

**Reply Comments Submitted for *Consultation on a New  
Access Licensing Framework, Changes to Subordinate  
Licensing and White Space to Support Rural and  
Remote Deployment (SLPB-004-21)***

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1. ISED has not allowed sufficient time for community and individual stakeholders<sup>1</sup> to digest and reply to the initial comments for this consultation. This situation was exacerbated by the Ministry's decision to post comments online on November 5, 2021 (only 32 days from the December 7 deadline for reply comments) without linking the posted comments to the initial consultation document. We feel that the length of the reply period will result in less meaningful feedback from organizations and smaller industry partners than would otherwise be possible. If it takes eight business days for ISED to post comments, the Department should strongly consider how smaller organizations and individuals are to meaningfully respond to over 700 pages of material in just 22 business days.
2. There is no greater endorsement to the Access Licensing Framework proposal than the resistance presented by commenters such as Bell,<sup>2</sup> Rogers, and Shaw. Their insistence that current licensing frameworks and spectrum allocations are sufficient for rural and remote broadband service deployment – in the face of evidence that clearly indicates the contrary is true – should serve as sufficient support for most of the framework as outlined in the consultation document. The breadth of submissions from community-based, Indigenous-focused, and industry associations illustrates the appeal of lowered access barriers to unused spectrum for rural, remote, and Indigenous communities.
3. We note that several commenters have called for Indigenous sovereignty over spectrum rights and/or Rural Tribal Priority Window offerings modeled after programs in New Zealand, the United States, and elsewhere.<sup>3</sup> Since it falls outside the scope of this

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<sup>1</sup> We wish to specifically highlight the challenges faced by individuals including academic experts. Dr. Taylor identified the challenges faced of having academics participate during busy academic semesters including the fall term (Individual Comments Received: Gregory Taylor, para. 4). If ISED desires participation of individuals, including information and communication scholars, more consideration to meaningful engagement with this stakeholder group, including longer consultation periods, should be strongly considered.

<sup>2</sup> With regard to the submission of Bell, we wish to specifically challenge the veracity of the conclusion drawn from the PricewaterhouseCoopers (PWC) report that there “is clear evidence that there is no persistent market failure that is limiting the economic and social benefits that Canadians derive from the use of the radio spectrum resource” (Industry Comments Received: Bell, para ES4 and 9). As stated at the end of the PWC report:

This publication has been prepared for general guidance on matters of interest only and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers LLP, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

Given PWC's own statement on the report, Bell's comments on the lack of market failure should be considered groundless.

<sup>3</sup> Industry Comments Received: Eeyou Communications Network, paras. 16-24; Industry Comments Received: SSi Canada, para. 31. Organizations Comments Received: First Mile Connectivity Consortium, paras. 10-14; Organizations Comments Received: Internet Society and Mozilla, pp. 3-4; Organizations Comments Received: James Bay Cree Communications Society, paras. 18-24.

consultation's specific requests for comment, we encourage ISED to explore these ideas more formally as part of a dedicated, separate consultation.

4. Finally, we reiterate that several of the issues raised within the consultation cannot be fully addressed within it. As such we reissue our recommendations that go beyond the scope of the consultation. Specifically, we recommend that:
  - **ISED should undertake a separate consultation on the *Spectrum Policy Framework for Canada (SPFC)* in 2022**
  - **the Department should undertake or have a third party undertake an analysis of deployment requirements. This study should involve examining several benchmark deployment levels (e.g.: 10, 25, 33, 50, 67, 75, and 90%) in each Competitive Service Area from Tier 1 all the way to Tier 5 and identify how many population centres would be served/unserved based on the 2021 census results**
  - **that ISED undertake or have a third party to undertake final assessments of both the RRBS and RP-019 policies**
5. What follows is some brief commentary on patterns that appeared in stakeholders' responses to specific questions.

Q1. ISED is seeking comments on its proposal to implement a new Access Licensing framework to make licences available in rural and remote areas where there is unused spectrum.

6. We agree with commenters such as Advanced Interactive Canada, Com Com, Seaboard, and Telus, who stated that the Access Licensing Framework should be expanded to include as much spectrum as possible.<sup>4</sup> Once the Access Licensing Framework has been established for the proposed frequency ranges, it should be expanded to valuable ranges such as 700MHz, 2500MHz, and 500MHz as soon as it is feasible.

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

Q3. ISED is seeking comments on its proposal to use the rural and remote Tier 5 service areas as the basis to determine the rural and remote areas in which it will apply access licensing.

7. Many of the initial comment submissions, including ours, expressed concerns about the use of Tier 5 competitive service areas for Access licensing.<sup>5</sup> Commenters expressed concern about the size of the areas, adjacency issues, likely-misclassified areas, and the

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<sup>4</sup> Industry Comments Received: Advanced Interactive Canada, page 1; Industry Comments Received: Com Com Service, Q21 comments; Industry Comments Received: LyttonNet, Q3 comments; Industry Comments Received: SeaBoard Group, Q1 comments; Industry Comments Received: Telus, para. 19.

<sup>5</sup> Industry Comments Received: Advanced Interactive Canada, page 2-3; Industry Comments Received: SeaBoard Group, Q1 comments; Industry Comments Received: Telus, para. 19.

complexities of managing licences across tiers. We note that several stakeholders suggested site-based licensing as an alternative, and that other participants advocated grid-based licensing using 25km<sup>2</sup> hex cells.<sup>6</sup> We would like to reiterate our advocacy for grid-cell-based licensing.

8. We also agree with commenters who expressed concern about the first-come, first-served (FCFS) approach resulting in an initial rush for established organizations to claim available licenses, at a disadvantage to community organizations or industry players who are new to ISED's application processes. Iristel's suggestion that ISED should cumulate demand for a brief period before processing applications obviates the FCFS approach but may serve to level the playing field for new or less-frequent applicants.<sup>7</sup>

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.

9. Our concerns with regards to deployment requirements are shared by several commenters.<sup>8</sup> Further, we share Telus' opinion that, "deployment requirements introduced in ISED's auction frameworks have been relatively lax."<sup>9</sup> CanWISP has characterized deployment requirements as "low,"<sup>10</sup> and Bell's insistence that "ISED will be effectively punishing licensees for not deploying to a target that they were never required to meet"<sup>11</sup> demonstrates that ISED should simply set higher targets. CCGA has also stressed the need for stronger deployments more generally (i.e. not just within the Access Licensing framework).<sup>12</sup> ITPA has also underscored the challenge of various licences being covered by differing deployment requirements.<sup>13</sup>
10. As we suggested in our original comments, we feel the department should undertake a study of deployment requirements for the purpose of providing greater understanding as to the likely impact of deployment requirements in different tiers at various levels. Such a study would benefit all stakeholders and future auction design.
11. As noted by several commenters, the definition of "deployed" in the context of wireless broadband services is vague and likely to be a source of conflict. ISED should clarify whether "deployment" is achieved by installing equipment, or if it is only achieved after a licence holder can demonstrate that services are being provided *with* that equipment.<sup>14</sup>

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<sup>6</sup> Industry Comments Received: Bell, para. 29; Industry Comments Received, Redline Communications, paras. 8-12.

<sup>7</sup> Industry Comments Received: Iristel, paras. 13-14.

<sup>8</sup> Industry Comments Received: Ecotel, paras. 86-88; Industry Comments Received: Iristel, para. 42; Industry Comments Received: Telus, paras. 73-76; Organization Comments Received: ITPA, paras. 79 and 81; Organization Comments Received: Joint Internet Society/Mozilla, pg. 7, and Individual Comments Received: Gregory Taylor, para 20.

<sup>9</sup> Industry Comments Received: Telus, para. 18.

<sup>10</sup> Organization Comments Received: CanWISP, para. 9.

<sup>11</sup> Industry Comments Received: Bell, para. ES9.

<sup>12</sup> Organization Comments Received: CCGA, pg. 2.

<sup>13</sup> Organization Comments Received: ITPA, para. 79.

<sup>14</sup> Industry Comments Received: Cogeco, para. 40; Industry Comments Received: Ecotel, paras. 35, 68.

Given the overall laxity of deployment requirements mandated for spectrum licences for fixed or mobile wireless services, we believe strongly that “deployed” should be interpreted to mean equipment that is installed, is connected to a network, and is able to provide communication services to subscribers or users.

Q49. ISED is seeking comments on its proposal to no longer renew existing RRBS licences after March 31, 2027.

12. We wish to highlight the opposition to discontinuing RRBS licenses, presented in submissions from Advanced Interactive Canada, First Broadband, 6Harmonics, SeaBoard Group, and Gregory Taylor.<sup>15</sup> Collectively, these submissions make a compelling case for a re-examination of this decision in light of RRBS’ potential to provide high-capacity broadband services to rural, remote, and indigenous communities.

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<sup>15</sup> Industry Comments Received: Advanced Interactive Canada, pages 12-15; Industry Comments Received: First Broadband, Q49 comments; Industry Comments Received: Seaboard Group, pp. 1-2. Individual Comments Received: Gregory Taylor, paras. 5-9.