

**Notice No. SLPB-002-20**  
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***Consultation on the Technical and Policy Framework for 3650-4200 MHz Band and  
Changes to the Frequency Allocation of the 3500-3650 MHz Band,***  
**Notice No. SLPB-002-20**

**Reply Comments**  
**of**  
**SHAW COMMUNICATIONS INC.**



**November 30, 2020**

## I. INTRODUCTION

1. The following constitutes the reply comments of Shaw Communications Inc. (“Shaw”), on behalf of itself and of Freedom Mobile Inc. (“Freedom”), to Innovation, Science and Economic Development Canada (the “Department” or “ISED”) in connection with the proceeding initiated by the *Consultation on the Technical and Policy Framework for the 3650-4200 MHz Band and Changes to the Frequency Allocation of the 3500-3650 MHz Band*, No. SLPB-002-20 (the “Consultation” with such document the “Consultation Document”).
2. The Consultation comes at an important time in Canada’s wireless market: COVID-19 has underscored the critical importance of robust and reliable telecommunications infrastructure to Canadians; we are seeing unprecedented progress toward sustainable competition in the wireless market; and, 5G is on our doorstep. The stakes are higher than ever and any policy misstep could have significant consequences for the sustainability of emerging competition in the wireless market, including in rural Canada, and the success of 5G, particularly given the criticality of mid-band spectrum to the future of wireless. As such, we commend the Department for its comprehensive Consultation Document and we appreciate the opportunity to provide our comments on the important issues it raises.
3. In the Consultation, a number of parties are asking the Department to significantly deviate from its well-established regulatory processes for the allocation and licensing of the spectrum resource. This proceeding has been unnecessarily confused and complicated by the Big 3’s various proposals to: amend the 3500 MHz licensing process; make licensing determinations on the 3800 MHz band in the current proceeding without a consultation; and, compress and rush auction processes in a manner that will significantly disadvantage regional and other new competitors in the wireless market. The Big 3’s tactics leverage Telesat’s illogical and self-serving proposal to run an unprecedented private licensing process to fund its LEO upgrade project. Contrary to the assertions of their proponents, each of these proposals would introduce a significant degree of regulatory uncertainty to a wireless market already bedevilled by instability and would harm Canadians and the Canadian economy by undermining the timely deployment of 5G, wireless competition and affordability.
4. Shaw strongly objects to any amendments to the 3500 MHz auction framework (which has been finalized for nearly a year). If amendments such as those proposed by Rogers

and Telus are contemplated,<sup>1</sup> procedural fairness and the integrity of the auction dictate that those amendments be canvassed in a proper public consultation. With the auction scheduled to commence in six short months, a consultation would result in a further delay, slowing the release of this spectrum for 5G. As for the proposals to address mid-band fragmentation through the 3800 MHz assignment phase, these submissions may have merit, but this consultation is not the proper forum for their consideration. Such issues should be explored in the future licensing consultation that will be held following a determination on the band plan and amount of spectrum to be reallocated in the 3800 MHz band.

5. Similarly, as discussed at length in Shaw's initial comments and reinforced in the comments of most other intervenors (other than Bell and Telus), Telesat's Clearing Proposal will not expedite or enhance 5G in Canada.<sup>2</sup>
6. The Department must be wary of these submissions and dismiss any proposal that would distract us from the path we are already on and represent a departure from ISED's tried and tested allocation and licensing procedures. This is particularly important where, as in the case of Telesat, a proposal would constitute an improper delegation of important public policy functions to a private party. 5G is already starting to be rolled out in Canada;<sup>3</sup> it is disingenuous to suggest that any of these proposals are required to hasten its arrival. The Department must instead focus on laying the groundwork for affordability, widespread availability and innovation in 5G through sustainable competition. It can do this by staying on course: first rendering a decision in this proceeding that reallocates a sufficient amount of mobile spectrum and sets a workable band plan and then launching a licensing consultation that contemplates a significant set-aside. That licensing consultation can also consider how the assignment phase in the 3800 MHz band could be structured to achieve contiguity and more efficient spectral use. In contrast, introducing unpredictability to the market at this critical time will threaten competition, as will any proposal that would give the Big 3 an advantage over their newer competitors. In Shaw's view, the clearing and assignment proposals do both.
7. In this reply, Shaw comments on the key issues raised by other parties in their initial comments. Where Shaw does not respond directly to any submission, this should not

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<sup>1</sup> For example, Telus, Initial Comments dated October 26, 2020, paragraph 192; also, Rogers, Initial Comments dated October 26, 2020, paragraph 24.

<sup>2</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 31.

<sup>3</sup> For example, Telus' website states that "Telus 5G is available in Vancouver, Toronto, Montreal, Calgary, Edmonton and more, providing superior coverage in urban centres." <<https://www.telus.com/en/about/5g>>

be interpreted as acceptance of such submission. Further, as alluded to above, certain parties in this proceeding have raised issues that are the proper subject of a future consultation. Our comments on such issues are made without prejudice to Shaw's positions in the subsequent consultation.

## **II. ISED MUST PROCEED WITH ITS 3500 MHZ AUCTION AND ADDRESS 3800 MHZ ASSIGNMENT ISSUES IN A FUTURE CONSULTATION**

### ***The Department cannot alter the 3500 MHz auction framework at this stage***

8. The 3500 MHz auction will mark the first release of significant mid-band capacity appropriate for 5G service in Canada. Certain parties, however, have suggested that the Department should make changes to the upcoming 3500 MHz auction. For example, Telus states that its preferred approach would be to modify the 3500 MHz auction to incorporate the 3650-3900 MHz band.<sup>4</sup> Rogers similarly suggests that combining the auctions would be the ideal approach.<sup>5</sup> Shaw strongly opposes any proposal that would modify the 3500 MHz auction framework, which has been finalized for nearly a year following a comprehensive consultation. Upending the auction framework now would be contrary to Shaw and other parties' legitimate expectations with regard to the licensing process and would significantly delay the auction.
9. In framing its suggestion to modify the 3500 MHz auction, Telus is highly critical of Canada's approach to 5G, casting our country as a laggard and criticizing the Government for not making enough spectrum available fast enough. Nevertheless, in other fora, Telus is already touting its 5G rollout in major cities across the country.<sup>6</sup>
10. Amending the 3500 MHz auction process to include C-band spectrum would require that a separate consultation be held to consider such changes. This would further delay the 3500 MHz auction.
11. Additionally, modifying the 3500 MHz auction framework at this stage would be inefficient, disruptive, and contrary to the legitimate expectations of potential auction participants, who have been incorporating the expectation of a 3500 MHz auction into their business planning since the decision was released nearly a year ago. Upending the Department's established process at this stage would introduce significant uncertainty to the market, disproportionately harming wireless disruptors whose competitive positions in the market are far more vulnerable to uncertainty than those of the Big 3.

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<sup>4</sup> Telus, Initial Comments dated October 26, 2020, paragraph 192.

<sup>5</sup> Rogers, Initial Comments dated October 26, 2020, paragraph E7.

<sup>6</sup> *Supra*, note 3.

A licensing framework for 3500 MHz is in place, an appropriate schedule has been set and parties (including the Department) are preparing based on the established parameters. Any suggestion that the Department should make changes to the 3500 MHz auction framework, particularly without proper consultation and due process, is an inappropriate distraction. These proposals must be dismissed, and the Department should proceed with its 3500 MHz auction as planned.

12. The Big 3 each highlight that it is imperative for Canada to release 5G spectrum as soon as possible. The best way to achieve this is to adhere to the process already in place for the impending 3500 MHz auction, which will ensure the release of much needed spectrum for 5G in 2021. Therefore, the Department must not in any way alter, delay or derail the 3500 MHz auction framework.

***Assignment issues should be addressed in the 3800 MHz framework consultation***

13. A few parties have suggested that some form of joint or rules-based assignment for the 3500 MHz and 3800 MHz bands is necessary to address the concern that fragmentation of spectrum holdings in the bands will lead to spectral inefficiency and undermine the 5G experience. Rogers states that the two bands should be treated as “one band” to achieve contiguous spectrum,<sup>7</sup> and that assignments in the 3500 MHz auction should be awarded on a temporary basis, with a unified frequency assignment stage at the conclusion of the 3800 MHz auction process.<sup>8</sup> Telus advances a similar “alternative” proposal, entailing an “interim” assignment stage for 3500 MHz and a “final” assignment stage upon conclusion of the 3800 MHz process.<sup>9</sup> Rogers also proposes alternatives that would entail a rules-based approach to assignment in either the 3500 MHz or 3800 MHz band.<sup>10</sup>
14. As stated above, Shaw opposes any changes to the 3500 MHz auction framework at this time, including amendments to the assignment round rules. As discussed in our initial comments, we likewise oppose any attempts to make decisions on the licensing process for the 3800 MHz band, including decisions related to assignment, in this band plan and reallocation consultation. This is not to say that proposals to address fragmentation through the assignment rules for the 3800 MHz band are without merit. But such issues must be consulted on and addressed in the subsequent licensing framework for the 3800 MHz band, once we have a decision on the amount of spectrum

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<sup>7</sup> Rogers, Initial Comments dated October 26, 2020, paragraph E2.

<sup>8</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 24.

<sup>9</sup> Telus, Initial Comments dated October 26, 2020, paragraphs 197 and 198.

<sup>10</sup> Rogers, Initial Comments dated October 26, 2020, paragraphs 24 and 81.

that will be repurposed for flexible use and the band plan for the spectrum. From there, the Department can consult on mechanisms that could allow for contiguity of spectrum holdings obtained in the 3500 MHz auction (under its established rules) with any holdings that may be obtained in a future 3800 MHz auction.

15. We encourage the Department to remain focused on making a determination on the reallocation of spectrum in the 3800 MHz band and establishing a band plan, consistent with its established standard processes. Following its determination in this proceeding, the Department must then conduct a subsequent framework consultation that encourages competition in 5G.<sup>11</sup>
16. Importantly, options for mitigating fragmentation in spectrum holdings across the bands will depend in part on the decision that is made with respect to existing WBS users in the 3650-3700 MHz band. As noted in our initial comments, there is an opportunity to achieve some of the purported benefits of the Department's Option 2 without displacing WBS users, as new technical rules and licensing mechanisms can be adopted in the existing band.<sup>12</sup> As Nokia states, keeping WBS users in the 3650-3700 MHz band would enable Canada to take full advantage of the U.S. C-band ecosystem while enabling WBS users to utilize the ecosystem for the U.S. CBRS band.<sup>13</sup>
17. However, Shaw notes, as have other parties, that there are several benefits of relocating WBS to the 3400-3450 MHz frequency range.<sup>14</sup> Moving these users to the 3400 MHz range would allow for contiguity between the 3500 and 3800 MHz bands as desired by the Department, potentially making it easier to address the fragmentation problem without imposing the significant transition costs (e.g., due to equipment upgrades) that would accompany a move to 3900 MHz. This proposal merits full consideration by the Department.
18. The Department should not be distracted by the Big 3's assertions that 5G will be jeopardized in Canada if the auctions are not merged, if the 3500 MHz assignment phase is not revised, or if the timing of the 3800 MHz spectrum auction is not rushed. These are exaggerated claims. But where some possible merit exists, a solution has a better chance of being uncovered through the Department's standard, deliberate and

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<sup>11</sup> As the Consultation Document states (paragraph 184), the subsequent framework consultation will consider, among other things, auction rules, competition measures and conditions of licence.

<sup>12</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 63 to 65.

<sup>13</sup> Nokia, Initial Comments dated October 26, 2020, page 4.

<sup>14</sup> See for example Nokia, Initial Comments dated October 26, 2020, pages 2 and 3; see also, Ericsson, Initial Comments dated October 26, 2020, response to Q14.

specific framework consultation process. Moreover, it is certain that a widely available and affordable 5G ecosystem – one that delivers the full potential of this new connectivity era – will be jeopardized if the market is not competitive. Rushing the auction or subverting the standard licensing procedures will add to the pernicious regulatory uncertainty in the market that is already disproportionately affecting the regional disruptors. This could have devastating consequences for competition in and the timely deployment of 5G.

### **III. TELESAT’S CLEARING PROPOSAL WILL NOT ACCELERATE 5G AND IS NOT IN THE BEST INTEREST OF CANADIANS**

19. In our initial comments we explained that Telesat’s proposed “accelerated clearing approach” (the “Clearing Proposal”) is not in the best interest of Canadians and that it must be rejected. An overwhelming majority of parties support this view. Bell and Telus, on the other hand, offer their support for the Clearing Proposal, which would benefit the Big 3 while disadvantaging regional disruptors. Their comments should be disregarded, and the Department must proceed with its established process.

#### ***Telesat’s proposal constitutes an improper delegation of policy functions to a private party***

20. As outlined in our initial comments, the Clearing Proposal constitutes an improper delegation of important public policy functions to a private company.<sup>15</sup> It would position Telesat as the arbiter of Canada’s digital future and would undermine the integrity of the spectrum release process.<sup>16</sup> The Department, not Telesat, has the responsibility to maximize the economic and social benefits that Canadians derive from the use of the spectrum resource and to manage it in the best interest of Canadians.<sup>17</sup>
21. Many parties have made similar submissions:
- As Rogers describes, Telesat is a private company that will focus only on profit maximization, which is at odds with appropriate spectrum policy.<sup>18</sup> The Department has never empowered a displaced incumbent in such an unprecedented fashion – the proposal is “transparently self-serving and inconsistent with the Department’s approach to the fundamental reallocation of other spectrum bands in past years.”<sup>19</sup>

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<sup>15</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 22 to 24.

<sup>16</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 21.

<sup>17</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 20.

<sup>18</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 67.

<sup>19</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 65.

- Eastlink argues that the Department cannot “[hand] their responsibility for spectrum management over to Telesat who have a financial incentive to design the spectrum process to maximize earnings.”<sup>20</sup>
  - As Sasktel describes, the Telesat proposal is not in the best interest of Canadians – there must be a public auction administered by the Department.<sup>21</sup> A private sale lacks transparency and the primary motivation of the selling party would be to maximize profit.<sup>22</sup>
  - Iristel cautions that it should not be up to a private company to manage allocation of spectrum, which is a public good.<sup>23</sup>
22. Shaw agrees with each of these submissions. There is overwhelming consensus that the Clearing Proposal would constitute an improper delegation of important public policy functions to a private company, which would not be in the public interest. Meanwhile, neither Telesat nor the few parties who have signalled any support for the Clearing Proposal have provided sufficient explanation as to how a private company can take responsibility for a public good and manage it in the public interest or how positioning Telesat as the arbiter of Canada’s digital future is good for Canadians.
23. Further, in our initial comments, we observed that the Clearing Proposal is premised on the notion of Telesat being capable of “taking responsibility” for clearing the entire band, including the operations of other users.<sup>24</sup> We noted that it was unclear whether Telesat had the support of other users in the band and to what extent those users would receive compensation under the Telesat proposal.
24. It is now clear that Telesat does not have such support of other FSS incumbents. For example, Intelsat and SES, have raised concerns regarding Telesat’s proposal. SES expresses concerns about the feasibility of the Clearing Proposal in terms of ensuring continuity of service, highlighting that leaving FSS users with only 100 MHz from 4100-4200 MHz is insufficient.<sup>25</sup> As Intelsat points out, Telesat is not the exclusive user of the band, the Clearing Proposal fails to account for the role of other users and Telesat cannot accomplish clearing without loss of service from other providers.<sup>26</sup> In

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<sup>20</sup> Eastlink, Initial Comments dated October 26, 2020, paragraph, 18.

<sup>21</sup> Sasktel, Initial Comments dated October 26, 2020, paragraph 26.

<sup>22</sup> Sasktel, Initial Comments dated October 26, 2020, paragraph 27.

<sup>23</sup> Iristel, Initial Comments dated October 26, 2020, paragraph 7.

<sup>24</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 24.

<sup>25</sup> SES, Initial Comments dated October 26, 2020, paragraph 6.

<sup>26</sup> Intelsat, Initial Comments dated October 26, 2020, paragraphs 56 to 58.



other words, not only is it inappropriate for the Department to delegate its responsibilities, but Telesat is also incapable of assuming such responsibilities given that it is not the exclusive user of the band and has not considered the impact of its Clearing Proposal on other users.

***There is no legal or policy basis for the Clearing Proposal***

25. As outlined in our initial comments, there is no legal or policy basis for the adoption of the Clearing Proposal. For example, a purported benefit of the Clearing Proposal is that it would enable Telesat to invest in its LEO project. We strongly disagree with Telesat's description of the Clearing Proposal as a "win win" scenario in which Telesat can "leverage the capital funding from the wireless industry" to invest in new facilities, including LEO.<sup>27</sup> As detailed in our initial comments, there is no causal link between the proposed reallocation of C-band spectrum and the LEO project that would justify this extraordinary windfall and disruption to the licensing process.<sup>28</sup> Similarly, Xplornet states, "ISED's repurposing process is not the right venue for Telesat to receive support for its LEO constellation."<sup>29</sup>
26. However, as we discussed previously, Shaw is not opposed to Telesat and other FSS incumbents being reimbursed, out of the proceeds from any auction or other government funding, for any reasonably incurred transition costs that are substantiated with evidence and in excess of those already covered by the FCC.<sup>30</sup> The rejection of the Clearing Proposal in favour of compensation for reasonable, substantiated costs would still be a significant win for Telesat – as Xplornet notes, other users that get displaced often do not get any compensation.<sup>31</sup> As detailed in our initial comments, the applicable Client Procedure Circular is very clear that FSS licences may be revoked where there is a change in frequency allocation or spectrum use policy following a public consultation.<sup>32</sup> In other words, users do not have the legal "right" to the perpetual use of this spectrum.
27. Shaw has highlighted that the benefit of clearing additional spectrum in the 4000-4100 MHz range is unclear, since it would take Canada out of step with the U.S. with respect to the treatment of existing FSS users. As such, there is a low probability of a viable

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<sup>27</sup> Telesat, Initial Comments dated October 26, 2020, paragraph 45.

<sup>28</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 30.

<sup>29</sup> Xplornet, Initial Comments dated October 26, 2020, paragraph 91.

<sup>30</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 29.

<sup>31</sup> Xplornet, Initial Comments dated October 26, 2020, paragraph 88.

<sup>32</sup> ISED, CPC-2-6-02 – *Licensing of Space Stations*, Section 5.7. <<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01385.html#s4.5>>

mobile ecosystem in this band.<sup>33</sup> Rogers similarly observed that this purported benefit of the Clearing Proposal may never be realized, given potential interference with radionavigation systems,<sup>34</sup> a concern which was echoed in the submissions from the aviation industry.<sup>35</sup> We also note that in a situation where some of the spectrum released is less desirable and usable than other spectrum from an ecosystem perspective, it is likely that the Big 3 would push smaller players into this range to assert their dominance. Additionally, since C-band satellite footprints typically cover all of North America, such a fundamental deviation from the U.S. transition plan would create logistical challenges and inefficiencies for FSS operators.

28. Shaw disagrees with Bell's weak attempts to provide a policy basis for the Clearing Proposal based on their reference to the enabling guidelines set out in the *Spectrum Policy Framework for Canada* (the "Spectrum Policy Guidelines"),<sup>36</sup> which, among other things, discuss the importance of secondary markets, the reliance on market forces, and minimizing administrative burdens.<sup>37</sup> The Clearing Proposal does not align with the Spectrum Policy Guidelines.
29. For instance, as Xplornet highlights, secondary markets are intended to facilitate efficient use of the spectrum – they are not a means with which to allocate an entire band.<sup>38</sup> Bell neglects to explain how the Clearing Proposal would actually constitute more appropriate reliance on market forces as compared to an ISED auction and conveniently overlooks the Spectrum Policy Guidelines' requirement that market forces must be tempered by the continued need for the appropriate management of the resource.<sup>39</sup>
30. Put simply, Telesat is asking to be granted a new, flexible use licence for the sole purpose of selling it. It is not proposing to sell its *existing* FSS licence on the secondary market. Nor is it proposing to put this new flexible use licence to work for the benefit of Canadians. In contrast to Telesat's suggestion that there is precedent for its Clearing Proposal,<sup>40</sup> the Department has never granted such a windfall before. In previous processes, parties have been able to retain/exchange a certain portion of their spectrum,

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<sup>33</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 33.

<sup>34</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 283.

<sup>35</sup> Joint Aviation Industry Stakeholders, page 3.

<sup>36</sup> ISED, *SPFC – Spectrum Policy Framework for Canada*, Section 4.4 <<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html>>.

<sup>37</sup> Bell, Initial Comments dated October 26, 2020, paragraph 13.

<sup>38</sup> Xplornet para 82

<sup>39</sup> Spectrum Policy Guidelines, Section 4.4.

<sup>40</sup> Telesat, Initial Comments dated October 26, 2020, paragraph 6.

but this for the express purpose of ensuring continued provision of service, not for the enrichment of a single party through a private sale process.

31. Additionally, contrary to Bell’s suggestion regarding the Spectrum Policy Guidelines, the Clearing Proposal will not promote administrative efficiency.<sup>41</sup> The Department would have administrative functions relating to the Telesat proposal, including the review and approval of an unknown number of applications. In practice, these burdens could prove to be greater than if the Department proceeds with its well-established and transparent existing process. As Rogers alludes to, even if the Clearing Proposal is accepted, the Department would still be consulting on, designing and conducting additional auctions for the 3650-3700 MHz band and the 3900-4100 MHz band.<sup>42</sup>
32. Lastly, the few parties in support of the Clearing Proposal also attempt to argue its policy merits on the basis that it would accelerate access to crucial mid-band spectrum and speed up 5G deployments. Shaw does not dispute that timely access to spectrum is an important policy objective. However, as we outlined in our initial comments, the Clearing Proposal is unlikely, overall, to materially accelerate the deployment of 5G in Canada. In the U.S., only 120 MHz (3700-3820 MHz) will be made available by December 2021, and only in 46 of the top 50 service areas. Nationwide deployment across the entire range, including the remaining 180 MHz (3820-4000 MHz), will not be possible until December 2023. Even if a sale process is conducted with extraordinary speed, the subsequent transfers and subordinations will still be subject to ISED’s review process, which, depending on the number of applications involved, may be lengthy and complex. Moreover, interference issues at the border would likely complicate the early deployment in Canada of mobile for 5G in the 3700-3900 MHz range. Moreover, there is also the issue of other FSS users, as explained above. As Cogeco states, there is good reason to think that the “overall process may not be any faster” than under the Department’s own proposal.<sup>43</sup>

***ISED must continue with its standard reallocation and licensing processes***

33. In light of the above, the Department must proceed with its standard reallocation and licensing procedures. Once the Department determines a band plan and reallocation framework, it must consult further on specific issues relating to the future spectrum release, including pro-competitive measures, conditions of licence, auction design,

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<sup>41</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 39.

<sup>42</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 66.

<sup>43</sup> Cogeco, Initial Comments dated October 26, 2020, paragraph 95.

anti-collusion and prohibited communications rules, and expectations for a rigorous application process.<sup>44</sup>

34. Telesat overlooks the importance of a thorough and transparent consideration of these issues and casts the issue of pro-competitive measures as an “unnecessary delay”. This underscores the fact that Telesat is not capable of managing this process in the public interest.<sup>45</sup> As Eastlink and Sasktel describe, the Clearing Proposal will effectively shut regional disruptors out of the 3700-3900 MHz band (and therefore from 5G) as it does not include or consider appropriate pro-competitive measures, and those that are investing in networks should get a reasonable opportunity to acquire this critical 5G spectrum.<sup>46</sup> Eastlink goes on to add that the Clearing Proposal would “inherently favour the larger national providers who would have infinitely more resources”.<sup>47</sup> Shaw shares these concerns, and also agrees with Sasktel that the Department must proceed with administering its own public auction.<sup>48</sup>
35. Bell acknowledges the Department’s extensive experience running complex auctions in a manner that is fair and efficient.<sup>49</sup> Yet, it supports supplanting the Department’s standard process with one that is inherently unfair, inefficient and lacks transparency. Bell also goes so far as to argue that the implementation of the Clearing Proposal should include a high expectation of approval for the terms that the private parties agree upon.<sup>50</sup> This would completely diminish the policy maker’s role in the licensing process and eliminate any modicum of integrity and transparency. With Telesat’s clear profit maximization objective, it would also give Bell and its Big 3 counterparts the ability to easily foreclose competitors from acquiring this spectrum and competing in 5G. We elaborate on this foreclosure risk in Section IV.
36. The FCC found that, as compared to the substantially similar proposal advanced by the C-Band Alliance, which included Telesat, a normal-course public auction would provide “greater benefit to potential bidders, ensure [oversight] and protect the interests of displaced C-band users, promote a rapid transition, and be more firmly grounded in

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<sup>44</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 35.

<sup>45</sup> Clearing Proposal, paragraph 44.

<sup>46</sup> See Eastlink, Initial Comments dated October 26, 2020, paragraphs 4, 15 and 16; and Sasktel, Initial Comments dated October 26, 2020, paragraph 28.

<sup>47</sup> Eastlink, Initial Comments dated October 26, 2020, paragraph 16.

<sup>48</sup> Sasktel, Initial Comments dated October 26, 2020, paragraph 26.

<sup>49</sup> Bell, Initial Comments dated October 26, 2020, paragraph 105.

<sup>50</sup> Bell, Initial Comments dated October 26, 2020, paragraphs 18-19 and 132.

established legal authority”.<sup>51</sup> There is no valid reason for the Department to reach a different conclusion here.

#### **IV. PRO-COMPETITIVE MEASURES AND OTHER LICENSING ISSUES MUST BE CONSIDERED IN A SEPARATE CONSULTATION**

37. Before providing reply comments regarding pro-competitive measures, Shaw reiterates its strong opposition to the sequencing introduced by the Clearing Proposal, which asks the Department to make a determination on pro-competitive measures in this consultation.<sup>52</sup> As the Consultation Document states,<sup>53</sup> and as other parties have emphasized,<sup>54</sup> pro-competitive measures must be considered as part of a future framework consultation. Accordingly, our comments on this topic are without prejudice to our views in the subsequent licensing framework consultation, at which time we will provide detailed submissions.
38. Predictably, the Big 3 have each made comments opposing appropriate pro-competitive measures, and in particular, the use of set-asides. Before addressing these points in further detail, we encourage the Department to read the Big 3’s comments in context. In particular, they should be read with regard to the fact that the Big 3 continue to hold a significant market share advantage and they continue to dominate spectrum holdings.<sup>55</sup> Their goal is to maintain this *status quo*. This goal drives their comments.

#### ***The Department must adopt appropriate pro-competitive measures in the 3800 MHz band***

39. As detailed in our initial comments, Canadians are benefiting from unprecedented competitive pressure from Shaw and other regional disruptors, but this competition is vulnerable, particularly as we transition to 5G.<sup>56</sup>
40. On one hand, the Big 3 overstate the level of competition in the market in their attempts to downplay the importance of pro-competitive measures. For example, Bell suggests that there is an “abundance of evidence” that the market is highly competitive.<sup>57</sup> Rogers

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<sup>51</sup> FCC, *Report and Order and Order of Proposed Modification*, Released March 3, 2020, paragraph 37.

<sup>52</sup> <https://docs.fcc.gov/public/attachments/FCC-20-22A1.pdf>

<sup>53</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 41 to 42.

<sup>54</sup> Consultation Document, paragraph 184.

<sup>55</sup> For example, Eastlink, Initial Comments dated October 26, 2020, paragraph 14.

<sup>56</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 50 to 52.

<sup>57</sup> For example, Shaw, Initial Comments dated October 26, 2020, paragraphs 43 to 47, detailing improvements in prices and value, along with Shaw’s expansion to deliver competition to more rural Canadians.

<sup>58</sup> Bell, Initial Comments dated October 26, 2020, paragraph 142.

also describes the market as “highly competitive”.<sup>58</sup> These claims ignore the Competition Bureau’s recent finding that the Big 3 continue to possess market power.<sup>59</sup> They also ignore clear signs that the market is not as competitive as it could be; for example, the Big 3 continue to capture nearly 90% of Canadian mobile wireless subscribers.<sup>60</sup>

41. Contradicting their arguments that Shaw and other regional disruptors are sophisticated, financially stable and highly competitive players in the market who are not in need of special regulatory treatment,<sup>61</sup> the Big 3 downplay the regional disruptors’ role in driving the burgeoning competition in the market. For example, Rogers argues that the “key dynamic” driving competition in the market is competition between the Big 3.<sup>62</sup> Not only does this contradict the Big 3’s comments regarding the strength of regional disruptors, it is simply inaccurate: competition between the Big 3 is not the key driver of competitive progress in Canada. As the Competition Bureau has found, where facilities-based wireless disruptors have gained market share of between 5.5% and 20%, the Big 3’s prices are generally in the range of 35% to 40% lower.<sup>63</sup> This makes it clear that, absent a strong regional disruptor, competition between the Big 3 alone is insufficient – it is the presence of strong regional disruptors that is the “key dynamic” driving competition in Canada’s wireless market.
42. Most importantly, the Big 3’s comments do not address the heightened foreclosure risk that exists in this band due to the nascent competition in the market and the transition to 5G. The simple reality is that absent appropriate pro-competitive measures, regional disruptors like Shaw will not be able to acquire this spectrum. This would not be a positive outcome for the digital economy or Canadians.
43. Whether disruptors are financially “stable” is irrelevant. Spectrum is a barrier to competition, and we cannot compete without it. The Big 3 know this and have every incentive to keep critical mid-band spectrum holdings (which the Big 3 currently dominate) out of the hands of regional competitors. This incentive, paired with their extensive market advantages – spectrum concentration, subscriber dominance,

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<sup>58</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 260.

<sup>59</sup> TNC 2019-57, Competition Bureau, Further Comments dated November 22, 2019, Section IV.  
<<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04510.html>>

<sup>60</sup> *Ibid*, paragraph 26.

<sup>61</sup> See for example Bell, Initial Comments dated October 26, 2020, paragraph 143; see also Rogers, Initial Comments dated October 26, 2020, paragraphs E6 and 27 to 28.

<sup>62</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 31.

<sup>63</sup> TNC 2019-57, Competition Bureau, Further Comments dated November 22, 2019, paragraphs 5 and 37-40.  
<<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04510.html>>

established market presence and mature, national networks – creates a significant foreclosure risk that cannot be overcome through financial stability.

44. As Rogers acknowledges, this critical mid-band spectrum is the “most important spectrum band for scaling up 5G deployments.”<sup>64</sup> We would also add that, as detailed in our initial comments, the 3800 MHz band is the last anticipated mid-band spectrum release for 5G.<sup>65</sup> This is exactly why the foreclosure risk is heightened for the 3800 MHz band – the Big 3’s incentive to block regional disruptors from 5G is stronger than ever.
45. As Videotron explains, the Department must proceed with its own auction, and this auction must include appropriate pro-competitive measures – otherwise, there is a risk that the Big 3 will extend their “stranglehold” on spectrum in order to block access by strong regional disruptors.<sup>66</sup> As Professor Peter Cramton, a world-renowned expert on spectrum auctions, has previously explained, absent a significant set-aside, the foreclosure risk in Canada is real.<sup>67</sup>
46. As detailed in our initial comments, spectrum imbalances are a critical barrier to sustainable competition.<sup>68</sup> This imbalance will only be exacerbated if the Department does not adopt a significant set-aside to offset this heightened foreclosure risk. Accordingly, the Department’s licensing framework consultation for 3800 MHz must contemplate the adoption of a significant set-aside.

***A set-aside is the best mechanism to address the heightened foreclosure risk***

47. While Bell opposes any pro-competitive measures,<sup>69</sup> Telus and Rogers recommend the adoption of a cap across both the 3500 MHz and 3800 MHz bands.<sup>70</sup> As discussed previously, at this time it is entirely inappropriate to make any determinations that would impact the 3500 MHz auction. A set-aside is already in place for the 3500 MHz

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<sup>64</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 8.

<sup>65</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 54-57.

<sup>66</sup> Videotron, Initial Comments dated October 26, 2020, paragraphs 87-89. (Translated from Google Translate)

<sup>67</sup> Peter Cramton, *The Critical Importance of Pro-competition Measures in the Canadian 3500 MHz Auction: Reply*, dated September 20, 2019 (the “**Cramton Reply Paper**”), pages 3 – 5. <[https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw-Cramton-Attachment1.pdf/\\$FILE/SLPB-002-19-Reply-Shaw-Cramton-Attachment1.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw-Cramton-Attachment1.pdf/$FILE/SLPB-002-19-Reply-Shaw-Cramton-Attachment1.pdf)>

<sup>68</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 49 to 53.

<sup>69</sup> Bell, Initial Comments dated October 26, 2020, paragraphs 135 to 146.

<sup>70</sup> See Telus, Initial Comments dated October 26, paragraphs 8 and 205; and Rogers, Initial Comments dated October 26, paragraphs 35 and 36.

auction, and to the extent that any of the Big 3's arguments imply that this should be effectively supplanted with a cap, such arguments must be disregarded.

48. In their initial comments, the Big 3 argue that set-asides are no longer the norm internationally and that a cap is superior as it effectively creates a set-aside.<sup>71</sup> As we explained in detail in our reply comments in the Department's 3500 MHz framework consultation, a cap does not serve the same purpose as a set-aside.<sup>72</sup> Spectrum caps are the preferred instrument when the purpose is to prevent excessive concentration of holdings, while set-asides are preferred when there is a risk of foreclosure of smaller regional players by dominant incumbents.<sup>73</sup> Caps may not ensure that sufficient spectrum will be available for the wireless disruptors in the auction; set-asides will directly offset the foreclosure risk.
49. The Big 3 continue to cite the 600 MHz auction in support of their arguments against set-asides. For example, Bell states that set-aside eligible parties have previously bid on non-set-aside spectrum, which, they allege, drives up costs for the Big 3.<sup>74</sup> Rogers similarly states that set-asides drive up costs for the Big 3.<sup>75</sup> These assertions are inaccurate. The 600 MHz auction is an excellent example of why set-asides are necessary to avoid the foreclosure risk. It is telling that all of the open, non-set-aside blocks in that auction were acquired by the Big 3 despite attempts by smaller players to acquire the spectrum.<sup>76</sup> Shaw has previously explained in detail (and substantiated with evidence) that parties like Shaw did not drive up prices in the 600 MHz auction; the prices paid by the Big 3 were determined entirely by the other incumbents and ISED rather than the set-aside eligible bidders.<sup>77</sup>

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<sup>71</sup> Telus, Initial Comments dated October 26, paragraph 209

<sup>72</sup> Shaw, Reply Comments in SLPB-002-19, *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, dated September 20, 2020 ("**Shaw 3500 MHz Reply**"), Section II.

<[https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw.pdf/\\$FILE/SLPB-002-19-Reply-Shaw.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw.pdf/$FILE/SLPB-002-19-Reply-Shaw.pdf)>

<sup>73</sup> Shaw 3500 MHz Reply, paragraph 41; see also Cramton Reply Paper, page 2.

<sup>74</sup> Bell, Initial Comments dated October 26, 2020, paragraphs 136-138.

<sup>75</sup> Rogers, Initial Comments dated October 26, 2020, paragraph E11.

<sup>76</sup> ISED, 600 MHz Auction – Final Results, April 10, 2019.

<<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11499.html>>

<sup>77</sup> Shaw, 3500 MHz Reply, paragraphs 57 to 64.; see also, Economists Incorporated, *An Analysis of Allocation Phase Pricing and Lock Round Price Increases in the Canadian 600 MHz Auction*, September 20, 2019.

<[https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw-Economists-Attachment2.pdf/\\$FILE/SLPB-002-19-Reply-Shaw-Economists-Attachment2.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-19-Reply-Shaw-Economists-Attachment2.pdf/$FILE/SLPB-002-19-Reply-Shaw-Economists-Attachment2.pdf)>



50. The Big 3's arguments that spectrum set-asides drive up spectrum costs, and that those costs are borne by consumers, have no basis in theory or in fact.<sup>78</sup> The driver of consumer prices is the degree of competition in the market, and well-crafted pro-competitive measures enhance competition.
51. The investments made by facilities-based disruptors like Shaw are driving unprecedented progress toward sustainable competition in the Canadian wireless market. The Department has set a course in its recent auctions that is unquestionably correct and is paying dividends for Canadians. Including a significant set-aside as part of the 3800 MHz auction will provide significant benefits for Canadians in the form of lower prices and more valuable services. In contrast, the Big 3 argue for policies that would enable them to capitalize upon 5G to preserve and extend their joint dominance.
52. Lastly, Bell points out that at this time, parties do not have a clear understanding of what the deployment conditions would be under the Clearing Proposal.<sup>79</sup> This is another reason why the Department must proceed with its established process and canvass the issue of deployment conditions and other conditions of licence in the subsequent licensing framework consultation.
53. We also note that Bell takes the opportunity to complain that the 3500 MHz deployment obligations are unfair because existing regional LTE providers would only have to reach a minimum deployment level outside of urban centers as per their LTE footprint as of a certain date.<sup>80</sup> It is fundamentally misleading to characterize the issue in this way. The Big 3 have had a decades-long head start in building out their networks in rural areas, which has for years given them a distinct advantage over the regional disruptors in meeting the coverage targets of the deployment conditions. That advantage was amplified significantly for the Big 3 through their favourable access to low-frequency spectrum, which establishes the coverage foundation for wireless networks and is particularly important to cost-effective rural and remote deployments. In sharp contrast to the regional competitors, who are still waiting for access to some low-frequency spectrum that they have already paid for through competitive auction processes, the Big 3 were awarded substantial low-frequency holdings for free and at the very outset of their network builds. The Big 3 were also awarded substantial mid-band holdings for free. The mobile LTE requirement attempts to offset some (certainly

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<sup>78</sup> As Professor Cramton has previously stated, "the causal connection between high spectrum prices and higher consumer prices is at best difficult to establish". See Cramton Reply Paper, page 2; see also Shaw 3500 MHz Reply, paragraph 56.

<sup>79</sup> Bell, Initial Comments dated October 26, 2020, paragraphs 16 and 121.

<sup>80</sup> Bell, Initial Comments dated October 26, 2020, paragraphs 123 to 126.

not all) of the impact of these multi-faceted advantages by creating a deployment requirement linked to an existing network footprint.

## **V. TREATMENT OF EXISTING USERS AND CONTINUED FSS USE IN SATELLITE DEPENDENT AREAS**

54. With respect to the 3700-4200 MHz portion of the band, as detailed in our initial comments, Shaw supports the proposal to consolidate FSS users' operations in the 4000-4200 MHz portion of the band.<sup>81</sup> This would align Canada with the U.S. and its associated equipment ecosystems, facilitate the deployment of 5G and facilitate competition in 5G through the adoption of a significant set-aside. Aligning with the U.S. will also be optimal from a transition perspective for FSS users that operate both in the U.S. and in Canada.
55. We also support the Department preserving FSS use across the full 3700-4200 MHz band in remote areas of the country that depend exclusively on satellite for essential telecommunications services. However, as we have discussed, the Department's proposed Annex E includes many areas that are not truly satellite dependent as they fail to account for the availability of terrestrial transport services.<sup>82</sup> Shaw continues to be of the view that the Department should focus on communities where terrestrial transport is unavailable and establish exclusion or coordination zones around those communities, instead of maintaining a co-primary protected designation for FSS throughout the entire Tier 4 area.<sup>83</sup>
56. Other parties have made similar comments. For example, Rogers raises concerns that some of the areas identified by the Department are "well served by terrestrial broadband and wireless communication service providers", including areas such as Val D'Or, Kenora, Portage La Prairie, Powell River, Williams Lake, Quesnel, Terrace, Smithers, Dawson Creek, Fort St. John and others.<sup>84</sup>
57. As stated in our initial comments, the key risk with adopting an over-broad definition of "satellite dependent" is that it will run counter to the Department's objective of promoting connectivity in rural areas, as it would preclude the deployment of flexible

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<sup>81</sup> Shaw, Initial Comments dated October 26, 2020, Section V.

<sup>82</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 69.

<sup>83</sup> Shaw, Initial Comments dated October 26, 2020, paragraphs 71 and 72.

<sup>84</sup> Rogers, Initial Comments dated October 26, 2020, paragraph 171.

use systems in the 3800 MHz in areas outside of urban centres where it is well-suited for the delivery of broadband.<sup>85</sup> Xplornet and Telus raise similar concerns.<sup>86</sup>

58. Narrowing the definition of “satellite dependent” to capture an additional criterion – namely, the availability of terrestrial services – and adopting exclusion or coordination zones around truly satellite dependent areas would ensure that the Department strikes an appropriate balance between maintaining continuity of critical services and encouraging deployment of flexible use systems in rural and remote areas.

## **VI. CONCLUSION**

59. The Department must not be distracted by the Big 3’s attempts to modify the 3500 MHz auction framework or by Telesat’s attempts to exploit this reallocation process to secure an unprecedented windfall to fund a project that is unrelated to C-band spectrum. We encourage the Department to remain focused on the critical issues in its Consultation Document, such as ensuring a smooth transition of existing users and laying the foundation for the adoption of meaningful and effective measures to support sustainable competition in the 5G era and beyond. This means ensuring that the resulting band plan is set up to maximize the benefits of the spectrum, including by facilitating the adoption of appropriate pro-competitive measures. Shaw thanks the Department for the opportunity to share its views in this important consultation.

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<sup>85</sup> Shaw, Initial Comments dated October 26, 2020, paragraph 73.

<sup>86</sup> Xplornet, Initial Comments dated October 26, 2020, paragraph 19; see also Telus, Initial Comments dated October 26, 2020, paragraph 14.