



Reply Comments for:

Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment

SLPB-004-21

August 2021

Spectrum Management and Telecommunications

December 7, 2021

Introduction

1. The Federation of Canadian Municipalities (FCM) has been the national voice of municipal government since 1901. Our members include more than 2,000 municipalities of all sizes, ranging from Canada's largest cities to rural communities, to northern communities. FCM also includes 20 provincial and territorial municipal associations. Together, FCM members represent more than 90 percent of all Canadians from coast to coast to coast.
2. Municipal leaders from across Canada assemble each year to set FCM policy on key issues, which allows FCM to advocate for municipalities to be sure their citizens' needs are reflected in federal policies and programs. FCM's work benefits every municipal government and taxpayer in Canada, and our programming delivers tools that help municipalities tackle local challenges.
3. Broadband connectivity is an enabler and prerequisite to economic development, access to essential services, and quality of life. Over the past decade, FCM rural members have increasingly sounded the alarm about the importance of closing the digital divide to meet the needs of the estimated two million Canadians in remote and rural areas, some of whom live in close proximity to large urban centres, who still lack access to affordable, reliable, high-quality broadband.
4. FCM takes an active role in consultations with the Canadian Radio-television and Telecommunications Commission (CRTC) on regulatory measures to improve connectivity in rural and remote areas and welcomes ISED's objective of accelerating deployment in rural and remote regions of Canada in the present consultation.
5. FCM welcomes the opportunity to provide Reply Comments to ISED on its Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment.

FCM General Comments on stakeholders' submissions

6. FCM notes that, of the 53 respondents who submitted comments to ISED's *Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment*, only five opposed ISED's proposal to introduce a new Access Spectrum Licencing regime that would put unused spectrum to use for the benefit of Canadians living in rural and remote areas.

7. Several supporters of the new access regime are primary licence holders, notably TELUS, Cogeco, Eastlink, Iristel, TerreStar, and Xplornet, or associations representing multiple primary licence holders such as ITPA, CanWISP, CCSA or BCBA.
8. This is an important point because the submissions of these licence holders indicate a willingness to place the needs of rural communities ahead of the fear of losing unused spectrum resources to other entities. It also shows a commitment from these entities to contribute to the fulfilment of ISED’s rural policy objectives via the new Access Licensing Framework. On whole, the record shows a strong consensus – across the range of stakeholders – to take corrective measures to deliver connectivity for rural and remote Canadians.
9. Several submissions proposed insightful recommendations for implementation or corrective measures viewed as necessary to ensure the success of the new Access Licencing regime. FCM views this active participation as encouraging; developing successful spectrum policies aimed at bridging the digital divide in a country as large as Canada is not a simple task. Seeing all stakeholders, including industry, engaged in supporting the regulator with practical ideas and solutions to help achieve the policy goals and finetune concepts proposed in the Consultation is a step in the right direction.
10. Several ideas deserving of consideration were submitted to ISED. Entities associated with First Nation communities such as Spuzzum First Nation, Eeyou Communications Network, First Mile connectivity Consortium, Joint Internet Society and Mozilla and James Bay Cree Communications Society pointed out that First Nation concerns and issues were not specifically identified and addressed in the Department’s policy proposal. Other stakeholders, such as TELUS and Xplornet highlighted that the new regime should be expanded to other spectrum bands as long as primary licence holders were given the opportunity to meet their deployment requirements. Still others such as CanWISP and Cogeco highlighted the fact that the exclusion of transfer and subordination rights for the new access licences might be too restrictive for entities which have both invested in deploying service using those spectrum licences and met their deployment requirements.
11. And the list goes on: an incredibly large number of relevant suggestions were made to ISED in the submissions filed by stakeholders. FCM hopes that ISED will take time in analysing them and perhaps reach out to respondents for clarifications as required. FCM believes the success of the new Access Licencing framework is critical to the development of broadband networks in rural areas and correspondingly, accessibility and affordability for rural subscribers. The stakes are high, and Canadians need this policy to be successfully implemented right down to the details.
12. FCM also noted that the national incumbent carriers, those deemed to exercise market power in 9 out of 10 provinces by the CRTC¹ and representing some 90% of mobile subscriptions in

¹ CRTC TRP 2021-130 p.1 <https://crtc.gc.ca/eng/archive/2021/2021-130.htm>.

Canada,² devoted considerable expert resources towards engaging with ISED’s proposal and pointing out areas of improvement and concern. While the large incumbents took a range of positions on the overall acceptability of the proposal – one rejecting it, another highlighting key gaps and concerns, and another voicing qualified support – all their submissions show a comprehensive and serious engagement with the proposal.

13. FCM believes the overwhelming majority of industry submissions in the present consultation show that there is a strong basis for introducing the regime, and suggests that the insight provided by incumbent carriers, once considered by ISED, will contribute to the success of the final Access Licencing regime.
14. FCM also notes that Rogers, SSi Canada, Iristel and ITPA highlighted the need for ISED and the CRTC to enhance coordination of their policies. Rogers pointed out it had recommended that the Department take a more holistic approach to their wireless policy goals, as it believes the stated goals as well as recent decisions by the Department and the CRTC are unintentionally working at cross purposes in the realm of accessibility and affordability of broadband services, competition, and efficient use of public resources.
15. Along with FCM, SSi Canada, Iristel and ITPA all highlighted the potential conflict between CRTC TRP 2021-130 (the MVNO regime) and ISED’s new Access Licencing framework where an existing primary licence holder could be rendered ineligible to qualify for the MVNO wholesale tariff if a portion of its undeployed spectrum was granted to an applicant under the new Access Licencing regime in a Tier 4 service area (where it would otherwise be eligible to access the MVNO tariff). The CRTC granted eligible entities a seven-year period for MVNOs to build their own Radio Access Network; ISED’s new regime should take this under consideration in the new Access Licencing framework.
16. FCM urges ISED and the CRTC to coordinate their policies to improve the complementarity of the distinct regimes.

FCM comments on selected stakeholders’ answers to ISED’s questions

Q2 ISED is seeking comments on its proposal to issue access spectrum licences and access radio licences on a first-come, first-served basis.

17. FCM mentioned in its original submission that it is not opposed to the use of first-come, first-served process (FCFS) in the issuance of Access spectrum Licences, but highlighted that, in the early phase of the regime, demand might significantly exceed the number of licences available in certain areas.

² CRTC CMR Report p.49 <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2020/index.htm>

18. Some stakeholders, notably TELUS and the ITPA, also referred to this possibility in their comments. TELUS suggested that ISED could use a sealed-bid auction or a non-monetary process for allocating licences sought by multiple applicants.
19. FCM believes that, for the sake of enabling small service providers access to spectrum, a non-monetary process is preferable to a sealed-bid auction if ISED determines that a processes other than an application time stamp (which favors larger service providers given their access to resources) is required to ensure fair distribution of spectrum resources in the early days of the new regime (i.e., until the demand and supply for licences stabilizes).

Q9 ISED is seeking comments on its proposed process for identifying rural and remote Tier 5 service areas in which there is unused spectrum that would be made available for access spectrum licensing.

20. FCM notes that most existing primary spectrum holders, whether they support or oppose ISED's proposed Access Licencing regime, all highlighted the same concerns regarding potential interference to existing systems in adjacent Tier 5 areas or the possibility of a 'false positive' in the identification of unused spectrum based solely on ISED's Spectrum Management System.
21. FCM believes ISED should adopt additional processes to address the industry' concerns and ensure legitimate systems (new or existing) are protected from interference, and ensure spectrum is truly 'unused' in the various licence areas before making it available to the new regime.

Q12 ISED is seeking comments on the options considered for eligibility.

Option 1, in order to be eligible for an access spectrum licence, at the time of application, an applicant must not hold a spectrum licence for undeployed commercial mobile, fixed, or flexible use spectrum, in the same Tier 5 licence area as the area for which it is seeking an access spectrum licence.

Option 2, in order to be eligible for an access spectrum licence, at the time of application, an applicant must not hold a spectrum licence, whether deployed or undeployed, for commercial mobile, fixed, or flexible use spectrum, in the same Tier 5 licence area as the area for which it is seeking an access spectrum licence.

22. FCM notes that several primary licence holders, whether they oppose or support ISED's proposed regime, preferred Option 1 over Option 2. The industry association representing small internet service providers (CanWISP) also supported Option 1.

23. FCM agrees with TELUS's position that Option 2 is a nonstarter because it would deprive existing licensees of the opportunity to use Access Licensing to expand and improve the service they deliver. Therefore, even though FCM did not endorse either option in its original submission and continues to believe that small service providers would be better served with a 3rd option that focuses on their ability to deliver rather than on their spectrum holdings, FCM believes Option 1 is clearly preferable to Option 2, especially in the context that it considers only undeployed spectrum in the same band sought by the applicant.
24. FCM would have preferred a third option in the Consultation, in which an applicant's existing spectrum holdings in the Tier 5 area of interest, deployed or not, would not be relevant (or determinative) in qualifying for eligibility under the new Access Licensing framework, and notes that a few small service providers echoed its position.
25. FCM continues to believe that ISED should focus on the fulfilment of its policy objectives and implement measures to prevent spectrum hoarding rather than focusing on the existing spectrum holdings of applicants in its new Access Licencing regime.

Q16 ISED is seeking comments on its proposal to align the deployment conditions for access spectrum licences with the relevant conditions of licence currently applied to the licences in the specific band, taking into account any differing characteristics such as Tier sizes, and the timing as to when those deployment requirements should apply. ISED is also seeking comments on the appropriateness of existing deployment requirements for private networks.

ISED will consider alternative proposals for the deployment requirements for access spectrum licences. Such proposals should contain a rationale and discussion of their implications for ISED's policy objectives

26. FCM notes that stakeholders generally support the imposition of deployment requirements by ISED, whether they support or oppose ISED's proposed Access Licencing regime. Although several respondents to the Consultation expressed the need for ISED to impose realistic deployment requirements, a clear consensus has not emerged as to what constitutes such a requirement.
27. FCM notes that ISED generally sets the first deployment milestone of the spectrum licence 5 years after the issuance of the licence to allow licensees sufficient time to go through the various phases of the deployment of service.
28. FCM believes ISED should simply require that deployment conditions be met prior to renewal of access spectrum licences in light of the following considerations:
 - a. the proposed initial licence term would be 3 years for access spectrum licences;
 - b. the industry is not fully aligned on what reasonable deployment conditions should be; and,

- c. to minimize the administrative burden for ISED and applicants.

Q27 ISED is seeking comments on the process for making access spectrum licences available and the options described in section 6.6.7 of the Consultation document.

29. As pointed out by FCM in its original submission, various stakeholders have pointed out that Option 2, whereby ISED must arbitrarily decide which ‘tranches’ of spectrum are released where and when, has a higher chance of disappointing applicants.
30. FCM also noted a certain correlation between the opponents of the new regime and the supporters of Option 2.
31. FCM continues to maintain that Option 1, where ISED releases the spectrum simultaneously to all areas – without having to make an arbitrary determination on the sequence of release – is the most suitable option.

Q43 ISED is seeking comments on the potential or actual benefits of subordinate licensing to increase rural broadband access and accommodating new innovative network usage.

32. FCM notes the broad, industry-wide support for a subordinate licencing process. Although efforts to date have not succeeded in creating a vibrant secondary market for spectrum, FCM believes that ISED received many suggestions to help create the vibrant secondary spectrum market it seeks, including the idea a geographical representation of the spectrum licenced and available in Canada – as suggested by TELUS, Iristel, and ITPA, an industry association representing small carriers.
33. As pointed out in its original submission, FCM believes that the new Access Licencing regime, with the appropriate adjustments now submitted by stakeholders, will encourage entities to subordinate their spectrum instead of loosing it and will contribute to the creation of an active secondary market for spectrum through subordination arrangements.

Q44 ISED is seeking comments on ways in which to streamline the general application requirements for subordinate licences as set out in sections 5.6.3 and annex D of CPC-2-1-23. ISED also seeks proposals to streamline the application process for all subordinate licence applicants, including those in commercial mobile bands who must also provide material addressing the criteria and considerations in section 5.6.4 of CPC-2-1-23. In these proposals, ISED also seeks comments as to how parties can demonstrate (e.g., an attestation, or other commitment) that their request for a subordinate licence does not constitute a transfer, deemed transfer, or prospective transfer as discussed in section 8.2.1 of the Consultation document.

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Q45 ISED is seeking comments on facilitating subordinate licensing and encouraging secondary market transactions including:

- *Should additional changes be made to existing licences that will encourage the use of subordinate licences as a means to help deploy more services?*
- *Given ISED's regulatory role, are there any issues or actions ISED should consider?*

34. FCM notes that the industry is generally aligned on the desire to facilitate the spectrum subordination process established by ISED and was pleased to read the various suggestions from stakeholders to simplify or streamline the spectrum subordination process.

35. As stated in the review of responses to Question Q43, FCM believes that a map of spectrum availability in Canada, where prospective applicants can find visual up to date information on spectrum usage and ownership, would facilitate the subordination process.

36. As pointed out in stakeholders' submissions, FCM believes that linking spectrum availability to a mapping interface such as the existing tier area map and improving the data quality prior to the initiation of the application process, would allow for higher quality information and reduce the administrative burden, not only for applicants but also for ISED.

Conclusion

37. FCM supports ISED's current efforts to establish a new Access Spectrum Licencing framework for unused spectrum and applauds the industry-wide support and the level of sophistication of the feedback stakeholders provided to ISED.

38. FCM encourages ISED to take these comments into consideration, consider the connectivity challenges specific to rural and remote regions of Canada, and apply a "rural lens" throughout the design and implementation of the new framework.

39. Finally, FCM encourages ISED to consider how decisions resulting from the present consultation will interact with existing CRTC policies with respect to rural and remote deployment in order to ensure that the regimes are complementary and mutually reinforcing.