

**BEFORE INNOVATION, SCIENCE, AND ECONOMIC DEVELOPMENT CANADA**

**IN THE MATTER OF**

**CONSULTATION ON NEW ACCESS LICENSING FRAMEWORK, CHANGES TO  
SUBORDINATE LICENSING AND WHITE SPACE TO SUPPORT RURAL AND  
REMOTE DEPLOYMENT, AUGUST 2021**

**REPLY COMMENTS OF THE  
CANADIAN ASSOCIATION OF WIRELESS INTERNET SERVICE PROVIDERS**

**7 DECEMBER 2021**

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## 1.0 INTRODUCTION

1. ISED's proposed access licensing framework will facilitate the construction of last-mile broadband network infrastructure in communities that are currently unserved and underserved.
2. CanWISP wholly agrees with the assessment of Eeyou Communications Network ("ECN") that,

*The reasons many rural and remote areas of Canada, particularly the North, have been left behind in digital access and services are many: a reliance on market forces that favour large incumbents that in turn primarily serve Canadian urban centres; the immense financial investment needed for infrastructural development and implementation; limited access to broadband spectrum licenses; and limited opportunity to participate in regulatory consultation processes.<sup>1</sup>*

And that,

*Many rural and remote communities in Canada have seen improvements in regard to access to affordable and reliable broadband services in recent years. Much of this improvement has been the result of small and independent ISPs, like ECN. To effectively address the particular issues that remote and rural regions of Canada face in providing broadband services, non-profit, First Nations, networks, and other small and independent ISPs must be an important part of the policy making process, including design of the policy proceedings and consultations.<sup>2</sup>*

3. In devising an effective access licensing framework, ISED must consider the input of these non-profit groups, First Nations, and other small and independent ISPs that have built network infrastructure in communities that have not been served by large national carriers.
4. ISED's proposed access licensing framework has been met with universal support from all respondents to this consultation, with the exception of those companies that hold large quantities of undeployed spectrum.
5. In these reply comments, CanWISP demonstrates why Bell Mobility Inc. ("Bell"), Rogers Communications Inc. ("Rogers"), Saskatchewan Telecommunications ("Sasktel"), and several other respondents are mistaken in their arguments against this proposed framework, and that rural Canadians will benefit from the proposed framework. We also show that ISED has clear authority to introduce this framework. We also address some of the proposed modifications to the proposed policy, including mechanisms to dispute the eligibility of Tier 5 areas, modifications to the access licensing areas, terms and conditions of access licences, the licence application and award mechanism, and some other suggestions and concerns raised by other parties.

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<sup>1</sup> Comments of Eeyou Communications Network (ECN), undated, posted November 5, 2021, ("ECN Comments"), at para. 3.

<sup>2</sup> ECN Comments, at para. 4.

## 2.0 RURAL CANADIANS WILL BENEFIT FROM THE ACCESS LICENSING FRAMEWORK

### 2.1 Access to more spectrum is critical

6. Bell and Rogers, who both hold vast quantities of undeployed spectrum, assert that there is enough spectrum available in the lightly-licensed and unlicensed bands.<sup>3</sup> Further, they assert that there is no evidence of spectrum scarcity amongst other telecommunications operators.<sup>4</sup>

7. Rogers proceeds to make the surprising claim that,

*Rogers is unaware of any rural and remote applications that could require more than 15 GHz of spectrum across various bands, bands, particularly as these applications do not support the numbers of customers or need to provide the same level of service as the national network providers.*<sup>5</sup>

8. The record of this proceeding demonstrates that a lack of access to spectrum is a significant barrier faced by non-profit groups, First Nations, and other small and independent ISPs who wish to build broadband networks in underserved communities. EORN<sup>6</sup>, ECN<sup>7</sup>, Télésignal<sup>8</sup>, Ecotel<sup>9</sup>, Iristel<sup>10</sup>, Lyttonnet<sup>11</sup>, Redline<sup>12</sup>, TwinComm<sup>13</sup>, Xplornet<sup>14</sup>, and Federation of Canadian Municipalities<sup>15</sup> all cited spectrum access as a barrier to connectivity.

9. As Rogers also points out,

*Spectrum is the lifeblood of wireless networks, and access to exclusive, interference-free spectrum is necessary for facilities-based operators to continue increasing coverage and capacity to benefit Canadians.*<sup>16</sup>

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<sup>3</sup> Comments of Bell Mobility Inc., dated October 26, 2021 (“Bell Comments”), at paras. ES5-ES7 and 10-13; Comments of Rogers Communications Canada Inc, dated October 26, 2021 (“Rogers Comments”), at paras. 46 and 58.

<sup>4</sup> Bell Comments, at paras. ES2 and 1; Rogers Comments, at para. 74.

<sup>5</sup> Rogers Comments, at para. 46.

<sup>6</sup> Comments of Eastern Ontario Regional Network, dated October 20, 2021 (“EORN Comments”), at para. 3.

<sup>7</sup> ECN Comments, at para. 8.

<sup>8</sup> Comments of Communications Télésignal Inc., undated, posted November 5, 2021 (“Télésignal Comments”), at Q1.

<sup>9</sup> Comments of ECOTEL Inc., dated October 26, 2021 (“Ecotel Comments”), at paras. 9 and 21.

<sup>10</sup> Comments of Iristel Inc., dated October 26, 2021 (“Iristel Comments”), at para. 10.

<sup>11</sup> Comments of Lytton Area Wireless Society, dated October 26, 2021 (“Lyttonnet Comments”), at the first paragraph.

<sup>12</sup> Comments of Redline Communications Group Inc., dated October 26, 2021 (“Redline Comments”), at para. 4

<sup>13</sup> Comments of Twin Island Communications, undated, posted November 5, 2021 (“TwinComm Comments”), at the first paragraph.

<sup>14</sup> Comments of Xplornet Communications Inc., dated October 26, 2021 (“Xplornet Comments”), at paras. 3 and 11.

<sup>15</sup> Comments of the Federation of Canadian Municipalities, dated October 26, 2021 (“FCM Comments”), at para. 19.

<sup>16</sup> Rogers Comments, at para. 1.

10. The necessity of exclusive, interference-free spectrum applies to non-profit groups, First Nations, and other small and independent ISPs as much as it applies to large national carriers. While unlicensed and lightly-licensed spectrum can be leveraged to improve rural connectivity, long-term solutions will be built using exclusive, interference-free spectrum. As we have seen in the recent 3500 MHz auction, this spectrum remains out of reach for these local providers in the primary market.

11. Rogers' claim that 15 MHz of spectrum is adequate for rural applications is incorrect. Indeed, we note that in 2019, Rogers wrote,

*The ability for facilities-based operators to eventually assemble contiguous bandwidths of ideally up to 100 MHz is key to deliver on the promise of 5G.*<sup>17</sup>

12. At the same time, Bell wrote,

*Access to large blocks of contiguous spectrum is necessary for the full benefits of 5G technologies to be realized. This is, in part, because the benefits associated with 5G result from its ability to support larger bandwidths than LTE. Whereas LTE was designed for peak efficiency when employed with 20 MHz bandwidths, 5G for 3500 MHz reaches its peak efficiency in 100 MHz channels.*<sup>18</sup>

13. It is clear from these comments, as well as from the experiences of CanWISP members, that 15 MHz is not adequate to bring high-speed broadband Internet to rural communities. Local and regional operators will use a variety of technologies, including emerging 5G systems, to bring connectivity services to rural and remote areas, and we need access to meaningful quantities of exclusive, interference-free spectrum to do so.

14. The proposed access licensing framework will enable operators who want to build broadband infrastructure in underserved remote and rural communities to access the spectrum that is necessary to do so.

## **2.2 Subordination is not working**

15. Bell<sup>19</sup> and Rogers<sup>20</sup> assert that no further measures are required to strengthen the secondary market for spectrum, citing the existence of a number of subordination arrangements.<sup>21</sup>

16. However, the record of this proceeding demonstrates that operators who request spectrum subordination agreements face disappointment if their proposed networks are neither in the north nor private.

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<sup>17</sup> Comments of Rogers Communications Inc. to Canada Gazette Notice No. SLPB-002-19: Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band, dated August 2, 2019, at para. 123.

<sup>18</sup> Comments of Bell Mobility Inc. to Canada Gazette Notice No. SLPB-002-19: Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band, dated August 2, 2019, at para. 13.

<sup>19</sup> Bell Comments, at para. ES16.

<sup>20</sup> Rogers Comments, at para. 54.

<sup>21</sup> Bell Comments, at para. ES 11; Rogers Comments, at para. 210.

17. Ecotel Inc. (“Ecotel”) describes the subordination process as “dysfunctional and inefficient”.<sup>22</sup>

18. Iristel notes that “obtaining [subordinate] licences in southern rural Canada had proven impossible in spite of the fact that these rural areas have unused spectrum.”<sup>23</sup>

19. Redline Communications Group Inc. (“Redline”) reports that two national carriers refused to subordinate spectrum outright, and obtaining a subordination approval from the third national carrier, when possible, can take up to eight months.<sup>24</sup>

20. Canadian Electricity Association (“CEA”) clearly describes the insufficiency of the secondary market:

*If subordination was truly in the best interests of the spectrum holder then it would be common and ISED would not be asking how to encourage subordination. Instead it should be taken as evidence that subordination, only works between companies with similar commercial interest. Despite the clear benefits to Canadians, reallocation of unused spectrum is not something that can be resolved without a new regulatory approach.*<sup>25</sup>

21. The quantity of undeployed spectrum across Canada (ISED has identified a preliminary list of 526 entire Tier 5 areas with no deployments<sup>26</sup>) and the existence of only 53 subordination arrangements<sup>27</sup>, many of which are with private network operators and in Canada’s far north, is evidence of the inadequacy of the secondary market to address the needs of rural communities.

22. While improvements to the subordination licensing framework (such as mandatory timelines for a licensee to respond to a request to enter into a subordinate agreement and a requirement for valid justifications for refusal) will improve access to spectrum in the secondary market, the proposed access licensing framework ensure access to unused spectrum for operators who are ready to serve rural and remote consumers.

### **2.3 Existing policies have not met ISED’s policy objectives**

23. Bell argues that a new access licensing framework is unnecessary because ISED’s policy objectives are being met through policies that are already in place, such as set-asides and caps in spectrum auctions.<sup>28</sup>

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<sup>22</sup> Ecotel Comments, at para. 23.

<sup>23</sup> Iristel Comments, at para. 11.

<sup>24</sup> Redline Comments, at paras. 28-30.

<sup>25</sup> Comments of the Canadian Electricity Association, dated October 22, 2021 (“CEA Comments”), at para. 26.

<sup>26</sup> Innovation, Science and Economic Development Canada, Spectrum Management and Telecommunications, “Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment”, SLPB-004-21, August 2021 [“SLPB-004-21”], Annex C.

<sup>27</sup> Bell Comments, at para. ES11.

<sup>28</sup> Bell Comments, at paras. ES4 and ES5.

24. ISED's policy measures have indeed brought increased mobile competition to urban areas, but the record of this proceeding demonstrates that the policy tools used by ISED to date, such as set-asides and caps in spectrum auctions, have not facilitated the deployment and timely availability of services in Canada's rural and remote regions.

25. The responses from representatives of rural Canadians, in particular farmers, demonstrate the need for policies that better address rural consumers. The comments of these organizations demonstrate that rural Canadians are not well-served by current spectrum policies (Canola Growers Association<sup>29</sup>, Canadian Cattlemen's Association<sup>30</sup>, Canadian Federation of Agriculture<sup>31</sup>, Canadian Horticultural Council<sup>32</sup>, Fertilizer Canada<sup>33</sup>, Forest Products Association of Canada<sup>34</sup>, Syngenta<sup>35</sup>, L'Union des producteurs agricoles<sup>36</sup>, Federation of Canadian Municipalities<sup>37</sup>).

#### **2.4 The time for this policy is now**

26. Bell<sup>38</sup>, Rogers<sup>39</sup>, and SaskTel<sup>40</sup> propose that they be granted more time to meet new deployment requirements, and to deploy in the unserved rural and remote Tier 5 areas.

27. It is notable that Bell, Rogers and SaskTel are not requesting more time in order to better serve rural Canadians. The objective for these companies is to continue warehousing vast amounts of spectrum with no regard for underserved Canadians or the companies that would invest in serving them.

28. These companies have had more than enough time to deploy services in the areas and communities where they wish to deploy services. Canadians who remain underserved years after these licences have been issued deserve the opportunity to be served now, without further delay, if another operator is ready to invest in their community.

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<sup>29</sup> Comments of the Canadian Canola Growers Association, dated October 13, 2021 ("CCGA Comments"), at pages 1-2.

<sup>30</sup> Comments of the Canadian Cattlemen's Association, dated October 12, 2021 ("CCA Comments"), at pages 1-2.

<sup>31</sup> Comments of the Canadian Federation of Agriculture, dated October 12, 2021 ("CFA Comments"), at the sixth paragraph.

<sup>32</sup> Comments of the Canadian Horticultural Council, dated October 14, 2021 ("CHC Comments"), at pages 1-2.

<sup>33</sup> Comments of Fertilizer Canada, dated October 26, 2021 ("Fertilizer Canada Comments"), at the first paragraph.

<sup>34</sup> Comments of the Forest Products Association of Canada, dated October 25, 2021 ("FPAC Comments"), at page 1, last paragraph.

<sup>35</sup> Comments of Syngenta Canada Inc., dated October 26, 2021 ("Syngenta Comments"), at page 1, seventh paragraph.

<sup>36</sup> Comments of L'union des producteurs agricoles, dated October 12, 2021 ("UPA Comments"), at page 1, second paragraph.

<sup>37</sup> Comments of the Federation of Canadian Municipalities, dated October 26, 2021, at para. 4.

<sup>38</sup> Bell Comments, at para. ES10.

<sup>39</sup> Rogers Comments, at para. 158.

<sup>40</sup> Comments of Saskatchewan Telecommunications, dated October 26, 2021 ("SaskTel Comments"), at para. 38.

### **3.0 SASKTEL’S ARGUMENT ABOUT THE LEGALITY OF ISED’S PROPOSALS IS INCORRECT**

29. In its submission, SaskTel states that it does not believe that ISED’s proposals for a new Access Licensing Framework are “legally viable”.<sup>41</sup> SaskTel acknowledges “that ISED has the power to alter license conditions.”<sup>42</sup> However, SaskTel argues that ISED’s proposals go beyond altering license conditions and that they are “a fundamental alteration of the license”<sup>43</sup> because ISED is “[r]emoving spectrum from those who have purchased/licensed it” and that this is impermissible.<sup>44</sup> SaskTel also claims that ISED is changing spectrum license deployment obligations without notice and in a punitive manner, which is a breach of contract.<sup>45</sup>

30. SaskTel’s arguments must be rejected in their entirety.

31. At the outset, it must be emphasized that SaskTel provides no authority whatsoever for its legal arguments.

32. ISED’s proposals can clearly be affected through amendments to conditions of licence. One way to conceptualize ISED’s proposals is that they are an amendment to the deployment obligations contained in conditions of licence. Essentially, spectrum holders are being told to use their spectrum to provide telecommunications services to Canadians in rural and remote areas or risk having it used by carriers that are willing to use the spectrum to provide those telecommunications services. Indeed, SaskTel itself seems to acknowledge this conceptualization of ISED’s proposals when it states that ISED’s proposals are changing its “spectrum license deployment obligations.”<sup>46</sup>

33. Moreover, ISED is not seizing spectrum arbitrarily and without giving SaskTel a chance to do something to preserve its ability to use the spectrum. To the extent that SaskTel wishes to avoid having some of its spectrum become subject to the proposed Access Licensing Framework, it merely needs to make use of it to provide telecommunications services to Canadians before the Access Licensing Framework is implemented.

34. SaskTel’s claim that ISED is changing spectrum licence deployment obligations without notice must also be rejected. ISED is currently holding a public consultation on its proposals, the details of which were published in August 2021. As part of this public consultation, ISED is providing parties with the opportunity to both submit comments and make replies. Clearly, SaskTel has been provided with ample notice of ISED’s proposed changes to the conditions of licence.

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<sup>41</sup> SaskTel Comments, at para 19.

<sup>42</sup> SaskTel Comments, at para 25.

<sup>43</sup> SaskTel Comments, at para 2.

<sup>44</sup> SaskTel Comments, at para 96.

<sup>45</sup> SaskTel Comments, at para 5.

<sup>46</sup> SaskTel Comments, at para 5.



35. SaskTel provides no support or explanation as to why ISED's proposed changes are "punitive", and therefore this contention should be rejected.<sup>47</sup> In any event, there is nothing punitive about requiring spectrum licence holders to make unused spectrum available to parties that are prepared to use it to provide telecommunications services to Canadians.

36. Overall, SaskTel's argument that ISED's proposals are not legally viable is completely unsupported and must be rejected.

#### **4.0 PROPOSED MODIFICATIONS TO THE ACCESS LICENSING FRAMEWORK**

##### **4.1 Objection period / Notice to primary licensee**

37. Rogers<sup>48</sup> and the CEA<sup>49</sup> proposed that an applicant should submit a deployment plan as part of the application for a spectrum access licence.

38. CanWISP agrees that submitting a deployment plan along with an application for an access licence would be a reasonable expectation.

39. Several parties (Rogers<sup>50</sup>, Sasktel<sup>51</sup>, SSi<sup>52</sup>) expressed concern that the granting of an access licence might disrupt the deployment plans of the primary licensee, including projects that have been funded by government funding programs.

40. CanWISP recognizes that this is a valid concern in some circumstances, but primary licence holders will have a strong incentive to claim future deployment plans in all circumstances where another operator applies for an access licence. Such claims cannot automatically be allowed to prevent the grant of an access licences.

41. ITPA<sup>53</sup> proposed that valid objections to granting an access licence might include:

- (a) the public notifications that are part of ISED's site authorisation process or evidence of construction work; and
- (b) evidence that work has begun, such as site surveys.

42. CanWISP agrees that these two reasons might present valid objections to the granting of an access licence. An executed agreement with a funding body pertaining to the proposed application area would also constitute a valid objection to granting an access licence in CanWISP's view.

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<sup>47</sup> SaskTel Comments, at para 5.

<sup>48</sup> Rogers Comments, at para. 84.

<sup>49</sup> CEA Comments, at Q12.

<sup>50</sup> Rogers Comments, at paras. 13 and 170.

<sup>51</sup> Sasktel Comments, at para. 6.

<sup>52</sup> Comments of SSi Canada, dated October 26, 2021 ("SSi Comments"), at para. 47.

<sup>53</sup> Comments of the Independent Telecommunications Providers Association, dated October 26, 2021 ("ITPA Comments"), at para. 49.

43. CanWISP agrees with ITPA’s proposal that the “existing licensees should also be required to use the spectrum within 18 months and to complete construction and provision of service to subscribers in the case where the evidence provided was accepted by ISED for use of the designated spectrum.”<sup>54</sup>

44. Several parties (Cogeco<sup>55</sup>, Télésignal<sup>56</sup>, Ecotel<sup>57</sup>, Iristel<sup>58</sup>, TwinComm<sup>59</sup>) raised the concern that primary licensees may have deployments that do not provide meaningful service to consumers, but rather only exist only to meet deployment requirements (“token deployments”).

45. Such deployments pose a challenge are difficult to verify. CanWISP proposes that applicants have an opportunity to submit to ISED a claim that a particular deployment is not being used to provide meaningful service to Canadians along with an application for an access licence. The primary licensee would subsequently have an opportunity to refute that claim by demonstrating that the deployment is actively serving consumers.

46. Bell<sup>60</sup> and Rogers<sup>61</sup> noted that a Tier 5 service area may be covered by sites that are outside of that service area. On that basis, they argue that the Tier 5 service area should not be eligible for access licensing in this case.

47. The proposed framework adequately addresses these concerns by affording protection to existing stations deployed by the primary licensee.<sup>62</sup> Issuing access licences for areas smaller than Tier 5, as discussed below, will further alleviate any concern of access licensees operating in areas that are currently served.

48. Iristel<sup>63</sup> and ITPA<sup>64</sup> expressed concern that, in some circumstances, granting an access licence might cause the primary licensee to become ineligible to operate as an MVNO based on the CRTC rules.

49. CanWISP agrees with ITPA<sup>65</sup> that ISED and the CRTC should co-ordinate their policies to ensure that the access licensing mechanism does not impact MVNO operators. If this issue is not resolved, then ISED should not grant an access licence if doing so will cause the primary operator to be ineligible to operate as an MVNO.

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<sup>54</sup> ITPA Comments, at para. 50.

<sup>55</sup> Comments of Cogeco Communications Inc., dated October 12, 2021 (“Cogeco Comments”), at para. 9.

<sup>56</sup> Télésignal Comments, at Q2.

<sup>57</sup> Ecotel Comments, at para. 35.

<sup>58</sup> Iristel Comments, at para. 29.

<sup>59</sup> TwinComm Comments, at Q16.

<sup>60</sup> Bell Comments, at para. 31.

<sup>61</sup> Rogers Comments, at para. 38.

<sup>62</sup> SLPB-004-21, at para. 46.

<sup>63</sup> Iristel Comments, at paras. 9 and 19.

<sup>64</sup> ITPA Comments, at paras. 44 and 53.

<sup>65</sup> ITPA Comments, at para. 54.

## 4.2 Service Areas

50. CanWISP agrees with Télésignal<sup>66</sup> and CCSA<sup>67</sup> that rural and remote Tier 5 areas are a good starting point for the access licensing framework, but that further modifications to licensing and eligibility areas are necessary in order to properly serve rural and remote consumers.

51. Based on our review of the comments, we reiterate our proposal for two modifications to the proposed eligibility criteria and licensing areas, and we propose a third modification.

### *Modification 1 – ISED should allow access licensing of areas smaller than Tier 5*

52. Many rural and remote Tier 5 areas are large enough that a small carrier wishing to bring service to a small community or industrial site would not necessarily wish to serve the entire Tier 5 area.

53. CanWISP proposed that ISED licence applicant-defined areas that are smaller than a Tier 5 area<sup>68</sup>, and similar proposals were made by Télésignal<sup>69</sup>, Ecotel<sup>70</sup>, ECN<sup>71</sup>, TwinComm<sup>72</sup>, CCSA<sup>73</sup>, CEA<sup>74</sup>, and FMCC<sup>75</sup>.

54. We reiterate our position that access licensing should be areas defined by the applicant within a Tier 5 area, including an entire Tier 5 area.

55. We agree with comments of Iristel<sup>76</sup> and Redline<sup>77</sup> that allowing subdivision and subordination of access licences would be important if ISED does not allow access licensing for areas smaller than Tier 5 service areas.

56. Rogers<sup>78</sup>, Sasktel<sup>79</sup>, Shaw<sup>80</sup>, and Xplornet<sup>81</sup> expressed the concern that Tier 5 areas are small enough that interference will be create challenges.

57. In response, CanWISP wholly agrees with the comment of Ecotel, that:

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<sup>66</sup> Télésignal Comments, at Q7.

<sup>67</sup> Comments of the Canadian Communication Systems Alliance, dated October 12, 2021 (“CCSA Comments”), at para. A3.

<sup>68</sup> Comments of the Canadian Association of Wireless Internet Service Providers, dated October 26, 2021 (“CanWISP Comments”), at para. 30.

<sup>69</sup> Télésignal Comments, at Q3.

<sup>70</sup> Ecotel Comments, at paras. 40-43.

<sup>71</sup> ECN Comments, at paras. 31-32.

<sup>72</sup> TwinComm Comments, at Q7.

<sup>73</sup> Comments of the Canadian Communication Systems Alliance, Inc., dated October 12, 2021 (“CCSA Comments”), at A3.

<sup>74</sup> CEA Comments, at para. 7.

<sup>75</sup> Comments of the First Mile Connectivity Consortium, dated October 26, 2021 (“FMCC Comments”), at paras. 44 and 54-56.

<sup>76</sup> Iristel Comments, at para. 40.

<sup>77</sup> Redline Comments, at paras. 21b and at Q18.

<sup>78</sup> Rogers Comments, at para. 156.

<sup>79</sup> Sasktel Comments, at para. 34.

<sup>80</sup> Comments of Shaw Communications Inc., dated October 26, 2021, at para. 6.

<sup>81</sup> Comments of Xplornet Communications Inc., dated October 26, 2021, at para. 49.

*... any technical challenge is manageable even when using very granular licensing areas. Coordination processes are clear and in place. More coordination is also the price to pay for more efficient use of such an important resource that is spectrum.*<sup>82</sup>

58. The use of licensing areas that are smaller than Tier 5 will better serve Canadians living in rural and remote areas.

*Modification 2 – Unserved portions of partially-served Tier 5 areas should be eligible for access licensing*

59. Along with CanWISP<sup>83</sup>, a number of parties (Cogeco<sup>84</sup>, Télésignal<sup>85</sup>, Ecotel<sup>86</sup>, Iristel<sup>87</sup>, Lyttonnet<sup>88</sup>, Redline<sup>89</sup>, and CEA<sup>90</sup>) have pointed out that many rural and remote Tier 5 areas are ineligible due to a small deployment that serves a single community or highway corridor, outside of which there are significant underserved rural areas with no deployment by the primary licensee.

60. CanWISP agrees with Cogeco’s proposal that “the unserved zones within a Tier 5 service area should be considered a candidate for access licensing.”<sup>91</sup>

61. In these cases, ISED may require the applicant to demonstrate that these areas are underserved, for example by providing supporting letters from local governments or residents affirming that 50/10 broadband service is not available, along with evidence from the Spectrum Management System (“SMS”) that there is no deployment in the target area.

62. The availability of access licences in undeployed and underserved portions of Tier 5 areas will benefit the rural consumers living in these areas.

*Modification 3 – Rural portions of Urban Tier 5 areas should be eligible for access licensing*

63. Cogeco proposed that

*...in addition to the applicability of the proposed ALF [access licensing framework] to rural and remote Tier 5 service areas, ISED also consider unserved zones within Tier 5 service areas in the Metro and Urban categories on a case-by-case basis, given that certain of these zones have characteristics similar to rural Tier 5 service areas in terms of coverage gaps.*<sup>92</sup>

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<sup>82</sup> Ecotel Comments, at para. 64.

<sup>83</sup> CanWISP Comments, at para. 111.

<sup>84</sup> Cogeco Comments, at para. 17.

<sup>85</sup> Télésignal Comments, at Q3.

<sup>86</sup> Ecotel Comments, at para. 40a.

<sup>87</sup> Iristel Comments, at para. 7.

<sup>88</sup> Lyttonnet Comments, at Q3.

<sup>89</sup> Redline Comments, at paras. 12-13.

<sup>90</sup> CEA Comments, at Q18 and Q20.

<sup>91</sup> Cogeco Comments, at para. 17.

<sup>92</sup> Cogeco Comments, at para. 18.

64. CanWISP agrees that rural underserved portions of Tier 5 areas that are designated “Urban” should also be eligible for access licensing.

## **5.0 RESPONSES TO OTHER COMMENTS REGARDING THE ACCESS LICENSING FRAMEWORK**

65. Several parties (Cogeco<sup>93</sup>, Ecotel<sup>94</sup>, Iristel<sup>95</sup>, Motorola<sup>96</sup>, Redline<sup>97</sup>, CCSA<sup>98</sup>) proposed that a licence term of three or five years would be appropriate.

66. CanWISP maintains that, given the disruption caused by the displacement of the WBS (3650-3700 MHz) licences, a longer licence term is necessary to support investment (agreeing with the CEA<sup>99</sup> and Télésignal<sup>100</sup>). CanWISP proposes a licence term of ten years.

67. CanWISP maintains that all areas should be released at once (as described in the consultation<sup>101</sup> at Q29 option 1), rather than releasing service areas in a series of tranches (as described in the consultation at Q29 option 2).

68. If ISED chooses to release service areas in a series of tranches, all service areas should be released within two years.

69. Cogeco<sup>102</sup>, Iristel<sup>103</sup>, Motorola<sup>104</sup>, and CEA<sup>105</sup> agree with CanWISP<sup>106</sup>, that transfers of access licences should be permitted in order to allow for changes in ownership structure of a service provider. CanWISP reiterates the importance of allowing spectrum transfer.

70. Some parties (Iristel<sup>107</sup>, Ecotel<sup>108</sup>, ECN<sup>109</sup>) raised concerns regarding excessive demand for access licences at the time of initial availability of these licences. CanWISP submits that, were ISED to permit licensing areas that are smaller than Tier 5 service areas, this concern would be, at least in part, mitigated.

71. If ISED establishes rules for choosing between two applicants, these rules should be very simple and clear. For example,

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<sup>93</sup> Cogeco Comments, at para. 39.

<sup>94</sup> Ecotel Comments, at para. 37.

<sup>95</sup> Iristel Comments, at para. 38.

<sup>96</sup> Comments of Motorola Solutions, dated October 12, 2021 (“Motorola Comments”), at Q14 and Q17.

<sup>97</sup> Redline Comments, at para. 21a and Q15.

<sup>98</sup> CCSA Comments, at A14.

<sup>99</sup> CEA Comments, at Q14 and Q16.

<sup>100</sup> Télésignal Comments, at Q14.

<sup>101</sup> SLPB-004-21, at Q29.

<sup>102</sup> Cogeco Comments, at para. 44.

<sup>103</sup> Iristel Comments, at para. 39.

<sup>104</sup> Motorola Comments, at Q15.

<sup>105</sup> CEA Comments, at Q15.

<sup>106</sup> CanWISP Comments, at paras. 48 and 51.

<sup>107</sup> Iristel Comments, at paras. 6, 13, and 14.

<sup>108</sup> Ecotel Comments, at para. 44 .

<sup>109</sup> ECN Comments, at para. 33.

72. If the service area includes a First Nation community, a First-Nation-owned service provider should have priority; and

73. A service provider with a track record of successful deployments in that province should have priority over an entity with no such track record.

74. A variety of deployment requirements have been proposed. For example, Cogeco<sup>110</sup> and CEA<sup>111</sup> proposed a three-year deployment requirement; CanWISP<sup>112</sup>, Iristel<sup>113</sup> and ITPA<sup>114</sup> a two-year deployment requirement; Ecotel<sup>115</sup> and Telus<sup>116</sup> proposed a one-year deployment requirement. CanWISP agrees that a two-year or three-year deployment requirement would be appropriate given the delays associated with constructing new sites.

## **6.0 IMPROVING ACCESS TO SUBORDINATE LICENCES**

75. The CEA submits<sup>117</sup> that access licensing is functionally equivalent to mandatory subordination, and that no further changes are required to encourage subordination. While the use of subordination may become less compelling for small operators following the introduction of the access licensing framework, access licensing may not wholly replace subordination arrangements. We therefore encourage ISED to proceed with measures that will encourage more subordination in parallel with the implementation of the access licensing framework.

76. Many parties (Cogeco<sup>118</sup>, Télésignal<sup>119</sup>, Ecotel<sup>120</sup>, Iristel<sup>121</sup>, Redline<sup>122</sup>, CCSA<sup>123</sup>, FMCC<sup>124</sup>) encouraged ISED to impose measures such as a mandatory timeframe in responding to subordination requests and a requirement that a denial of a subordination request be accompanied by a valid justification. CanWISP agrees that such measures are appropriate.

77. CanWISP believes that more stringent deployment conditions would encourage more subordinate licensing, and Cogeco<sup>125</sup> agreed.

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<sup>110</sup> Cogeco Comments, at para. 50.

<sup>111</sup> CEA Comments, at Q14.

<sup>112</sup> CanWISP Comments, at paras. 53 and 54.

<sup>113</sup> Iristel Comments, at para. 41.

<sup>114</sup> ITPA Comments, at paras. 69 and 77.

<sup>115</sup> Ecotel Comments, at paras. 37, 48, and 80.

<sup>116</sup> Comments of TELUS Communications Inc., dated October 26, 2021 (“TELUS Comments”), at para. 69.

<sup>117</sup> CEA Comments, at para. 27.

<sup>118</sup> Cogeco Comments, at para. 94.

<sup>119</sup> Télésignal Comments, at Q45.

<sup>120</sup> Ecotel Comments, at para. 141.

<sup>121</sup> Iristel Comments, at para. 74.

<sup>122</sup> Redline Comments, at para. 32.

<sup>123</sup> CCSA Comments, at A45.

<sup>124</sup> FMCC Comments, at para. 109.

<sup>125</sup> Cogeco Comments, at para. 97.

78. Several parties (FCM<sup>126</sup>, Iristel<sup>127</sup>, ITPA<sup>128</sup>) proposed that ISED publish a database of spectrum holders including contact information for making subordination requests. CanWISP agrees that it would be helpful to have contact information published. CanWISP notes that while some licensing information is available through the SMS website, the search function is not easy to use for those unfamiliar with band uses, band naming conventions, or licence areas (in particular the Local Telephone or TEL service areas used for cellular bands).

## **7.0 CONTINUED ACCESS TO RRBS LICENCES**

79. A number of parties (SeaBoard Group<sup>129</sup>, Advanced Interactive Canada Inc.<sup>130</sup>, Rural First Broadband Inc.<sup>131</sup>, Wilson Engineering<sup>132</sup>, and Spuzzum First Nation<sup>133</sup>) objected strongly to the proposed non-renewal of RRBS licences. While no members of CanWISP members have expressed concern, we encourage ISED to carefully consider the concerns of those serving rural communities. CanWISP does not support any policy decision that would result in rural consumers losing access to Internet service.

80. CanWISP supports the proposal of 6Harmonics that ISED add a remote/rural class of TVWS device with higher power limits. The existence of this device class should not restrict the deployment of devices or databases that do not enable this device class, in order to ensure the availability of devices and databases that otherwise meet all ISED specifications.

## **8.0 CONCLUSION**

81. ISED's proposed access licensing framework has been met with enthusiastic approval from all stakeholders in rural connectivity, with the sole exception of those companies that hold vast amounts of undeployed spectrum in rural areas.

82. The proposed access licensing framework clearly serves the interests of consumers living in rural and remote areas. Furthermore, this framework does not intrude on the interests of consumers elsewhere in Canada.

83. CanWISP encourages ISED to proceed with implementation of the access licensing framework, which will enable Canada's independent ISPs, not-for-profit network operators, and First Nations network operators to build broadband infrastructure to serve rural and remote communities.

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<sup>126</sup> FCM Comments, at paras. 40-41.

<sup>127</sup> Iristel Comments, at para. 72.

<sup>128</sup> ITPA Comments, at para. 140.

<sup>129</sup> Comments of SeaBoard Group, dated October 21, 2021, third paragraph.

<sup>130</sup> Comments of Advanced Interactive Canada Inc., undated, posted November 5, 2021, at Q49.

<sup>131</sup> Comments of Rural First Broadband Inc., dated October 25, 2021, at Q49.

<sup>132</sup> Comments of Wilson Engineering, dated October 24, 2021, at Q49.

<sup>133</sup> Comments of Spuzzum First Nation, dated October 26, 2021, on behalf of Spô'zê'm First Nation and sixty-one signatory nations across Canada, second paragraph.