



November 30, 2020

VIA E-MAIL

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Director, Spectrum Regulatory Best Practices  
Innovation, Science and Economic Development Canada  
235 Queen Street  
Ottawa, Ontario K1A 0H5

Re: *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, Canada Gazette, September 12, 2020, Notice No. SLPB-002-20*

Eutelsat S.A., on behalf of itself and its affiliates (including operators of U.S., Mexican, and French-licensed satellites) (collectively, “Eutelsat”), hereby submits the attached reply comments in response to Innovation, Science and Economic Development (“ISED”) Canada’s *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, Canada Gazette, September 12, 2020, Notice No. SLPB-002-20.*

Eutelsat appreciates the opportunity to provide additional input regarding this important matter. Please do not hesitate to contact the undersigned or Eutelsat’s international regulatory consultant (copied) should any questions arise with respect to this submission.

Respectfully submitted,

/s/

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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

(SLPB-002-20)

Reply Comments of  
Eutelsat S.A.

November 30, 2020



1. Eutelsat S.A., on behalf of itself and its affiliates (including operators of U.S., Mexican, and French-licensed satellites) (collectively, “Eutelsat”), appreciates the opportunity to provide additional input on Innovation, Science and Economic Development (“ISED”) Canada’s *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, Canada Gazette, Part I, September 12, 2020, Notice No. SLPB-002-20* (the “3800 MHz Consultation”). Eutelsat hereby submits these reply comments (i) reiterating its position with respect to the essential elements of a judicious transition of C-band frequencies in Canada, (ii) opposing Telesat Canada’s (“Telesat”) attempt to seize and monetize hundreds of megahertz of terrestrial spectrum; and (iii) responding to the comments of Intelsat US LLC (“Intelsat”) and SES S.A. (“SES”), which also seek to receive unwarranted economic incentives in addition to the billions of U.S. dollars in payments they will receive for C-band transition efforts in the United States.
2. Eutelsat operates satellites on ISED’s list of foreign satellites approved to provide fixed-satellite service (“FSS”) in Canada.<sup>1</sup> Eutelsat provides FSS services in Canada, including traditional international communications and video distribution services, in the frequencies at issue in this proceeding. Furthermore, like Telesat, Intelsat, and SES, Eutelsat is in the process of relocating earth station customers to the upper portion of the 3800 MHz Band in connection with the C-band transition in the United States. As a result, Eutelsat has a direct and material interest in the outcome of ISED’s 3800 MHz Consultation.

## **I. OPTIMAL TRANSITION OF THE 3800 MHZ BAND**

3. Eutelsat applauds ISED’s efforts to adopt a C-band transition plan that recognizes the unique characteristics of the Canadian communications marketplace and the value that both satellite and terrestrial wireless systems bring to Canadian consumers. Eutelsat urges ISED to adopt regulations that enable access to this spectrum for both FSS and flexible use services to the extent possible. Eutelsat also suggests that ISED leverage the extensive work conducted by the Federal Communications Commission (“FCC”) in developing the U.S. transition approach for the band, which necessarily impacts the ISED transition because C-band satellites generally cover both Canada and the United States.
4. Eutelsat reiterates that it believes ISED should seek to benefit from the 3800 MHz transition approach embodied in the FCC’s C-Band R&O to the extent possible.<sup>2</sup> Harmonization of 3800 MHz policies will optimize the effort of satellite operators and terrestrial wireless providers alike, and will facilitate efficient and effective use of the 3800 MHz Band in the best interest of all Canadians. Accordingly, ISED should (i) pursue a public auction to secure maximum value of flexible use licences for the Canadian public; (ii) link the band-clearing efforts underway in the United States to accelerate the 3800 MHz transition in Canada; and (iii) permit earth station access to the 3700-4000 MHz band on a no-protection basis and

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<sup>1</sup> See List of foreign satellites approved to provide fixed-satellite services (FSS) in Canada (available at <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf02104.html>).

<sup>2</sup> See FCC, Report and Order and Order of Proposed Modification, GN Docket No 18-122 (rel. Mar. 3, 2020) (the “C-Band R&O”).

preserve earth station access to the 3700-4200 MHz band on a primary (protected) basis in satellite-dependent areas (“SDAs”).

5. The FCC rejected the proposals of the C-Band Alliance (ultimately comprised of Intelsat, SES, and Telesat) to conduct a private sale of 3800 MHz spectrum on the secondary market or reserve a portion of auction proceeds for satellite operators to facilitate the introduction of wireless services in the band. The FCC opted instead for a public auction and band-clearing approach that focused on maximizing the value of terrestrial wireless spectrum to the public, while incentivizing satellite operators to clear spectrum rapidly for flexible use. Thus, satellite operators will receive billions of U.S. dollars in acceleration payments, as well as reimbursement for costs incurred to relocate earth station customers (including new satellites where necessary to maintain comparable services).

## II. INDUSTRY GENERALLY OPPOSES THE TELESAT PROPOSAL

6. Unsurprisingly, industry commenters primarily expressed discomfort with the unsupported and self-serving proposal of Telesat to unilaterally transition FSS earth station operations in the 3700-4100 MHz band in exchange for an exclusive Tier 1 flexible use licence for 200 megahertz of spectrum in the 3700-3900 MHz band, along with the right to fully monetize that licence on the secondary market (the “Telesat Proposal”).<sup>3</sup> Of the numerous comments received in response to the 3800 MHz Consultation, only a few expressed tepid support for the Telesat Proposal. These were greatly outweighed by opponents citing a lack of necessary information regarding the proposal, arguing that it is an attempt by Telesat to substitute itself as the regulator, and confirming that the approach is not in the best interest of Canadians. Instead, an auction led by ISED would ensure that sufficient spectrum is released in a timely manner that is fair, pro-competitive, and transparent.
7. As Eutelsat set forth in its initial comments, Telesat seeks unprecedented compensation via a flexible use licence in more than half of the spectrum it proposes should be made available, even though it holds only a non-exclusive authorization to operate satellite downlinks in the band. Grant of such a licence would be inconsistent with Canadian law and regulation, which plainly establish that Telesat has no exclusive claim to the spectrum and provides for compensation only in very limited circumstances.<sup>4</sup> Apart from its questionable jurisdictional basis, allowing Telesat to monetize terrestrial spectrum to support its unrelated satellite initiatives would significantly distort competition, especially since Telesat shares the spectrum at issue with other satellite operators that will compete with it in these and other bands.

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<sup>3</sup> See Fast tracking affordable, Canada-wide 5G and universal connectivity with 3800 MHz spectrum, Telesat Canada (July 5, 2020).

<sup>4</sup> An assignment of frequencies to an operator “does not confer a monopoly on the use of the frequency or frequencies, nor shall a radio authorization be construed as conferring any right of continuing tenure in respect of the frequency or frequencies”; Radiocommunication Regulations, Assignment of Frequencies, § 40; and the Radiocommunication Act authorizes compensation only in circumstances where the Canadian government takes possession of a radio station and all things necessary to the sufficient working of that radio station. See Radiocommunication Act § 7(3).

8. In its comments, Telesat has made its intentions clearer by doubling down on enlisting ISED in the alarming scheme to cross-subsidise its LEO system through the exclusive acquisition and monetization of terrestrial C-band spectrum even though it holds only non-exclusive authority to provide GSO satellite services in the band. Telesat asserts that the proposal “has been carefully designed...” so that “Telesat can leverage capital funding from the terrestrial wireless industry and invest all of the net proceeds from this process into new facilities and satellites, particularly Telesat LEO.”<sup>5</sup> Importantly, to the extent new satellite facilities are necessary for Telesat to continue providing comparable services, it would be eligible for reimbursement of the costs of such facilities through the U.S. transition process. However, Telesat has made no such claim for reimbursement. Thus, the proposed use of funds from the resale of proposed flexible use terrestrial spectrum licences amounts to unjustified subsidization of unrelated satellite facilities.
9. Telesat contends, without foundation, that its proposal is the “only actionable path forward for the Department to auction any part of the 3800 MHz spectrum band and realize any potential future auction proceeds to the Treasury without jeopardizing the vital services Canadians receive over this spectrum today.”<sup>6</sup> Telesat, along with other C-band satellite operators, are in the process of transitioning essential satellite services in the United States despite the FCC’s adoption of a public auction and rejection of a similar secondary-market proposal by satellite operators. In addition, the extraordinary synergies that would result from aligning the Canadian and U.S. transition approaches will greatly assist Telesat and other satellite operators in seamlessly relocating earth station customers to the upper portion of the band. Thus, Telesat’s claim that its proposal is the only viable way forward is groundless.
10. Furthermore, contrary to Telesat’s assertions, the Telesat Proposal is not in the best interest of Canadians. As multiple commenters point out, it is best to have such a precious, finite resource such as spectrum managed by ISED and not by a private company.<sup>7</sup> Granting Telesat exclusive control over terrestrial spectrum for which it has no claim disadvantages flexible use and FSS providers alike, and therefore would be extremely anticompetitive. As Eastlink notes, the Telesat Proposal “would provide [Telesat] with control over the

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<sup>5</sup> See Comments of Telesat, ¶ 45 (Oct. 26, 2020) [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Telesat-comments.pdf/\\$FILE/SLPB-002-20-Telesat-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Telesat-comments.pdf/$FILE/SLPB-002-20-Telesat-comments.pdf).

<sup>6</sup> *Id.* at ¶ 46.

<sup>7</sup> See Comments of ECOTEL Inc., ¶ 130 (Oct. 26, 2020) (stating “ECOTEL believes Telesat proposal is an attempt to substitute itself to the regulator and sees this as a dangerous precedent that should be avoided at all cost.”), [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Ecotel-comments.pdf/\\$file/SLPB-002-20-Ecotel-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Ecotel-comments.pdf/$file/SLPB-002-20-Ecotel-comments.pdf); Comments of Iris Technologies, ¶ 122 (Oct. 26, 2020) (stating it “is surprised to see that ISED is considering, even remotely (at least enough to include the prospect as part of this Consultation), to allow a private company to substitute the regulator by allowing it to manage the fragmentation of a Tier 1 licence into Tier 4 subsets sold to the highest bidder.”), [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Iristel-comments.pdf/\\$file/SLPB-002-20-Iristel-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Iristel-comments.pdf/$file/SLPB-002-20-Iristel-comments.pdf); Comments of Quebecor Media, Inc., ¶ 93 (Oct. 26, 2020) (raising serious concerns about an auction being privately managed, especially for band critical to the successful deployment of 5G networks in Canada.”), [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Quebecor-Media-inc-comments.pdf/\\$FILE/SLPB-002-20-Quebecor-Media-inc-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Quebecor-Media-inc-comments.pdf/$FILE/SLPB-002-20-Quebecor-Media-inc-comments.pdf).

distribution of this valuable spectrum, which they will directly profit from, undoubtedly driving up the cost of this spectrum, and potentially shutting out smaller, regional providers.”<sup>8</sup>

11. Eutelsat would also note that most commenters support the preservation of 200 megahertz of spectrum in the 4000-4200 MHz band for satellite services. For example, Intelsat and SES, while supporting Telesat’s plan generally, reject the Telesat proposal to limit C-band operations to 100 MHz, a measure which SES refers to as “impracticable” and “unsustainable,” calling for the full 4000-4200 MHz band to be reserved for C-band services, as proposed by ISED and in alignment with the U.S. allocation.<sup>9</sup> Hunter Communications Canada points out that Telesat’s proposal to limit C-band supply to 100 MHz will “by economic certainty...result in a material increase in price for services delivered to satellite-dependent communities.”<sup>10</sup> Preservation of such spectrum is essential to provide satellite broadband connectivity to all areas of Canada, including rural and remote regions. Maintaining only 100 megahertz of spectrum for satellite services is insufficient to deliver essential services in Canada and driven by Telesat’s desire to seize and monetize vast amounts of terrestrial spectrum over which it has no claim.

### **III. ADDITIONAL ECONOMIC INCENTIVES FOR SATELLITE OPERATORS ARE UNNECESSARY**

12. SES and Intelsat both conditionally supported the Telesat Proposal.<sup>11</sup> They assert that all satellite operators, domestic or foreign, should be entitled to certain incentive payments in the form of secondary market transactions. Specifically, Intelsat suggests it is entitled to a minimum 25% of compensation from the proceeds of an auction. It arrived at this result by using calculations including variables such as the “significance of the Canadian services provided” and the expenses related to clearing the band.<sup>12</sup> SES suggests a compensation mechanism similar to the FCC’s would be more appropriate, which “would need to include reimbursement of clearance costs, as well as additional incentives for accelerated and timely completion of such clearance,”<sup>13</sup> and which would be based on each operator’s share of the Canadian market.<sup>14</sup>

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<sup>8</sup> See Comments of Bragg Communications, Inc., Operating as Eastlink, ¶ 15 (Oct. 26, 2020), [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Bragg-Communications-Inc-comments.pdf/\\$FILE/SLPB-002-20-Bragg-Communications-Inc-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Bragg-Communications-Inc-comments.pdf/$FILE/SLPB-002-20-Bragg-Communications-Inc-comments.pdf).

<sup>9</sup> See Intelsat Comments, ¶ 48; see also SES Comments at 6.

<sup>10</sup> See Comments of Hunter Communications Canada, Inc., at 2 (Oct. 26, 2020), [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Hunter-Communications-Canada-Inc-comments.pdf/\\$FILE/SLPB-002-20-Hunter-Communications-Canada-Inc-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Hunter-Communications-Canada-Inc-comments.pdf/$FILE/SLPB-002-20-Hunter-Communications-Canada-Inc-comments.pdf).

<sup>11</sup> See Comments of SES S.A., (Oct. 26, 2020) [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-SES-SA-comments.pdf/\\$FILE/SLPB-002-20-SES-SA-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-SES-SA-comments.pdf/$FILE/SLPB-002-20-SES-SA-comments.pdf) (“SES Comments”); Comments of Intelsat US LCC, (Oct. 26, 2020) [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Intelsat-comments.pdf/\\$file/SLPB-002-20-Intelsat-comments.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/SLPB-002-20-Intelsat-comments.pdf/$file/SLPB-002-20-Intelsat-comments.pdf) (“Intelsat Comments”).

<sup>12</sup> See Intelsat Comments, ¶ 23.

<sup>13</sup> See SES Comments at 3.

<sup>14</sup> See *id.* at 7.

13. Eutelsat notes that similar proposals from the C-band Alliance were expressly rejected in the United States for numerous legal and policy reasons. Under the approach ultimately adopted by the FCC, satellite and earth station operators are entitled to reimbursement of relocation costs and, as an additional incentive, satellite operators are eligible for accelerated relocation payments for clearing the band early. Because satellite operators are already incentivized by billions of dollars in acceleration payment associated with the U.S. process, Eutelsat believes that ISED should limit any potential reimbursement to the incremental costs incurred for clearing the 3800 MHz Band.
14. Relocation efforts in the United States and Canada are linked because each C-band satellite generally covers both Canada and the United States given their geographic proximity. Canada can benefit from the relocation efforts and economies of scale associated with the C-band transition in the United States. Detailed transition plans, equipment supply chains, and institutional knowledge being developed in the U.S. process will facilitate band-clearing in Canada. Although reimbursement of actual transition costs may be appropriate, no additional economic incentives are necessary to facilitate earth station relocation in Canada.
15. Neither Telesat nor any of the commenters provide a reasonable basis for ISED to take a different approach to compensating satellite operators for relocation efforts. Acceleration payments associated with the U.S. process are more than sufficient to ensure C-band satellite operators expeditiously transition earth station customers within their services areas, including Canada and the United States, to the upper portion of the C-band. Preserving the value of the spectrum for the Canadian public is more important than giving unnecessary economic incentives or subsidies to Telesat or foreign satellite operators.