE's Northwestel subsidiary is wholly dependent on using satellite backbone connectivity purchased on a wholesale basis from separate network operators, including Telesat, in order to deliver retail telecommunications services to its customers in satellite-served areas.

27. Indeed, to suggest that the only "true" competition is where every carrier builds and operates the entirety of its own facilities to deliver service to end-users is nonsensical. It also denies the reality of BCE, whose operating subsidiaries are heavily dependent on using on the facilities of other network operators to deliver service to their customers.
28. In fact, BCE is attempting to halt the development of what is needed for a truly innovative, competitive and interconnected telecommunications market that can service consumers and meet the challenges to address the issues of accessibility and affordability of service in this country.
29. Where the circumstances of a firm like SSi – or even a much larger firm such as Videotron offering competitive service to customers in M. Lemire's riding – differ from the Mobility arms of Incumbent Local Exchange Carriers ("ILECs") Bell and Telus is that the ILECs and their Mobility subsidiaries will not negotiate access with a competitor that has, by BCE's own admission, nothing to offer the dominant firm.
30. It is exactly this market failure that the CRTC addresses by requiring dominant carriers to provide wholesale access services to facilities that meet its "Essentiality Test."<sup>8</sup>
31. It is important the Committee understand that when dominant carriers are required to offer regulated access to their facilities, they are fully compensated according to standards set following careful regulatory scrutiny by the regulator.
32. Moreover, it is important to recognize that the dominant carrier defines the characteristics and conditions of offer of its regulated wholesale service. The service is not developed in

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<sup>7</sup> See, for instance, Response to Undertaking – Exhibit 4, Telus(CRTC)18Feb20-29 and Response to Undertaking – Exhibit #4, Bell Mobility(CRTC)18Feb20-23, both available under "Undertakings" in the TNC 2019-57 proceeding through the following CRTC webpage: <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?S=C&PA=T&PT=NC&PST=A&Lang=eng> . We also note, for example, ISED's 9 July 2020 approval of the transfer of certain spectrum licences acquired by Telus in the 600 MHz range to Bell Mobility (<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11622.html> ).

<sup>8</sup> For a description of the Essentiality Test and its application, see, for instance, Telecom Regulatory Policy CRTC 2015-326, at: <https://crtc.gc.ca/eng/archive/2015/2015-326.htm>

response to the needs or wants of wholesale customers (that is, of competitors to the dominant carriers).

33. Where regulatory conditions are supervised by ISED, rather than the CRTC, the outcome can be even less satisfactory. In response to a question from Mr. Erskine-Smith, Mr. Proctor provided the Committee with an update concerning the Connect to Innovate Program (“CTI”) administered by Innovation, Science and Economic Development Canada (“ISED”). Mr. Proctor reported that the optimism SSi expressed when we appeared before the Committee in early 2018 turned out to be premature.
34. Unfortunately, SSi has been unable to secure dedicated wholesale capacity from BCE subsidiary Northwestel on the backbone facilities in Nunavut that were funded through the CTI program.
35. ISED has not pursued a process comparable to the CRTC to enforce CTI open wholesale access requirements upon the funding recipient (Northwestel), meaning the quality of service, capacity, interconnection terms and pricing offered to competitors have not allowed SSi to use that capacity to deliver more affordable internet access for Nunavummiut.
36. The rhetorical distinction that BCE proposed to the Committee is not only absurd, however: it is dangerous. It is part of an effort to have the Commission roll back the requirement on dominant carriers to offer wholesale service at all – even when the cost for those facilities have been paid with public funds, as advanced by BCE and Northwestel in front of this Committee in 2018.<sup>9</sup>
37. BCE is also advancing such a position even under the conditions that currently prevail, which permit dominant carriers to be fully compensated for the provision of wholesale services that they define to suit their own interests, whether or not they are the services their competitor-customers need.<sup>10</sup>

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<sup>9</sup> Northwestel to House of Commons Standing Committee on Indigenous and Northern Affairs (INAN), 5 November 2018: “*The Government should look to abandon any obligation for subsidy recipients in Canada’s North to offer wholesale access instead of promote [sic] affordability through retail price commitments.*” We also note that both Bell Canada and Northwestel advocated a very similar position in testimony to this Committee’s 2018 study on broadband connectivity in rural Canada. See, for instance, Bell Canada’s submission dated 30 January 2018, Recommendation 4: “*Do not mandate wholesale access on subsidized networks,*” at:

<http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9618876/br-external/BellCanada-e.pdf>

<sup>10</sup> BCE and other ILECs used similar rhetoric in the proceeding initiated by Telecom Notice of Consultation CRTC 2019-57, *Review of Mobile Wireless Services*. That proceeding is considering what regulatory changes would improve affordability and accessibility to mobile wireless services. In that market, the dominant carriers including Bell, Telus Communications Inc., and Rogers Communications (Canada) Inc., have only very recently been required to develop tariffed wholesale offerings. This stands in stark contrast to the market for wireline telecommunications, where monopoly and other dominant carriers have been required to offer wholesale access services at rates set to fully compensate them for their costs and contribute to their profits, since the late 1970s, a

38. In his testimony, Mr. Philipp adverted to one of SSi's ongoing efforts to obtain wholesale access from Northwestel to monopoly cable and other local fibre facilities. This is referred to as Third-Party Internet Access, or TPIA.
39. The regulatory right to TPIA, which does not currently apply to Northwestel, is the foundation of Videotron's access to Câblevision du Nord du Québec's facilities in Abitibi-Témiscamingue. A copy of SSi's December 7, 2020 application to the CRTC to require Northwestel to provide TPIA service is attached for the Committee's reference.
40. Again, however, we note that SSi, like most other telecommunications service providers in this country, invests heavily in telecommunications infrastructure where that is feasible and desirable. SSi relies on wholesale services provided by ILECs only to the extent necessary.
41. The distinction that BCE paints between virtuous, connectivity-contributing "facilities-based carriers" and "resellers" which do not invest, is reductionist, factually inaccurate, and, if it were to be applied to regulatory decisions in 2021 and beyond, it is dangerous.

### ***The Potential of Satellites to Provide Service in Canada's North***

42. This Committee has heard from two proponents of low-earth orbit ("LEO") satellite services. Telesat Canada described a wholesale service model, where end-users are served in turn by customers for backbone connectivity provided over Telesat's planned LEO constellation. Space Exploration Technologies Corporation ("SpaceX") emphasized that its Starlink LEO service is "fundamentally optimized as a direct consumer service," and stated that the company had already started signing up Canadian beta-testers of the Starlink product.<sup>11</sup>
43. LEO systems, as well as the mid-earth orbit system in development from SES Networks, offer great potential to provide significant improvements over the current geostationary satellite systems in terms of capacity and of the potential for low-latency transmissions.
44. The degree to which the existence of these satellite systems will contribute to improving the affordability and accessibility of telecommunications, including broadband internet access and mobile wireless systems, in underserved regions of the country will depend upon pricing decisions.

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policy reinforced by the 1987 *Policy Framework for Telecommunications in Canada*, referred to in the excerpt reproduced at note 2. Bell Canada and Telus have advanced the distinction again in the proceeding initiated by Telecom Notice of Consultation CRTC 2019-406, *Potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, in an effort to preclude CRTC extension of mandatory wholesale services as a means of overcoming barriers to broadband access in underserved remote and rural parts of the country.

<sup>11</sup> INDU Evidence Number 004, Tuesday November 17, 2020, p. 3 (statement of Ms. Patricia Cooper, Vice-President, Satellite Government Affairs, Space Exploration Technologies Corp.).



45. As Mr. Philipp noted, even the best estimates that we have heard suggest that even with LEO/MEO systems, satellite may continue to be a high-cost backbone option compared to fibre. In turn, this suggests there will be a need for ongoing funding support to enable service providers, including SSi, to offer satellite-based internet and other telecommunications services at rates that are truly affordable for the often-disadvantaged people living in satellite-dependent communities.
46. We note that the presence and availability of satellite backbone connectivity from diverse and competing operators, which also include SES Networks, does improve the ability of Canadian telecommunications service providers such as SSi to harness the power of competitive markets to obtain effective access to the backbone connectivity desired at negotiated rates, terms and conditions of access to this vital input.

### ***Spectrum Licensing Proposals***

47. Another factor that contributes to the higher cost of broadband access in satellite-dependent and other underserved regions is the scarcity of spectrum.
48. As we noted, spectrum is a finite public resource. However, the way that the relevant regulatory authority, ISED, allocates the right to use that public resource is rightly subject to public debate and to policy input from bodies such as the Committee.
49. If ISED continues to use auctions as its primary means of allocating spectrum licences, the Department must continue to apply pro-competition measures such as spectrum set-asides and caps to prevent spectrum access from becoming a tool used by the wealthiest eligible companies – usually the ILECs – to re-monopolize markets for wireless services.
50. We also support the application of conditions of licence to prevent deep-pocketed bidders from reserving spectrum to their future use (or, worse, ensuring that their competitors cannot have access to this essential public resource) by, for instance, requiring licensees to demonstrate that the spectrum they hold is actually being used to provide services to the public, consistent with the policy that applies to each spectrum band.
51. We are sympathetic to arguments and positions, such as that described by Mr. Masse, that call upon the Government of Canada to allocate spectrum auction revenues to vital public interests such as ensuring that all Canadians, regardless of their income level or location, have access to the essential internet access and other telecommunications services that can be offered over this spectrum.

### **Conclusion**

52. In many cases, the existing regulatory bodies in Canada have policies in place that could support competition – if they were appropriately enforced to prevent ILECs and others from conducting anti-competitive manoeuvres.
53. Technology, ingenuity, and homegrown entrepreneurship enable competitive broadband to thrive where the regulatory and policy framework allows.
54. We urge you to recommend that the Government of Canada support competition, **and importantly competitors themselves**, through the power of government purchasing decisions as well as through regulatory proceedings and funding programs.
55. People living in remote and outlying communities must have better access to affordable communications services and competitive choice.
56. We truly believe Canada can be a global showcase, where broadband overcomes the barriers of distance, and where all regions of the country – no matter how remote, no matter their socio-economic circumstances – participate fully in the benefits of the digital economy.
57. Thank you again for providing SSi the opportunity to appear before the Committee on January 26 and for inviting us to complete our presentation by submitting this brief. We appreciate the careful and thorough approach INDU and its members take to complex issues including the challenge of improving the affordability and accessibility of telecommunications in Canada.

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## Schedule

### SSi December 7, 2020 Application to the CRTC To Require Northwestel Inc. to Provide Third-Party Internet Access

December 7, 2020

*Filed electronically*

Mr. Claude Doucet  
Secretary-General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

**RE:                   SSi Part 1 Application to Require Northwestel Inc. to Provide Third-Party Internet  
Access**

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Dear Mr. Doucet:

1. SSi Micro Ltd., doing business as SSi Canada (“SSi”), files this application pursuant to Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* and section 27(2) of the *Telecommunications Act* (the “Act”).

#### ***Relief Sought***

2. SSi requests that the Commission exercise its jurisdiction pursuant to section 27(2) of the Act to order Northwestel Inc. (“Northwestel”) to introduce wholesale high-speed access services immediately in the form of third-party internet access (“TPIA”) service to its monopoly cable television and fibre-to-the-premises (“FTTP”) facilities, filing any associated tariffs and cost studies in the most accelerated timeframe possible.
3. SSi further requests that the Commission act expeditiously to grant the relief sought, and, in particular, to require Northwestel to have wholesale services tariffs in place for TPIA to these access facilities prior to granting final approval Northwestel Tariff Notice 1099 (“TN 1099”) introducing new unlimited internet access packages over its cable and FTTP facilities.
4. We propose that the Commission establish interim rates for Northwestel’s TPIA service, given the importance of providing competitors with access to the ILEC’s cable and FTTP premises as soon as possible in order to respond to the needs of consumers. Consistent with Commission precedent, the interim rate should be set at a discount of 35% from the interim rates approved for TN 1099.

### ***Grounds of Application***

5. As explained in greater detail in SSi's intervention opposing Northwestel TN 1099, a copy of which is attached for ease of reference, Northwestel's filing of tariffs for unlimited internet access packages to be available to certain retail residential and business customers confers an undue preference upon Northwestel by permitting the ILEC to discriminate unjustly against its own wholesale customers. The undue preference and unjust discrimination stems from Northwestel's monopoly control over both transport facilities, which we propose in the SSi TN 1099 Intervention be countered by an immediate decrease in the rates for Wholesale Connect service, and the local access facilities over which Northwestel proposes to offer these new unlimited internet packages.
6. The present application is intended to address the undue preference that Northwestel continues to accord itself by reserving both coaxial cable and FTTP access facilities for Northwestel's exclusive access for purposes of serving retail customers.
7. We submit that the fact that Northwestel does not provide wholesale access to its cable and FTTP access facilities to competitors confers an undue preference on itself and subjects its competitors to disadvantage that is both undue and unreasonable, contrary to section 27(2) of the *Telecommunications Act*.
8. Furthermore, we submit that this undue preference and unreasonable discrimination must be addressed on an expeditious basis, and in any case prior to final approval of Northwestel's introduction of any unlimited internet access packages.

### ***TPIA Access is Long Overdue***

9. SSi submits that the relief sought in this application is long overdue.
10. SSi applied to the Commission on 16 January 2015 requesting that Northwestel be required to provide TPIA service in Yellowknife and Whitehorse and file any associated tariffs and cost studies. We sought wholesale high-speed access to the facilities that Northwestel operates as a monopoly cable operator in those two cities so as to provide improved internet access service in those locations, as well as other enhanced services.
11. In addition to reiterating the many advantages of supporting competition across the entire range of internet access services available in Northwestel's operating territory, our 2015 application explained clearly why the relief then sought was fully consistent with the Commission's existing policies concerning wholesale access to monopoly cable facilities. We noted, first, that when Northwestel's acquisition of the cable plant in these two cities was approved in 1995, Northwestel made the following commitment:

*... access to available capacity for the provision of non-programming services would be provided to **all customers** on a non-discriminatory basis, as required by the Telecommunications Act.<sup>12</sup>*

12. Second, we noted that the Commission's policy requires broadcast carriers that are also ILECs, such as Northwestel, to provide access on a wholesale basis to facilities such as local cable and FTTP:

*The Commission therefore concludes, with respect to higher speed access services provided by a broadcast carrier which is an incumbent cable company or an incumbent telephone company, that it is appropriate to tariff the rates and other terms on which such services are provided, **once the carrier has the ability to provide such access** in respect of competitive service providers.<sup>13</sup>*

13. Third, we noted that Northwestel clearly indicated, as long ago as 2013, that it does have the ability to provide competitive service providers with access to its cable facilities:

*Q. Are there any technical limitations to the Company preventing it from providing GAS and TPIA services where wired facilities exist?*

*A. Northwestel considers that it is technically feasible to provide wholesale High-Speed Access (HSA) services such as Third Party Internet Access (TPIA) service and Gateway Access Service (GAS) in terrestrial cable and ADSL communities.<sup>14</sup>*

14. Therefore, we submitted, all the conditions precedent to requiring Northwestel to provide TPIA have been met.

15. Despite the clear support of parties including the Governments of the Northwest Territories and Yukon and the Consumers' Association of Canada and the Public Interest Advocacy Centre, the Commission denied SSI's application in Telecom Decision CRTC 2015-320 ("TD 2015-320").<sup>15</sup>

16. In TD 2015-320, the Commission postponed consideration of the implementation of TPIA service in Northwestel's operating territory pending the outcome of "several processes" then underway or planned "that could impact any assessment of whether TPIA service should be implemented in the North."<sup>16</sup>

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<sup>12</sup> Decision CRTC 95-897, *Applications for authority to transfer effective control of three existing cable distribution undertakings and for licences to carry on eight new cable distribution undertakings in the Yukon and the Northwest Territories*, 15 December 1995.

<sup>13</sup> Telecom Decision CRTC 98-9, *Regulation under the Telecommunications Act of certain telecommunications services offered by "broadcast carriers,"* paragraph 77. Emphasis added.

<sup>14</sup> Undertaking NWTel(CRTC)17Jun13-06 filed June 25, 2013, in response to questioning by the Commission during the public hearing held pursuant to Telecom Notice CRTC 2012-669, *Review of Northwestel Inc.'s Regulatory Framework, Modernization Plan, and related matters*.

<sup>15</sup> Telecom Decision CRTC 2015-320, *SSi Group of Companies – Application requesting implementation of third-party Internet access service in Northwestel Inc.'s operating territory*, 20 July 2015.

<sup>16</sup> TD 2015-320, paragraph 8.

17. The Commission pointed to two proceedings already underway. The first, initiated by Telecom Notice of Consultation 2013-551 ("TNC 2013-551"), resulted in Telecom Regulatory Policy CRTC 2015-326 ("TRP 2015-326", the "Wholesale HSA Proceeding"), which was released only two days after TD 2015-320.<sup>17</sup>
18. TRP 2015-326 established new mandating criteria for the provision of wholesale services by incumbent carriers. The Commission had excluded Northwestel, as well as the small incumbent local exchange carriers ("SILECs") from the scope of that proceeding. Notwithstanding the exclusion of Northwestel from that proceeding, in denying SSI's 2015 application for TPIA the Commission expressed the opinion that the outcome of the wholesale HSA proceeding "could influence policy determinations related to various wholesale services such as TPIA service, transport facilities, retail Internet access services, and other regulatory measures in the North."<sup>18</sup>
19. The second proceeding to which the Commission alluded was the review of basic telecommunications services launched by Telecom Notice of Consultation 2015-134. This proceeding, too, has long since been concluded, with the Commission issuing determinations in principle in Telecom Regulatory Policy CRTC 2016-496 ("TRP 2016-496"), and then following up with proceedings to design the new CRTC Broadband Fund.<sup>19</sup> There is no doubt that these policy determinations are benefiting Northwestel; in fact, Northwestel received funding in the amount of approximately \$62 million as the result of the first call for applications to the Broadband Fund.<sup>20</sup>
20. In ruling in 2015 that SSI's application for TPIA was premature, the Commission also commented that the next review of Northwestel's regulatory framework "would be a more appropriate forum" in which to consider issues such as whether to mandate the ILEC to provide wholesale services including TPIA. In TD 2015-320, the Commission noted that the regulatory framework review was planned for the 2016-2017 fiscal year. In reality Northwestel's regulatory framework has been extended several times in the intervening period, without providing an opportunity to consider mandating the ILEC to provide TPIA service.
21. Recently, more than five years after denying SSI's 2015 application for TPIA service on the grounds that it was "premature to consider the implementation of TPIA service," the Commission initiated this long-delayed review proceeding. Telecom Notice of Consultation CRTC 2020-367, *Review of the Commission's regulatory framework for Northwestel Inc. and the state of telecommunications services*

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<sup>17</sup> Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 22 July 2015.

<sup>18</sup> TD 2015-320, paragraph 11.

<sup>19</sup> Telecom Regulatory Policy CRTC 2018-377, *Development of the Commission's Broadband Fund*, 27 September 2018 ("TRP 2018-377").

<sup>20</sup> Telecom Decision CRTC 2020-257, *Project funding approval for Northwestel Inc.'s Northwest Territories satellite project*, 12 August 2020 ("TD 2020-257"); Telecom Decision CRTC 2020-258, *Project funding approval for Northwestel Inc.'s Northwest Territories fibre project*, 12 August 2020 ("TD 2020-258"); Telecom Decision CRTC 2020-259, *Project funding approval for Northwestel's Old Crow satellite project*, 12 August 2020 ("TD 2020-259"); and Telecom Decision CRTC 2020-260, *Project funding approval for Northwestel Inc.'s Yukon fibre project*, 12 August 2020 ("TD 2020-260").

*in Canada's North* ("TNC 2020-367") invites comments on an extensive list of issues, including components of the Commission's framework for Northwestel that were established in 2011 and 2013.

22. The Commission has noted that it is planning for this to be a lengthy proceeding, proceeding in at least two distinct stages, and at some point incorporating a public hearing (TNC 2020-367, paragraph 6).
23. We submit that delaying a determination that Northwestel should be subject to the same TPIA requirements as every other ILEC, major cable carrier, and monopoly cable carrier/local exchange carrier in Canada until the conclusion of TNC 2020-367, while permitting Northwestel to continue to enjoy the undue preference of a monopoly over access to cable and FTTP facilities to offer retail internet access packages, including unlimited packages, would be unreasonable and cannot be justified.
24. Such a delay will make a foregone conclusion of the Commission's inquiries, in TNC 2020-367, concerning the state of competition in Canada's North. Delaying consideration of TPIA until a two-stage hearing has been concluded will, in effect, guarantee that competitors cannot offer internet packages sufficiently attractive to compete with Northwestel for years, with the easily foreseeable effect of eliminating competition altogether. There will simply not be any competition under these circumstances.

#### ***Mandating Northwestel to Provide Wholesale Services is in the Public Interest***

25. The policy determinations that the Commission announced in TRP 2015-326, the first of the three proceedings whose results the Commission thought might affect the assessment of whether TPIA service should be available in the North, clearly militate in favour of immediately ordering Northwestel to develop a TPIA service.
26. TRP 2015-326 made it explicit that the "desired outcome" of the regulatory framework governing when and how incumbent carriers are to make available wholesale service offerings is to stimulate, not suffocate, competition:

*The desired outcome is that once competitors are given access to certain facilities (for example, access facilities), they are incited to enter the market and invest in other parts of the network, eventually leading to lower prices, innovative service offerings, and greater choice for consumers.<sup>21</sup>*

27. Accordingly, the Commission mandated most ILECs, as well as the large cable companies, to provide wholesale access to their facilities and network components enabling the provision of competitive broadband services, known as wholesale high-speed access ("HSA") services.

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<sup>21</sup> TRP 2015-326, paragraph 7.

28. If there were any doubt that the generally desired outcome is more competition, the Commission listed a number of policy considerations that could inform, support, or reverse a decision to mandate the provision of a wholesale service:

- *Public good – there is a need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.*
- *Interconnection – the service would promote the efficient deployment of networks and facilitate network interconnection arrangements.*
- *Innovation and investment – mandating or not mandating the facility or wholesale service could affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both, or impact the associated level of adoption of advanced or emerging services by users of telecommunications services.<sup>22</sup>*

29. In TRP 2015-326, the Commission also applied the Essentiality Test to distinguish between the access facilities of the southern ILECs and cable companies to which the new Regulatory Policy applied, and their transport facilities. In determining that those carriers must provide disaggregated wholesale HSA services consisting solely of the access component, namely the connection between customer premises and the ILEC central office of cable company head-end, the Commission ruled:

*The Commission remains of the view that competitors cannot feasibly or practically duplicate last-mile HSA facilities on a scale sufficient to compete effectively with incumbent carriers within their serving regions. There continue to be significant barriers to duplicating access facilities, including securing sufficient capital, securing rights-of-way, and construction challenges that require significant lead time to complete.<sup>23</sup>*

30. These findings concerning duplicability of last-mile HSA facilities – together with relevant policy considerations including public good, interconnection, and innovation and investment by Northwestel’s remaining competitors –certainly apply in Northwestel’s case to support the requirement to provide TPIA access.

31. Unlike the southern carriers to which TRP 2015-326 applies, the Commission has acknowledged Northwestel’s market power over transport facilities for high-speed access. In our intervention concerning TN 1099, also filed today, we recommend the Commission’s immediate action to prevent Northwestel from according itself an undue preference by reserving to itself the ability to take advantage of CRTC Broadband Fund contributions so as to offer unlimited internet packages while maintaining rates for its Wholesale Connect service at their current high levels.

32. But the Commission has not addressed the ILEC’s market power over access facilities in the communities. In SSI’s submission, permitting Northwestel to continue to monopolize access to cable and FTTP facilities perpetuates the ILEC’s ability to accord itself an undue preference with respect to these access facilities, as well.

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<sup>22</sup> TRP 2015-326, paragraph 51.

<sup>23</sup> TRP 2015-326, paragraph 133.



33. In being allowed to own both the cable and the telecommunications access facilities in these communities without making TPIA available on a wholesale basis, Northwestel is perhaps unique among the country's telecom service providers. Cable television providers that are part of the same corporate family as the local ILEC have been required to offer TPIA services, even when they are much smaller than Northwestel.
34. For instance, in 2019, the Commission ruled that Cablevision du Nord de Québec inc. ("Cablevision") could not withdraw its tariffed TPIA service, which it had sought to do when it became aware that a competing provider, namely Videotron Ltd., had expressed a genuine interest in Cablevision's TPIA service. Cablevision was required to provide TPIA after its acquisition, in 2001, by Télébec, Société en commandite ("Télébec"); both Cablevision and Télébec are wholly-owned subsidiaries of Bell Canada, placing the incumbent telephone and cable service providers in the Abitibi-Témiscamingue region of Quebec in the same corporate family.<sup>24</sup>
35. The Commission should act now, more than five years following its last deferral of this issue, to require Northwestel to file wholesale high-speed access tariffs, supported by cost studies, enabling third-party internet access to both its cable and its FTTP facilities. We recommend that interim rates be set for this long-delayed service on the basis of the "retail-minus" approach, meaning a discount from the retail rates that Northwestel has just filed for unlimited internet access over these facilities in its TN 1099 filing.

#### ***Mandating Northwestel TPIA Service Contributes to The Path Forward for Canada's Digital Economy***

36. In denying SSi's 2015 application for TPIA, the Commission also pointed to the policy implications of the proceeding that resulted in TRP 2016-496, *Modern telecommunications services – the path forward for Canada's digital economy*.
37. Far from justifying Northwestel's ongoing monopoly control over cable and FTTP access facilities, the policy determinations the Commission made in TRP 2016-496 established a new urgency to facilitating, not restricting, competitive access to any facilities that can be used to move broadband services in remote and rural locations towards the Universal Service Obligation ("USO") set out in the policy.
38. In TRP 2016-496, the Commission made a particular point of calling on all participants in Canada's telecommunications system to contribute to the achievement of USO-level services in all areas of the country:

*The need for a Commission broadband funding mechanism to support the provision of modern telecommunications services in underserve areas in Canada was extensively examined in this proceeding. Closing the gap in broadband Internet access service availability in Canada is an*

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<sup>24</sup> Telecom Order CRTC 2019-422, *Cablevision du Nord de Québec inc. – Application to withdraw third-party Internet access service*, 16 December 2019, especially paragraphs 1 and 12; Telecom Decision CRTC 2019-423, *Videotron Ltd. – Applications regarding (i) Cablevision du Nord de Québec inc.'s (Cablevision) refusal to sign a third-party Internet access (TPIA) service agreement, and (ii) access to Cablevision's TPIA service at just and reasonable rates, and under just and reasonable terms*, 16 December 2019; and Telecom Order CRTC 2020-223, *Cablevision du nord de Québec inc. – Update to its third-party Internet access service*, 14 July 2020.

*enormous financial challenge, requiring billions of dollars in funding and investments that can only be overcome through shared responsibility.*

*While the Commission expects that continued investments from the private sector and funding programs from various levels of government will assist in achieving the broadband portion of the universal service objective, the record of this proceeding demonstrates a need for Commission intervention in closing the availability gap in Canada.<sup>25</sup>*

39. We submit that it is contrary to this emphasis on the contribution expected from the competitive component of the private telecommunications sector to prevent competitors from gaining access to any available facilities that can be used to contribute to achieving the USO.
40. This should be particularly true in Canada's North, where the availability gap still looms largest. This in itself should support competitive access to Northwestel's cable and FTTP facilities through a TPIA tariff.
41. It is also clear that Northwestel has been a significant beneficiary of the Commission's shift in focus, signalled in TRP 2016-496, from wireline voice services to broadband internet access services. It is the very fact that Northwestel is the beneficiary of almost all of the funding awards the Commission has made through the new Broadband Fund that has enabled this ILEC to now propose to introduce unlimited internet access service packages over its monopoly cable and FTTP facilities.<sup>26</sup>
42. The issues under discussion in the proceeding that led to TRP 2016-496 and the creation of the CRTS Broadband Fund have now been resolved. This should no longer be an impediment to the immediate introduction by Northwestel of a tariffed wholesale TPIA service.

***The Commission Needs to Address Northwestel's Undue Discrimination against Wholesale Customers Now***

43. In TD 2015-320, the Commission finally pointed to its review of Northwestel's Regulatory Framework, then planned for the 2016-17 Fiscal Year, as a reason why it was "premature" to consider SSi's application for Northwestel TPIA service.
44. Given the significant delays experienced in scheduling and completing this review, we respectfully submit that it is inappropriate to continue to hold the failure to complete the planned review as a valid reason to delay the implementation of Northwestel TPIA services to the benefit of Northwestel's wholesale customers. Northwestel is being permitted to use regulatory delay as a shield to competition – a delay that is itself having the effect of making competition in the North into a hypothetical prospect, rather than a real source of pricing and service discipline on Northwestel.

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<sup>25</sup> TRP 2016-496, paragraphs 128-129.

<sup>26</sup> "Northwestel Inc. Tariff Notice (TN) 1099 – Introduce Unlimited FTTP Internet Packages," 14 October 2020, paragraphs 2-3.

45. The review has been postponed numerous times. TRP 2016-496 extended Northwestel's regulatory framework to December 31, 2018, noting that the Commission's planned elimination of the local service subsidy would affect the ILEC, among others.
46. Following the release of the Commission's plan to phase out the local service subsidy, the CRTC initiated a review of the price cap and local forbearance regimes that govern a number of ILECs. The Commission again extended Northwestel's price cap regime pending resolution of the issues raised in that review.<sup>27</sup>
47. The Commission ruled on TNC 2018-214 early in 2020. Despite the active participation of Northwestel, SSi and a number of parties especially interested in the implications of the policy determinations made in TRP 2016-496 upon this ILEC, the Commission again determined that the evidence in the TNC 2018-214 proceeding was "limited", and promised to "launch a more fulsome review specific to Northwestel, prior to the complete phase-out of the subsidy."<sup>28</sup>
48. On November 2, 2020, the Commission finally initiated a proceeding to consider the regulatory framework appropriate to Northwestel in light of a number of circumstances, including the state of competition in Canada's North (TNC 2020-367).
49. Notwithstanding the number of years that have passed since this review was initially inscribed into the Commission's workplan, however, TNC 2020-367 is not outlining a rapid process. On the contrary: the proceeding is explicitly foreseen to proceed in two stages, with a public hearing to be scheduled at some point.
50. While we certainly welcome the Commission's initiation of a thorough review of these matters, we are gravely concerned that if the Commission does not act now to address Northwestel's undue discrimination against its wholesale customers, including by requiring the ILEC to immediately offer TPIA service to its cable and FTTP access facilities, the outcome of that proceeding will be moot.
51. Accordingly, we request that the Commission require Northwestel to file proposed TPIA tariffs on an expedited basis. Consistent with longstanding Commission precedent, we propose that the interim rate should be set at a discount of 35% from the interim rates approved for TN 1099 in recognition of the importance of providing competitors with access to the ILEC's cable and FTTP premises as soon as possible in order to respond to the needs of consumers.<sup>29</sup>

***Northwestel TPIA Is in the Public Interest and Consistent with the 2006 and 2019 Policy Directions***

52. Granting the relief sought in this Application is in the public interest. Not only will it enable competitors including SSi to develop and offer internet access offerings better able to compete with

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<sup>27</sup> Telecom Regulatory Policy CRTC 2018-213, *Phase-out of the local service subsidy regime*, 26 June 2018; Telecom Notice of Consultation CRTC 2018-214, *Call for comments – Review of the price cap and local forbearance regime*, 26 June 2018 ("TNC 2018-214").

<sup>28</sup> Telecom Regulatory Policy CRTC 2020-40, *Review of the price cap and local forbearance regimes*, 4 February 2020.

<sup>29</sup> See, for instance, Telecom Order CRTC 2011-377, *Interim rates for wholesale residential and business high-speed access services*, 15 June 2011.

Northwestel's new unlimited packages; it accords with the directions the Commission has received from the Governor in Council concerning issues it must consider as it implements Canada's telecommunications policy.

53. For a competitor to offer internet access packages able to compete with Northwestel's TN 1099 offerings, the Commission must address the ILEC's unjust discrimination against wholesale customers with respect to transport as well as access facilities. However, immediate action on either one of these levels will enable SSi to develop services that appeal to the wishes and respond to the needs of customers in Northwestel's serving territory.
54. For instance, with TPIA service, we anticipate that SSi will be able to offer:
- a) Competitively priced service packages for SSi end-user customers incorporating greater speeds and greater capacity than it is possible today to offer, since the "wholesale" TPIA packages provided to competitors like SSi closely track the speed performance and usage capacity that Northwestel offers its own end-user customers;
  - b) Attractive bundles of 4G LTE wireless and wireline (cable and FTTP) service packages; and
  - c) Pricing that remains competitive, based on TPIA wholesale pricing that tracks the rate changes Northwestel makes in its retail markets.
55. SSi submits that the relief sought in this application is fully consistent with the 2006 and 2019 Policy Directions, as well as with the telecommunications policy for Canada established by s. 7 of the *Telecommunications Act*.<sup>30</sup>
56. Both the 2006 Direction and the 2019 Direction ask the Commission to take note, as it implements the Canadian telecommunications policy objectives of s. 7, of the vital role of competition in delivering the benefits of telecommunications to all Canadians. In the 2006 Direction, the Governor in Council directed the Commission to rely on market forces "to the maximum extent feasible" and to ensure that any regulatory measures implemented "interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives." In the 2019 Direction, the Governor in Council went further to recognize explicitly that competition is the best available mechanism by which to achieve other high-priority objectives such as affordability, consumer interests and innovation.
57. The 2019 Direction requires the Commission to consider the extent to which its decisions "encourage all forms of competition and investment" and "reduce barriers to entry into the market and to competition for telecommunications services providers that are new, regional or smaller than the incumbent national service providers, even as it reaffirms goals first made explicit in the 1993

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<sup>30</sup> Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355 (the 2006 Direction"); Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, SOR/2019-227 (the "2019 Direction").



*Telecommunications Act* relating to affordability, availability in all of Canada's regions, innovation, research and development.

58. Not only is the relief we are seeking today consistent with this language in the 2019 Direction. We respectfully submit that, in proposing to bring an ILEC within a well-established regulatory framework of requiring TPIA, particularly in situations of joint ownership of both cable television and local telecommunications access facilities, this Application explicitly addresses the objective of "reducing barriers to entry ... and to competition" for smaller players.

All of which is respectfully submitted.

**SSi Canada**

[SGD – DEAN PROCTOR]

Dean Proctor

Chief Development Officer

**\*\*\* End of Document \*\*\***