

Consultation on New Access Licensing Framework,  
Changes to Subordinate Licensing and White Space to  
Support Rural and Remote Deployment  
SLPB-004-21

Reply Comments of  
Rogers Communications Canada Inc.  
December 7, 2021



## Executive Summary

- E1. The evidence provided on the consultation record shows that while secondary spectrum access seekers may have had some anecdotal challenges, commercial subordination licences have been issued over many years to numerous public and private network operators from multiple primary licensees. The Access Licensing framework proposed by Innovation, Science and Economic Development Canada (the Department) appears to be an overly blunt policy tool. It is likely that it will be a net negative for wireless policy in rural and remote areas of Canada, when some streamlining of the commercial subordination process appears all that is needed. Further, the consultation has proposed several significant drawbacks that will hurt both existing and planned rural coverage, including by mis-identifying “available” spectrum, proposing to introduce new access rights in an unreasonably short time frame, and potentially preventing primary licensees from being able to deploy new services in rural regions. The proposed Access Licensing framework is not in the best interests of rural and remote Canadians and must not be adopted without significant improvements to prevent the unintended harms it will create.
- E2. Rogers remains very supportive of the renewed and increasing efforts by spectrum stakeholders, including network operators and governments of all levels, to facilitate the deployment and timely availability of services across the country, including rural and remote regions. With the advances of fifth-generation (5G) mobile wireless technology and its ability to enable advanced connectivity services, there has never been a better opportunity to deliver broadband service to every Canadian, no matter where they live. 5G will allow operators to not only enhance mobile wireless services but enable coverage and capacity for Fixed Wireless Access Internet in communities that cannot be economically served by traditional wireline broadband Internet. These advanced new services require significant capital investments and access to spectrum; however, the proposed Access Licensing regime could either prevent the necessary spectrum from being available or inject high-levels of risk in use cases with already challenging economics.
- E3. As Canada’s largest single-operator network, Rogers needs certainty that when it deploys new and enhanced coverage that its exclusively-licensed spectrum will be available. Where we have not deployed in some remote regions, and other carriers wish to do so, Rogers has a history of subordinating spectrum to these public and private network operators so they can launch. In fact, we subordinated additional spectrum during the consultation. In their own submissions, other primary licence holders identify spectrum subordinations to public and private

network operators that have been issued. Rogers fully supports all efforts by the Department to streamline subordination processes in rural and remote areas that will not harm wireless competition between public networks and between primary licensees and private network operators. As the evidence shows, the existing commercial subordination regime is working effectively where requests can be reasonably accommodated, ensuring primary licensees have the spectrum they need for their deployment plans while also facilitating smaller carriers to deploy in their communities and private network locations.

- E4. As large and small Cellular and Personal Communications Services (PCS) licensees identify, the methodology that the Department has proposed to determine whether spectrum is “available” is flawed and does not account for numerous Tier 5 service areas with significant coverage being deemed as “not deployed”. Primary licensees all highlight that the lack of proposed consultation could result in interference to their existing coverage, which would harm the very rural and remote Canadians this consultation is targeting. Further, primary licensees highlight that the proposed regime could strand new deployments currently under construction, or future planned sites. These unintended consequences of wasting private investments and public tax dollars with no additional coverage or capacity gained showcase the real risks the proposed Access Licensing framework will have versus the current subordination regime. As strongly recommended by primary licensees, the Department must always consult with primary licence holders prior to any access licences being granted.
- E5. Primary licensees also highlight that the Access Licensing regime is being proposed in parallel with new deployment requirements for the Cellular and PCS bands. Proposing new requirements to use these spectrum bands in parts of rural Canada at the same time as the new access regime could undermine primary licensees’ (and their commercial subordinates’) ability to meet them. As such, the two consultations have the unintentional consequence of directly opposing each other. We support recommendations that the most appropriate time to consult on an Access Licensing regime would be during licence renewal periods, not in the middle of an exclusive licence term. At a minimum, the Access Licensing framework should not be adopted until the five-year milestone proposed by the Department in the Cellular and PCS consultation. Further, we strongly agree that no consideration should be given to expanding the bands included in the proposed novel access regime, particularly any band still in its initial auction term. Primary licensees have invested billions of dollars into exclusively-licensed spectrum with set term limits on which the Department publicly consulted. To change the terms of the spectrum awards in the middle of an auction term would inject significant

uncertainty into an industry that requires significant upfront and ongoing capital investments, further risking Canada's position as a world-leader in wireless network deployments.

- E6. In order to best increase rural wireless coverage, the Department should enhance spectrum efficiency by re-assigning the PCS band to create contiguous holdings for all licensees, which will ultimately result in more cost-effective wireless capacity and speed for consumers. The new coverage requirement timelines should start after the PCS spectrum is made contiguous, as this will enhance the ability of operators to deploy while also incentivizing both the Department and operators to move forward as quickly as possible. The Department should also ensure that wireless facilities-based network operators have the same access rights to passive infrastructure as wireline network operators, and work to reduce any unnecessary barriers to deployment. These policy options will have significantly greater benefit to rural and remote Canadians than the proposed Access Licensing regime, as well as having benefits to Canadians in urban and suburban areas. Improved commercial subordination processes remain the best option to accommodate secondary spectrum access seekers.

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## Introduction

1. Rogers Communications Canada Inc. (Rogers) welcomes the opportunity to reply to comments filed by other parties in response to *SLPB-004-21: Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment*<sup>1</sup> (the Consultation), posted on the Innovation, Science and Economic Development Canada (ISED or the Department) website on November 5, 2021.
2. After reviewing the comments provided by other parties, we remain of the view that in light of primary licensees' already expanding network coverage and capacity in rural and remote areas, that it would be a net negative to Canadians to adopt the proposed Access Licensing framework. As a result of the *Consultation on Amending Cellular and Personal Communications Services (PCS) Licence Conditions*<sup>2</sup> (the 850 & PCS Consultation), primary Cellular and PCS licensees will be further increasing deployments in rural and remote areas over the next few years. While there are some anecdotal complaints, the evidence on the record is that commercial subordinate licences for both public and private networks are happening. Primary licensees will continue to work with rural and remote operators to subordinate spectrum in areas where primary licensees do not have the business case or local resources to deploy, or where private networks will not interfere with existing or planned coverage. However, with the advances of fifth-generation (5G) mobile wireless technology and its ability to enable advanced connectivity services for public and private networks, primary licensees need their spectrum more than ever in rural and remote areas.
3. No evidence is submitted that counters (nor even addresses) the fact that the proposed Access Licensing regime would create significant regulatory uncertainty for primary licensees and their commercial subordinates in network planning and building. This is particularly true since the framework, as proposed, does not have a mechanism that confirms spectrum "availability" based on existing deployments and actual coverage, nor current build plans – including projects that have some level of public funding support. The proposed regime could thus result in stranded rural and remote deployments if the required spectrum is not available at the end of a build-cycle, wasting private investment and precious public tax dollars with no additional coverage or capacity gained. We cannot think of a more unintentionally harmful

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<sup>1</sup> ISED, *SLPB-004-21: Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment* (Consultation); <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11717.html>.

<sup>2</sup> ISED, *DGSO-003-21: Consultation on Amending Cellular and Personal Communications Services (PCS) Licence Conditions*; <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11716.html>.

wireless policy designed to improve coverage and capacity for rural Canadians. For this reason alone, any spectrum access should remain commercially-negotiated and voluntary. If the Department ultimately introduces an Access Licensing framework, all requests, at a minimum, must involve review with the primary licence holder to ensure that current and planned deployments are not impacted.

4. Rogers is a consistent champion for reducing administrative burdens on both licensees and the Department. As such, we fully support all efforts to reduce the burden of the commercial subordination process, particularly in rural and remote areas with unaffiliated parties, which will generally not have the same competition concerns as urban areas. Streamlining subordination regulatory approvals in cases where there are clearly no competition concerns, such as providing spectrum to a rural or Indigenous operator in communities that are un- or underserved or supporting remote private network deployments will further enhance the commercial subordination process.

#### **Proposed Framework is a Solution in Search of a Problem**

5. Primary licence holders and a number of secondary spectrum access seekers highlight that the current subordinate licensing regime has successfully provided unused spectrum to carriers seeking to extend coverage into underserved regions of Canada. Evidence is provided of the multiple voluntary agreements subordinating spectrum to small, regional carriers serving rural and remote areas, including multiple operators in the Far North. These agreements have resulted in the provision of wireless services using licensed spectrum in communities, including remote First Nations communities served by local, community-based carriers, that could not otherwise have been economically served. There is also evidence provided on the record of a number of subordinate licences being issued by multiple primary licensees for private network deployments. The proposed Access Licensing regime therefore appears to be unnecessary and ultimately counter-productive. While the Department should adopt improvements to the commercial subordination regime, it should not introduce a new licensing process that will jeopardize existing coverage and new rural deployments.
6. Again, one of the most significant flaws in the Department's Access Licensing proposal, identified by numerous licence holders, is that it fails to contemplate the current and future expansion plans of the existing mobile spectrum licensees. There is no provision in the proposed framework to account for the plans that licensees have to expand their networks and there is nothing to ensure that these crucial plans will proceed. Certainly, prospective access licensees do not even entertain such ideas and the negative impacts that will result to rural and remote coverage. These



harms to primary licensees expanding rural and remote deployments will be significantly multiplied should the Department adopt such sub-optimal policies within three months of a decision – a timeline that is patently unreasonable. As demonstrated in the comments, from coast-to-coast-to-coast Rogers and other operators are making ongoing investments to improve the efficiency and performance of their wireless networks. These are through a combination of wholly-private investments and, in areas with extremely challenging economics, in partnerships with all levels of government. The Department and Government of Canada should recognize and celebrate these recent successes, building on them instead of adopting policies that will unintentionally derail and prevent actual deployments.

### **5G changes everything for Rural and Remote deployments**

7. As highlighted in our comments, Rogers continues to make 5G available in urban, suburban, and rural areas. 5G will not only deliver enhanced mobile wireless capabilities but has the potential to be a game changer for rural and remote Canadians and businesses that cannot be served economically today via wireline services. In rural areas, this means that 5G fixed wireless access (FWA) will be able to provide Internet services to homes and businesses in a way that simply was not possible using older 3G and even more recent 4G Long Term Evolution (LTE) network technology. In addition, 5G network slicing allows for public network operators to deploy private network solutions with tailored capabilities to support a myriad of industrial use cases while not creating any interference issues to their public networks serving all Canadians. For self-contained private network deployments that will not connect back to the public network, primary licensees need certainty that they have access to their spectrum to ensure that they have sufficient bands to devote for dedicated use cases.
8. Just as Rogers and other facilities-based operators are beginning to unlock 5G's benefits for rural and remote consumer and enterprise users, the Department is now proposing to claw-back the necessary spectrum capacity and license it to others who have avoided investments in exclusive use spectrum up to this point. In light of the recent successes and growing momentum of both fully-private and publicly-supported rural and remote deployments, the proposed Access Licensing regime's timing could not more potentially damaging to carriers' in-progress 5G deployment plans and strategies. Focus must remain on enhancing and expanding rural and remote coverage, not simply ways to affect a transfer of exclusive spectrum rights from primary licensees to secondary spectrum seekers.

## **Increasing and Enhancing 850 & PCS Rural and Remote Coverage**

9. Rogers remains supportive of the renewed efforts to expand rural mobile service and note that primary licensees who have invested billions of dollars over the decades already have significant incentive to enhance coverage in rural and remote areas. In order to best maximize and increase rural wireless coverage, the Department should move forward with supporting primary licensees and enhancing spectrum efficiency by undertaking a rationalization of the PCS band, that is, to re-assign the band in order to create contiguous holdings for all licensees. ISED should also continue working to ensure that wireless facilities-based network operators have the same access rights to passive infrastructure as wireline network operators. These crucial regulatory actions, which Rogers has continuously supported over the years, are quite simply the most effective policy levers that ISED can use to increase coverage in the Cellular and PCS bands in rural and remote areas. Combined with all the efforts being made by private operators and public partners, these steps will help to build on all the recent successes and planned deployments to get all Canadians, no matter where they live, access to better wireless networks.
10. In addition to enhanced terrestrial 5G services, we also highlight future opportunities of hybrid terrestrial-satellite communication networks that have the potential to provide continuous wide-area mobile coverage to underserved and unserved rural and remote regions of Canada. Such services would use technology currently under trial that will likely become available in Canada within the next three to five years. This can only be accomplished using spectrum that is geographically continuous from coast-to-coast-to-coast and available today in virtually all commercial mobile devices, spectrum like the Cellular and PCS bands. Through commercial spectrum subordination agreements, immediate access to this spectrum could be made available without preventing primary licensees from deploying country-wide satellite-to-mobile services in the near future. The potential benefits to all rural and remote Canadians from this ubiquitous connectivity, including life saving search-and-rescue support, should be carefully considered prior to modifying wide area spectrum licences.
11. Access to infrastructure is essential to expanding network coverage and ISED can increase competition and network deployments by ensuring that any infrastructure and rights-of-way held by municipalities, hydro utilities, and local telephone companies are made available to all other competitors at reasonable commercial rates. The Department should also ensure access to rural municipal real estate for new wireless sites is available and ensure that local governments are not putting up roadblocks to rural deployment through protracted and unnecessary consultations

and zoning restrictions – especially those primarily designed as revenue generation and not legitimate cost-recovery. Fair and reasonable access to the public and private infrastructure is essential to the successful ongoing deployment of wireless services, including in rural and remote areas. While some of these aspects may rely more on measures taken by the Canadian Radio-television and Telecommunications Commission (CRTC), we strongly urge the Department and Government to continue supporting these efforts wherever possible and to move quickly on areas squarely within the Department's domain.

12. Rogers also repeats our recommendation that the Department continue to partner with all levels of government and the CRTC, to better coordinate programs meant to support broadband and wireless deployments in uneconomical rural and remote parts of Canada. The Government of Canada, along with its regional and private sector partners, have made marked improvements over recent years as the country has never been more mobilized to bridge the Digital Divide. Should the Department ultimately decide to adopt an Access Licensing regime, the Department should work closely with primary licensees and their commercial subordinates to ensure that network expansions that have been funded with taxpayer dollars, at least in part, will not see the required spectrum appropriated from the project.

### **Alternative Spectrum Available**

13. In our comments, Rogers highlights that the Department has made significant amounts of spectrum available for licence-exempt or lightly-licensed usage in mid- and high-bands. The Television White Spaces (TVWS) decision has made available significant amounts of low-band spectrum available for rural networks and the Consultation is also looking at ways to enhance usage of the 900 MHz LMR band for private network deployments. No evidence was provided on the record to show that rural and remote applications or operators require more than the aggregate of 15 GHz of spectrum across various bands than the Department has already made available at no- or low-cost.
14. Some commenters highlight their desire to get access licences in the Cellular and PCS bands in order to use Third Generation Partnership Project (3GPP) ecosystems. However, we note that many of the licence-exempt and lightly-licensed bands that the Department has made available will be able to access existing and rapidly emerging 3GPP ecosystems. However, to have robust, mature ecosystems continue to develop, operators must be willing to invest, and the proposed Access Licensing will likely do them irreversible harm, as it disincentivizes the use of these spectrum bands. Rural public operators and remote private operators are being incented to request an access licence in order to leverage the ecosystems that

exclusively-licensed network operators have spent decades developing and investing in. This is yet another reason why the proposed Access Licensing regime is a net negative for Canadian wireless policy.

15. Finally, we note that the only Cellular and PCS licensee that appears generally in favour of the proposed Access Licensing regime is Telus. It appears Telus' primary reason for support is in order to gain access to exclusively-licensed spectrum auctioned to set-aside bidders. Rogers agrees with the view that set-aside policies have resulted in a net negative for Canadian wireless policy, as these policies have contributed to market-distorting spectrum prices for national carriers that ultimately raise the costs of wireless prices for the majority of Canadian consumers and serve as a drag on the overall Canadian economy.
16. As we identify in our 850 & PCS Consultation replies, according to a just published article in *Policy Options*, if Canada's spectrum policies resulted in costs for the national Canadian operators similar to those of average European carriers, it would have reduced the annual cost of spectrum per subscriber by \$55. The article found that:

These high prices for consumers and carriers are the direct result of the government's decision to allocate much less of the wireless spectrum for new mobile services than have most other countries, and to withhold a substantial amount from the three national carriers, setting it aside for less efficient use by smaller regional carriers.<sup>3</sup>

17. However, while we share Telus' critique of spectrum set-aside policies that significantly, even if unintentionally, increase prices for Canadian wireless consumers, we do not believe expanding the proposed Access Licensing framework is the correct remedy, particularly for spectrum still in its initial auction term. The better long-term solution is the one taken up by nearly every other jurisdiction in the world and retire spectrum set-asides. If the Department is looking for additional pro-competition measures for spectrum auctions, appropriate spectrum caps that are applied at the network level at auction and as part of subordination approvals will achieve the same goal without the price distortions of set-asides. Appropriate spectrum caps can include asymmetrical levels, which will allow joint-network partners to acquire more spectrum than single-operator networks to account for a potentially higher combined number of customers. Asymmetric network spectrum caps, however, will prevent each network partner

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<sup>3</sup> Robert W. Crandall, "How Canada's wireless spectrum policy drives up mobile rates", *Policy Options*, October 19, 2021; <https://policyoptions.irpp.org/magazines/october-2021/how-canadas-wireless-spectrum-policy-drives-up-mobile-rates/>.

from acquiring the maximum spectrum at auction and then immediately combining after, thus negating the purpose of auction competition measures. Rogers has no confidence that the Access Licensing framework will result in set-aside spectrum being made available to national operators who already cover 99% of the population through their own networks and those of their commercial subordinates.

18. Rogers stated its position on all of the issues raised in the Consultation in its comments of October 26, 2021. This reply is limited to comments on proposals made by other parties. Failure to address any specific issue raised by other parties should not be taken by the Department as Rogers' acquiescence with the position.

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.

19. After review of the submissions in the Consultation, the proposed Access Licensing framework remains a sub-optimal policy to close the Digital Divide in rural and remote areas. While there is broad agreement regarding the Consultation's objectives of improving wireless services in unserved and underserved locations, there is no evidence provided that the proposed framework will be successful. Cellular and PCS licensees, amongst others, highlight significant challenges to the proposed framework, particularly the lack of any mechanisms to ensure that in-progress and currently planned builds will not be encumbered and ultimately result in less rural and remote network coverage and capacity.<sup>4</sup>
20. Instead, spectrum that has been exclusively-licensed for a set term should continue to be made available on a commercially-negotiated basis to ensure that primary licensees can continue to deploy their own spectrum for rural public network coverage and private networks in remote areas. In fact, since the comments deadline, ISED has announced an additional commercial subordination by Rogers to SSi Micro.<sup>5</sup> First Mile Connectivity Consortium (FMCC) highlights in their comments that a subordinate licensing agreement with Rogers has allowed K-Net Mobile to provide cellular services in 15 rural and remote First Nations in Northern Ontario for more than 10 years.<sup>6</sup> We also highlight two recent private

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<sup>4</sup> TECHNATION Comments, para 3; SaskTel Comments, para 19; Bell Comments, para 3.

<sup>5</sup> ISED, *Subordination of spectrum licences held by Rogers Communications Canada Inc. to SSi Micro Ltd.*; <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11748.html>.

<sup>6</sup> FMCC Comments, para 7.

network subordinations from other operators in our comments.<sup>7</sup> While we continue to support all efforts to streamline subordination processes that will not harm competition, commercial subordination is still the right mechanism to consider secondary access in exclusively-licensed bands and is working in the majority of instances where interference is not a risk.

21. The Department should also strongly reject any and all requests to apply the proposed Access Licensing framework to any additional bands, particularly any that are still in their initial auction term. The proposed regime poses significant risk to current and planned public and private network deployments by primary licensees and their commercial subordinates. Expanding a risky and untried licensing regime before there is any demonstrated need only increases the risk to Canadians' current network coverage. Canadian spectrum, as demonstrated in the recent 3500 MHz flexible use auction, is already amongst the most expensive in the world – if not the most expensive. To insert greater regulatory uncertainty in bands that have been awarded at auction at significant costs to licensees risks the stability needed to justify multi-year, capital-intensive network investments that have resulted in Canada having world-class 4G networks and being unable to extend that leadership into 5G networks to the detriment of all Canadians and the Canadian economy.
22. Most owners of exclusively-licensed spectrum also strongly oppose any Access Licensing regime, in part owing to the significant costs they have paid to acquire and maintain their spectrum. It is telling that private network operators, such as Ecotel, advocate strongly for the Access Licensing regime to be put in place but also that fees should be modified in the context of industrial / private network requirements (i.e., for themselves).<sup>8</sup> These actors are seeking to gain all the value of the ecosystems that have developed around exclusively-licensed spectrum without having to shoulder any of the costs. Nor do they appear to have any desire to invest in the lightly-licensed and licence-exempt spectrum bands that the Department has made available. The Department should reject all self-serving proposals by commercial private network operators to appropriate the spectrum and ecosystem value created by facilities-based operators.
23. Facilities-based competition ultimately provides the greatest benefit to wireless consumers; however, we acknowledge the challenges in delivering the most advanced network services to those Canadians living in rural and remote areas. Cogeco bases their support for the Access Licensing regime on claims that

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<sup>7</sup> Rogers Comments, para 18.

<sup>8</sup> Ecotel Comments, para 41.

wireless networks operators have only fulfilled the minimum of their deployment obligations and only in urban centres.<sup>9</sup> We highlight that Cogeco, while still having another three years to meet the initial deployment of their BRS spectrum licences, has yet to deploy a *single* 2500 MHz base station according to ISED's SMS database in urban or rural areas, after having bought the spectrum from another speculator in 2018.<sup>10</sup> As Bell states, Canadian WSPs have spent billions deploying world-class networks to more than 99% of the population, demonstrating that there is no market failure.<sup>11</sup>

24. Rogers also has significant concerns regarding the potential for interference from perspective Access Licensees, as the mobile spectrum bands generally allow for higher power equipment and the potential to propagate significant distances, particularly the Cellular 850 MHz band. Bell highlights both the interference risks as well as the fact that existing licensees will need to deal with potential holes in their coverage, making it more difficult to provide broad coverage or to deal with interference issues.<sup>12</sup> As Shaw states, "Even though existing sites are proposed to receive protection under the framework, in practical terms, it will still create a very real challenge that operators must contend with, which can translate to service interruptions that can harm consumers."<sup>13</sup> We whole-heartedly agree with the risks that the proposed Access Licensing regime poses to current network coverage.

25. Our own first-hand experience in coordination and interference mitigation is that smaller operators may not have the administrative or engineering resources to address these challenges in a prompt manner, which can degrade the services of Canadian wireless consumers of both networks. The validity of this risk is shown when those like Lyttonet recommend that the Access Licensing regime not pose a burden to small providers through things like monthly reporting updates. ITPA, in response to Q3, highlights that while large wireless service providers' site licence data is accurate, smaller service providers' data is less so.<sup>14</sup> While it is the responsibility of all good spectrum stakeholders to work collaboratively towards coexistence, the Access Licensing framework as proposed appears to put the burden primarily on the primary licence holder. Having to effectively provide free

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<sup>9</sup> Cogeco Comments, para 9.

<sup>10</sup> Based on review of ISED SMS database, November 11, 2021. There is also no evidence of any 2300 MHz or 2500 MHz deployments from spectrum purchased at auction in 2018.

<sup>11</sup> Bell Comments, para 7.

<sup>12</sup> Bell Comments, para 16.

<sup>13</sup> Shaw Comments, para 7.

<sup>14</sup> Lyttonet Comments, pg 2; ITPA Comments, para 33.

spectrum and network services to prospective competitors is both anti-competitive and unfair.

26. Again, commercial subordination provides better *ex ante* and *ex post* coordination and coexistence awareness and guarantees. Potential rural public networks and private network operators are also able to access numerous spectrum bands with little to no direct costs, and these bands already, or will, support a variety of access technologies, whether 3GPP or Institute of Electrical and Electronics Engineers (IEEE) based. At an absolute minimum, the Department must ensure that there is a review process that takes the current and planned deployments of the primary licensee into account. Further, prospective access licensees must not be allowed to cause interference to existing or future primary licensee operations, or their commercial subordinations, in any band where the proposed Access Licensing framework is applied.

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

27. Notwithstanding our opposition to the provision of access licences to exclusively-licensed spectrum bands, particularly in the middle of a licence term, we continue to support that access licensing should only be permitted on a First-Come, First-Served (FCFS) basis. As Bell states, FCFS will avoid interference and is well understood by the industry while SaskTel highlights that utilizing other solutions such as “all come all served” or database sharing mechanisms would increase the potential for interference between systems, as well as causing interference with deployments by existing licensees.<sup>15</sup> Beyond interference risks, Motorola states imposing dynamic spectrum access requirements may impose unnecessary costs on system deployment in rural and remote areas,<sup>16</sup> which would further work against the Consultation’s objectives. FCFS is, in fact, broadly supported by a wide-range of respondents from large national and regional providers, to small and rural operators like CanWISP, BCBA, CCSA, and Xplornet.<sup>17</sup> We also support similar recommendations to Rogers’ position that all FCFS access licences come with strict deployment requirements to limit speculation.

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<sup>15</sup> Bell Comments, para 20; SaskTel Comments, para 20.

<sup>16</sup> Motorola Comments, pg 2.

<sup>17</sup> Telus Comments, para 29; CCSA Comments, pg 20; CanWISP Comments, para 17; BCBA Comments, pg 3; Xplornet Comments; para 37.



28. It should be noted that several parties request modifications to FCFS to support either a particular class of operator or in part because they believe that demand will outstrip supply. In fact, Ecotel proposes auctioning access licences in areas with high demand.<sup>18</sup> If the demand is so significant that auctioning is a better tool, it seems evident that the proposed Access Licensing regime is not required and commercial subordination, which exists today, is the more appropriate secondary licensing regime.

29. We again highlight that whatever the process for applying for an access licence is ultimately adopted, there must be a process to challenge whether the requested spectrum is actually currently in use. No access licence should ever be issued by the Department prior to consultation with the primary licensees, since licensee build plans are based on current spectrum availability. Primary licensees must always have sufficient notice and right-of-first-refusal (based on an 18-month build plan) to ensure that the fundamental rights of exclusive primary licence holders are retained. Further, any access licensee should be required to coordinate with future deployments by the primary licensee, meaning that access licensees should not be granted a de facto exclusive licence.

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.

30. Upon review of other comments, Rogers continues to support using a Tier 5 area for eligibility and that any Tier 5 that has any level of wireless coverage from the primary licensee or commercial subordinate, whether from a site within or adjacent to a tier, should automatically be unavailable. Bell and ITPA both highlight that a particular Tier 5 area may be well serviced from an adjacent area.<sup>19</sup> Rogers also fully endorses SaskTel's view that although co-existence can ultimately be achieved utilizing existing rules found in SRSP documents, considerable efforts and costs will be incurred by the existing licensee to ensure there will not be any interference to existing deployments.<sup>20</sup> These additional costs and the potential (interim) degradation of existing network coverage will impact Canadian consumers. As such, any access licence should always be granted on the smallest

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<sup>18</sup> Ecotel Comments, para 45.

<sup>19</sup> Bell Comments, para 23-24; ITPA Comments, para 31.

<sup>20</sup> SaskTel Comments, para 23.

possible area, possibly grid-cells,<sup>21</sup> as is often the case with subordinations that the Department has approved to date.

31. The Department should strongly reject all proposals to provide secondary access to exclusively-licensed spectrum in any Tier 5 service area that already has service from the primary licensee or their commercial subordinate unless through commercial subordination. Expanding the parameters of an untried licensing regime within exclusively-licensed bands before any real-world experience only increases the interference risks (and costs) for Canadians receiving coverage today – which is the antithesis of the Consultation’s objectives.
32. For absolute certainty, the Department should not issue any access licence, regardless of access licence size (e.g., grid-cell), where there is any existing coverage in the Tier 5 area from a primary licensee or their commercial subordinate. Existing coverage, from within a Tier 5 or from an adjacent tier, should not be impacted in any way and must be fully protected. Otherwise, the Access Licensing regime could take away current rural and remote coverage from Canadian consumers, businesses, or along transportation corridors.

Q4: ISED is seeking comments on its proposed principles to be used when considering spectrum licensed or radio licensed bands where the proposed Access Licensing framework will apply.

33. While we continue to generally object to any Accessing Licensing regime, Rogers specifically does not support the framework being applied to any spectrum bands during their initial auction terms under any circumstances. As Bell states, “Otherwise, ISED would be violating the implicit contract between itself and auction participants.”<sup>22</sup> This view is also shared by Eastlink, noting, “It is essential that service providers have sufficient certainty when making the substantial investment in spectrum that their investment will continue to be available to them.”<sup>23</sup>
34. We strongly support SaskTel’s recommendation that if any Access Licensing framework is to be implemented, it should be at the time a spectrum licence is renewed and where deployment requirements are not met; however, there should be no revision of current licences.<sup>24</sup> Proceeding to allow access licensing at any

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<sup>21</sup> Bell Comments, para 24.

<sup>22</sup> Bell Comments, para 25.

<sup>23</sup> Eastlink Comments, para 8.

<sup>24</sup> SaskTel Comments, para 25.

time during an initial auction term will surely lead to significant regulatory uncertainty in future auctions and ultimately be a net negative for network coverage and expansion in Canada, including in rural and remote areas.

35. For these reasons, the Department should strongly reject any proposal to expand the bands to be potentially made available under any Access Licensing framework as being grossly unfair to auction participants and jeopardizing any future Canadian auction and network deployments. The most egregious example of this is with the BCBA proposing access to the 3500 MHz spectrum, which the industry just spent \$8.9B to secure exclusively-licensed flexible use rights and for which the Department has yet to issue a single licence. Were the Department to adopt the BCBA's proposal and start the proposed Access Licensing framework within 3-months of the decision (which we strongly oppose), it is theoretically possible that the Department could be issuing access licences before primary licensees are allowed to operate a single flexible use base station. Such an unreasonable and bad outcome for Canadian wireless policy highlights the numerous drawbacks of the proposed framework.

Q5: ISED is seeking comments on other principles it should take into account when considering bands where the proposed Access Licensing framework will apply.

36. We fully endorse the ITPA's highlighting the importance ISED granting spectrum holders sufficient time to deploy their networks and meet their deployment conditions before spectrum is made available to other entities and that newly awarded licences should not be deemed available through any Access Spectrum Licensing framework.<sup>25</sup> With a parallel proceeding to adopt new, more rigorous deployment requirements in the Cellular and PCS bands with a five-year milestone, that is the bare minimum that any Access Licensing should be adopted. More appropriate is during licence renewal consultations, and not in the middle of a set term for exclusively-licensed spectrum. Until that timeframe, commercial subordination is still available for rural and private network operators looking to access spectrum. The Department must reject all requests to expand the untried and untested Access Licensing framework to additional bands, particularly those in the middle of initial terms that were auctioned with exclusive usage rights after public consultation.

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<sup>25</sup> ITPA Comments, para 45.

37. We also support ITPA's recommended principle of a mandatory notification period to ensure that existing licensees are not already in the process of building infrastructure and expanding service.<sup>26</sup> Without a review of primary licensees' current build plans, and those of their commercial subordinates, any Access Licensing regime will be unreasonable, reckless, and a net negative for rural and remote Canadians, and strand investments by both the private and public sector.

Q6: ISED is seeking comments on adopting a flexible use licensing model for fixed and mobile services when issuing access spectrum licences.

38. There appears to be general support for flexible use when issuing access spectrum licences, with the primary use cases of mobile and fixed wireless access (FWA), including Internet of Things (IoT). However, we note that there does not seem to be any explicit support for allowing fixed point-to-point (PTP) services nor drone operations. Rogers reiterates our concerns that there is a significant risk of potential interference into adjacent service areas and the mobile services already enjoyed by most Canadians with these services and that they should not be authorized under any access licences.

39. We also repeat our recommendation that access licensees should solely be responsible for mitigating any interference to existing primary licensees' deployments, including coverage provided from adjacent licence areas. While primary licensees should be good spectrum neighbours, they should not bear the burden of providing both the spectrum and network management to their competitors. Further, as a condition of licence, access licensees should be required to coordinate on future deployments by primary licensees anywhere within the primary licensee's licence area – including in territory included in the access licence, whether spectrum or radio licensing is used. It is bad policy to take exclusively-licensed spectrum from those who have invested significant amounts in that spectrum and instead provide exclusive access to the spectrum appropriators.

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<sup>26</sup> ITPA Comments, para 48.

Q7: ISED is seeking comments on its proposal to use Tier 5 service areas for the proposed access spectrum licences and any associated potential technical challenges should this process be applied to all commercial mobile or flexible use frequency bands.

40. Rogers supports Bell's recommendation, which echoes our own, that Tier 5 areas should only be used to determine eligibility and that any access licences should be issued on a grid-cell basis. Further, the grid-cells should fall within the 3-year deployment plan of the prospective access licensees and only those that have deployed should be renewed, where they can apply for additional grid cell areas if they wish to expand if it will not cause interference to existing services.<sup>27</sup>
41. We also share SaskTel's concerns that the proposed access spectrum licences will create technical challenges of coexistence and interference management, and require increased efforts required to coordinate deployments. As SaskTel further notes, as the number of bordering areas increases, so does the workload for coordination, and with more borders between different operators the efficiency of spectrum deployments is reduced.<sup>28</sup> The ITPA similarly highlights that radio spectrum propagation does not stop at the border of a Tier 5 area, and techniques to contain signal within a given Tier 5 area should be encouraged/mandated by ISED to ensure existing radio systems are protected.<sup>29</sup> Rogers agrees with these views but has significant concerns that, as proposed, these increased coordination obligations (and associated costs) will fall on the primary licensees, leaving it to their customers to absorb the costs and have their services negatively impacted. While primary licensees should be good spectrum neighbours, the obligation to coordinate must be borne by prospective access licensees, not the network operators paying for exclusively-licensed spectrum rights.
42. Telus, a supporter of the proposed Access Licensing framework, highlights that access licensing should always be complementary to existing licensees' deployments but should never supplant them nor create any adverse impacts to primary licensees. Telus further highlights, as do many others, that there are numerous examples in which a Tier 5 has no physical sites deployed within the tier, but the primary licensee offers service under coverage being provided from adjacent Tier 5 service areas.<sup>30</sup> Rogers continues to oppose the Access Licensing

<sup>27</sup> Bell Comments, para 29-30.

<sup>28</sup> SaskTel Comments, para 31.

<sup>29</sup> ITPA Comments, para 57.

<sup>30</sup> Telus Comments, para 39.

framework but nevertheless agree with Telus that protection of existing coverage in all Tier 5 areas needs to be the primary focus, not simply Tier 5 areas with existing sites.

Q8: ISED is seeking comments on any future adjustments to the licence areas for access spectrum licences, including consideration of more localized areas (e.g. smaller than Tier 5).

43. We adamantly agree with SaskTel's view that issuing spectrum licences for areas smaller than Tier 5 will result in increased complexity in coordinating deployments to ensure mitigation of interference with existing deployments and that it would be more appropriate to issue site-based licences, a view also shared by Bell.<sup>31</sup> For clarity, Rogers does not support access spectrum licences being issued as sub-Tier 5 area licences, now or in the future, and recommends the Department only issue site-based or grid-cell licences to provide primary and access licensees with a greater ability to coordinate and manage potential interference.
44. We also agree with SaskTel's objection to the issuing of any site licences within a service area of existing spectrum licences which have been deployed in the given rural Tier 4 area,<sup>32</sup> including any Tier 5 that receives coverage from an adjacent Tier 5 service area. As such, the Department should strongly reject all proposals by prospective access licensees to acquire localized areas in Tier 5 service areas that are currently receiving coverage from within or from an adjacent service area.
45. As we state in our comments, if a primary licensee is already providing coverage for a Tier 5, normal network expansion or upgrades will result in additional coverage in the Tier 5. In larger deep rural or remote Tier 5 service areas where it may be possible for a localized or private network to deploy, commercial subordination is the appropriate licensing process to protect existing and future coverage by the primary licensee.

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<sup>31</sup> SaskTel Comments, para 34; Bell Comments, para 29.

<sup>32</sup> SaskTel Comments, para 34.

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.

46. As we suggest in our comments, a number of other Cellular and PCS licensees have also identified the same issues with Department's methodology to determine whether spectrum is "available". Bell states that ISED's process for determining the extent of unused spectrum is inaccurate since it does not consider actual network coverage and spectrum usage, which can be provided from a site operating in an adjacent Tier 5 area.<sup>33</sup> This view is also shared by numerous rural and small regional providers, such as Iristel, Xplornet, and the ITPA, with all highlighting that it is possible that spectrum might be in use in a Tier 5 area even if there is no radio situated in that Tier 5 area and the Spectrum Management System (SMS) may be out of date or inaccurate. As such, all call for additional propagation analysis and/or discussing with the primary licence holder before issuing an access licence to ensure that the SMS is up to date before a block is deemed "available".<sup>34</sup>
47. While we continue to support using coverage analysis to determine whether a Tier 5 is receiving coverage from an adjacent service area, we also continue to strongly oppose all proposals to further appropriate and sub-divide primary licences that are currently providing coverage in a Tier 5 area. Service areas where there is currently coverage, whether from within the Tier 5 or from sites in adjacent service areas, means it is highly probable that additional coverage will be required as the population grows. Any requests for spectrum in these Tier 5 service areas with existing coverage, whether from hyper-local public operators or private network businesses, should avail themselves of commercial subordination licensing processes. This will allow primary licensees and their current commercial subordinates to ensure protection of their current and future network deployments.
48. As SaskTel highlights, the Department's proposed methodology seems to rely on a "simple one-time analysis" of the SMS site database. However, as the site database relies on data provided on *operational* systems only, there is no information on *impending* usage for either existing sites or sites under construction.<sup>35</sup> We completely agree and continue to highlight how this is a

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<sup>33</sup> Bell Comments, para 31-32.

<sup>34</sup> Iristel Comments, para 26; Xplornet Comments, para 51; ITPA Comments, para 61.

<sup>35</sup> SaskTel Comments, para 36.

significant flaw in the Department's proposed framework that is unreasonable and will negatively impact rural and remote coverage expansion.

49. Notwithstanding our continuing overall objection to the proposed Access Licensing regime, spectrum availability should be based on primary licensees' coverage plus a conservative buffer to ensure protection of primary licensees' networks. Any Tier 5 service area with existing coverage should be excluded from any access licensing. In addition, all access requests should require confirmation from primary licensees (and their commercial subordinates) that any particular area is not part of an operators' 18-month build plan.

Q10: ISED is seeking comments on its proposal to impose a condition of licence to prohibit existing primary and subordinate licensees' deployment in areas for which an access spectrum licence has been issued.

50. Rogers strongly opposes any proposal to prohibit future deployments of primary licensees, particularly while simultaneously requiring greater deployments by primary licensees (or their commercially subordinated partners) in another consultation. Bell echoes our own recommendation that primary and subordinate licensees should still be allowed to deploy as long as they do not cause harmful interference with access licensees, and to do otherwise is contrary to the Department's policy objective to "facilitate the deployment and timely availability of services across the country, with an emphasis of rural and remote regions".<sup>36</sup>
51. SaskTel and SSi Micro also oppose the proposal on the grounds that it is effectively akin to a repudiation of the underlying contract that is created when spectrum is purchased/licensed, and a permanent reassignment of the spectrum.<sup>37</sup> We agree with these views, and do not support any proposed condition of licence which creates a de facto veto of future network deployments in a service area for which a primary licensee holds an exclusive licence term for another ten years.
52. The Department should reject the support by prospective access licensees as being wholly self-serving and not truly in the interests of rural Canadians. CanWISP states, "By ensuring that the access licence is an exclusive spectrum licence, ISED will provide access licensees with the business certainty needed to invest in network infrastructure."<sup>38</sup> It is wildly hypocritical for prospective access

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<sup>36</sup> Bell Comments, para 33.

<sup>37</sup> SSi Micro Comments, para 71; SaskTel Comments, para 47.

<sup>38</sup> CanWISP Comments, para 35.



licensees to appropriate exclusively-licensed spectrum from primary licensees and demand that they get exclusive rights.

53. Imposing a condition of licence prohibiting the expansion of coverage and capacity by an existing primary or secondary licensee is an incredibly poor policy choice for Canada. Such action restricts the ability of primary (or their subordinate) licensees from expanding coverage in rural and remote areas, whether for public networks or being able to deploy future private network opportunities. If the primary goal of the Consultation is to enhance rural coverage and capacity, then there should not be artificial restrictions on primary licence holders that have been investing in spectrum and networks for decades. As such, any access licence should come with a condition of licence that the access licensee is required to coordinate for any future deployments by the primary licensee.
54. For certainty, the obligation should be placed on the access licensee (the access seeker), not the primary licensee (the exclusive licence holder) or their commercial subordinate.

Q11: ISED is seeking comments on its proposal that stations already deployed by primary or subordinate spectrum licensees within their service areas would be protected from subsequent deployment under access spectrum licences.

55. There is broad consensus that all stations already deployed by primary or subordinate licensees should be protected from interference caused by access licensees. We continue to support this proposal but again highlight that it should include protecting existing coverage from service areas adjacent to areas covered by an access licence. We further recommend that this should also apply to future deployments by the primary or commercially subordinated licensee and that any access licence should be come with a condition of licence that requires that the access licensee be required to coordinate for any future deployments by the primary or commercial subordinate licensee anywhere in the primary or commercial subordinate licence area.
56. We object to CanWISP's dubious assertion that "primary licensees may use spurious claims of interference in order to curtail access licensees' deployments."<sup>39</sup> As the Department knows, Rogers has been, and always will be, a good spectrum neighbour, and quickly cooperates whenever any potential coexistence issues are

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<sup>39</sup> CanWISP Comments, para 37.

brought to our attention. We also have found that most operators, regardless of size, have also been cooperative in resolving coexistence challenges that may arise over time. However, it is also true that while small operators engage in interference mitigation in a congenial fashion, they often lack the engineering and financial resources to investigate and resolve coexistence issues in a timely manner. Further, some then point to their relative size as a reason that (almost) all mitigation efforts and costs should be borne by the larger carrier, even if they are the sole cause of the interference.

57. Again, any proposed framework should protect existing coverage and should not be an opportunity for prospective access licensees to appropriate spectrum and network services from national and large regional operators.

Q12: ISED is seeking comments on the above options for eligibility.

58. The record shows mixed support for the proposed options; however, Rogers continues to recommend the Department should select Option 2 for eligibility. As we state in our comments, if an access licensee applicant already holds a spectrum licence for commercial mobile, fixed, or flexible use spectrum, in the same Tier 5 licence area, whether deployed or undeployed, they should use their own spectrum and increase their facilities-based deployments (e.g., cell splitting, adding additional sectors, etc.). This view was also shared by Communications T l signal.<sup>40</sup> If applicants need additional spectrum, they should pursue the same processes that they used to secure their current spectrum, including participating in the Department's upcoming 3800 MHz and mmWave auctions or access the significant amounts of other low, mid, and high spectrum bands that the Department has made available as licence-exempt or lightly-licensed.

59. While Rogers has a history of working with regional and rural operators, as well as Indigenous operators, on commercial subordinations, we believe that any Access Licensing framework must truly be focused on those who have been unable to acquire spectrum. As such, we agree with Eeyou Communications Network (ECN), Internet Society and Mozilla, and FMCC, that Option 2 would maximize the opportunity for new operators to gain access to spectrum.<sup>41</sup> SaskTel and Xplornet,

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<sup>40</sup> Communications T l signal Inc Comments, pg 10-11.

<sup>41</sup> Eeyou Communications Network (ECN) Comments, para 36; Internet Society and Mozilla, pg 7; First Mile Connectivity Consortium (FMCC) Comments, para 62.

two network providers that operate in less-densely populated parts of Canada also support Option 2.<sup>42</sup>

60. We also highlight the disconnect of proponents of Option 1 (e.g., CanWISP, BCBA, TerreStar, Eastlink) that seemingly rail against primary licensees not having 100% Canadian landmass coverage in the Cellular and PCS bands while also suggesting that no prospective access licensee (i.e., themselves) should be penalized if they happen to hold undeployed spectrum in any band other than the one for which they are seeking access.<sup>43</sup> Some regional network operators also believe they need special dispensation for not having deployed any of their mobile spectrum (e.g., Cogeco) but, again, believe they are entitled to others' exclusively-licensed spectrum under minimal conditions.<sup>44</sup> Such self-serving proposals strengthen our view that Option 2 is the more appropriate choice, notwithstanding our support for all secondary access via commercial subordination.

Q13: ISED is seeking comments for Option 1 and Option 2, specifically should the deployed and/or undeployed spectrum be based on any frequency band (e.g. 2500 MHz) currently held by the applicant or only the band (e.g. PCS band) for which the application is made?

61. No submissions provide any evidence to alter our view that any prospective access licensee's eligibility should be based on whether they have any deployed and/or undeployed spectrum in any band. This view is shared by Communications T l signal, when they state an applicant, "should not be eligible to do access spectrum request for this area, whether in the same band or in a band different, since it already has access to the spectrum necessary to offer and install its services."<sup>45</sup> ECN, SaskTel, Xplornet, the FMCC, and the Internet Society and Mozilla, supporters of Option 2, similarly agree that all holdings must be taken into account.<sup>46</sup>

62. Even some proponents of Option 1, like Lyttonet, state "The determination of unused frequencies should be based on all bands held by the licensee rather than an individual band. This will encourage the licensee to deploy all the existing

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<sup>42</sup> SaskTel Comments, para 50; Xplornet Comments, para 54.

<sup>43</sup> TerreStar Comments, pg 8; CanWISP Comments, para 38; BCBA Comments, pg 5; Eastlink Comments, para 11.

<sup>44</sup> Cogeco Comments, para 36.

<sup>45</sup> Communications T l signal Inc, pg 11.

<sup>46</sup> ECN Comments, para 37; SaskTel Comments, para 51; Xplornet Comments, para 55; FMCC Comments, para 65; Internet Society and Mozilla Comments, pg 7.

frequency resources they hold before looking to gain additional licences from other providers.”<sup>47</sup> The Canadian Electricity Association (CEA), another Option 1 proponent, also agrees that it should be based on all 3GPP bands.<sup>48</sup>

63. The Department should again reject recommendations by commenters like Iristel and CanWISP who explicitly desire to appropriate exclusively-licensed spectrum even should they themselves hold spectrum they have not deployed.<sup>49</sup> Such requests are utterly self-serving and will leave spectrum undeployed in rural and remote areas, while increasing regulatory uncertainty for primary licensees and be a net negative for rural and remote Canadians.

Q14: ISED is seeking comments on its proposal to issue access spectrum licences with a three-year licence term and the proposed wording of the condition of licence above.

64. The three-year licence term for access licences is supported by a number of commenters including those who generally oppose the proposed Access Licensing framework, such as Bell, and those generally supportive of the proposed regime, such as Cogeco, ECN, Iristel, Xplornet, FMCC, ITPA and the Internet Society and Mozilla.<sup>50</sup> Both SaskTel and Telus, who respectively oppose and support the regime, also recommend shorter terms with stringent deployment requirements.<sup>51</sup> We continue to support a three-year term with the refinement to the proposed conditions of licence that the access licence will be automatically cancelled should the spectrum not be required, e.g., a private network customer decides to switch service provider, including the primary licensee; the rural operator ceases operations; etc.

65. We again find a disconnect between those asking for longer licence-terms to provide greater certainty to make investments while also advocating to appropriate currently exclusively-licensed spectrum in the middle of its licence term. This self-serving behaviour is particularly egregious by those looking for 10-year licence terms (i.e., the approximate time left in the licence term of the spectrum subject to

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<sup>47</sup> Lyttonet Comments, pg 3.

<sup>48</sup> Canadian Electricity Association (CEA) Comments, pg 46.

<sup>49</sup> Iristel Comments, para 36; CanWISP Comments, para 42.

<sup>50</sup> Bell Comments, para 39; Cogeco Comments, para 39; ECN Comments, para 38; Iristel Comments, para 38; Xplornet Comments, para 56; FMCC Comments, para 66; ITPA Comments, para 75; Internet Society and Mozilla Comments, pg 7.

<sup>51</sup> SaskTel Comments, para 52; Telus Comments, para 69.

this consultation) to provide themselves certainty and support their own return on network investments. However, there is no acknowledgement from these parties that the Access Licensing framework proposes to provide (formerly) exclusive primary licensees with only three months of spectrum certainty, followed by perpetual uncertainty.

66. Three-year terms with strict deployment requirements are more than sufficient, particularly with the Department's proposed high expectation of renewal for an equivalent term upon expiry, unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required or an overriding policy need arises. Should secondary spectrum seekers be searching for longer-term certainty, we note that commercial subordinations often are secured for substantially longer periods.

Q15: ISED is seeking comments on its proposal that access spectrum licences not contain transfer, subdivision or subordination privileges.

67. There is broad, general support for the proposal that access licences do not contain any transfer privileges, particularly to prevent speculation and arbitrage.<sup>52</sup> There is an additional group of respondents who concur that transfer of undeployed spectrum or spectrum licences should not be allowed but operational networks and deemed transfers should be permitted to support continuation of service, deal with the result of a private network operator that has gone bankrupt, or to allow entrepreneurs to sell their public networks. While Rogers is supportive of the need for continuation of service for public network access in rural areas, the presented scenarios may still ultimately be speculative and would require that ISED evaluate which of these transfers of expropriated spectrum are in the public good and which are ultimately speculative.
68. The Department should also reject various requests for subordination rights. Again, by only issuing site-based access licences, it reduces the potential need to entertain subdivision or subordinations of access licences. For prospective access licensees that are seeking such wide-area spectrum to support joint networks or MOCN deployments, commercial subordination remains the appropriate secondary licensing process. These steps will also continue to provide the primary licensee

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<sup>52</sup> Bell Comments, para 40; Communications Télésignal, pg 12; Lyttonet Comments, pg 3; SaskTel Comments, para 53; TerreStar Comments, Para 10; Xplornet Comments, para 57; CCSA Comments, A15; ITPA Comments, para 76; Internet Society and Mozilla Comments, pg 7.

with the greatest flexibility to use their own spectrum for public and private network deployments, which is the ultimate goal of this consultation and the Department's existing policies.

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.

69. Upon review of the other submissions from parties, some proposing hard one-year deployment requirements and some asking for deployment to only be reviewed at the end of the three-year term (and with significantly reduced targets) or at five-years (e.g., CCSA), we continue to see our proposed 18-month timeframe for all public network sites as the appropriate balance. This proposed timing is based on a reasonable build cycle, particularly for rural and remote parts of Canada, and results in aggressive but achievable deployment conditions for public networks. Further, we support all calls for interim reports to ensure work is under way and we continue to recommend access licensees be required to submit an attestation that deployment has begun within six months of the access licence being granted. This requirement should be strictly enforced and result in automatic termination of an access licence and require re-application should deployment not begin within six months, including providing the right of first refusal for the primary licensee to move forward with their own build plans for the area.

70. While we do not support private networks being granted an access spectrum licence and should only be granted site-based access radio licensing as proposed by the Department, we reiterate our recommendation that private network sites should be required to be completed in one-year. As the ITPA states, private systems typically do not require the service provider to obtain site lease or land use authority approval, so they should be able to move faster than public network

deployments.<sup>53</sup> For certainty, we do not support ITPA's proposal of 18-months for private network deployments, they should be completed in one-year.

Q17: ISED is seeking comments on its proposal to apply the conditions of licence set out in annex B to access spectrum licences issued through the proposed Access Licensing framework.

71. Rogers supports Bell's recommendation that, "Existing primary licence fees should be reduced to reflect the fact that a new access licence has been issued. Primary licensees should not pay for population its licence does not cover."<sup>54</sup> Telus takes a similar position, stating the access licences should have pro-rated fees based on the fee framework for the applicable band and fees for primary licences must be reduced by an equivalent amount.<sup>55</sup> It is unfair to take away the ability to serve certain rural and remote populations but still expect primary licensees to pay for the exclusive spectrum coverage. Further, it would be a bad policy outcome that will further divert capital from investments in rural and remote coverage, serving as an additional government tax/levy on Canadian wireless consumers.

72. Conversely, the Department should reject proposals that access licensees for public and/or private networks should not pay any fees or not include all the Pops covered by the access licence. These Tier 5 licences (or smaller) will generally already be of such low population counts that the fees will already be minimal. If the Department accepts that it should discount fees for rural and remote areas (similar to its recent Fixed Services fee decision) or move to a cost-recovery model, this should apply to all spectrum bands and licensees (i.e., primary licences). To do otherwise would be anti-competitive by providing a spectrum cost-structure advantage to access licensees by government fiat.

73. We continue to support that conditions of licence for access licences be based on those typically included in commercial mobile and flexible use licences and reiterate that all access licences – whether meant for public or private networks – should include a condition of licence that requires access licensees to protect existing coverage of the primary licensee (or commercial subordinate), including coverage from sites in adjacent service areas. This condition should also require

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<sup>53</sup> ITPA Comments, para 78.

<sup>54</sup> Bell Comments, para 46.

<sup>55</sup> Telus Comments, para 78.

access licensees to coordinate with future deployments of the primary licensee, whether for public or private network deployments.

74. We also strongly support the general mandatory roaming condition of licence, which continues to support competition in Canada and the Department should continue to firmly reject any calls for its removal or modification, whether by primary or access licensees. This condition of licence for all access licences should also extend an obligation for any access licensee that provides voice services or a connection to the public Internet to provide roaming services. Mandatory roaming, including for all national operators, will help achieve the Department's policy of improving wireless access in rural and remote areas for all Canadians. The Department should also reject any proposal by prospective access licensees, including private network operators, to forbear from being subject to mandatory tower sharing. Mandatory tower sharing will help achieve the Department's goal of increasing rural and remote coverage by more efficiently and economically allowing access to infrastructure and ensuring that Canadians fully benefit from any new network deployments and, thus, should be welcomed by all access licensees as the goal of the Consultation.

75. Consistent with our positions above, the Department should reject all proposals for longer access licence terms, reduced/no fees solely applicable to access licensees, or transfer/subordination rights. These proposals are self-serving, increase the level of harms that an Access Licensing framework will inflict on primary licensees, and are ultimately not in the best long-term interests of rural and remote Canadians.

Q18: ISED is seeking comments on its proposal to make 800 MHz cellular available for access spectrum licenses in rural and remote Tier 5 service areas in which the existing primary or subordinate has no deployment.

76. Rogers agrees with the objections to the Department's proposal to impose access licensing in the 800 MHz Cellular as raised by Bell and SaskTel. As Bell states:

Canada's facilities-based wireless providers have: (i) deployed services across the country, including rural and remote regions; (ii) invested tens of billions of dollars on wireless networks which has enabled the development of innovative and emerging applications including 5G; and (iii) continue to compete vigorously which was resulted in significant declines in wireless prices over time. ISED has also made significant amounts of spectrum available through spectrum set-asides and caps,



having existing licensees return spectrum for future licensing and allocating more spectrum for use on a shared basis. There is insufficient rationale for ISED to impose a new Access Licensing Framework in the Cellular, PCS or any other spectrum bands.<sup>56</sup>

77. We further agree with Xplornet's assertion that if the Department determines that it will establish new deployment conditions for these spectrum licences, access licences should only be available where a primary licensee fails to comply with the newly established deployment conditions.<sup>57</sup> Again, it is important to highlight that simply because there is not an existing deployment within the Tier 5 service boundaries, this is an unreliable proxy for actual coverage.

78. In areas where spectrum that has not been deployed or is in public or private network build plans, spectrum seekers are still able to avail themselves of a commercially-negotiated subordination agreement that can work for all parties and not result in interference to primary licensees existing and near-term coverage. No evidence or convincing arguments are provided that alters our view that a poorly designed Access Licensing regime risks taking away spectrum from primary licensees at a time when there is so much building momentum for rural deployments.

Q19: ISED is seeking comments on its proposal to modify the CTFA, where relevant, to change the existing fixed service allocation to primary status in the 824-849 MHz/869-894 MHz range, noting that the fixed service is already allocated on a primary basis in the 890-894 MHz portion.

79. There appears to be consensus support (or no objections) to the Department's proposal to modify the CTFA, where relevant, to change the existing fixed service allocation to primary status in the 824-849 MHz/869-894 MHz. We continue to support adding fixed service as primary but again recommend the Department not allow drone operations to be authorized under any access licences, whether on public or private networks.

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<sup>56</sup> Bell Comments, para 48.

<sup>57</sup> Xplornet Comments, para 61.

Q20: ISED is seeking comments on its proposal to make PCS blocks A to F available for access spectrum licenses in rural and remote Tier 5 service areas in which the existing primary or subordinate licensee has no deployment.

80. Rogers continues to expect that the Department's proposal to make primary licensees' PCS blocks A to F available in rural and remote Tier 5 service areas through non-commercially-negotiated subordination will have significant unintended consequences that will be a net negative for rural Canadians. SaskTel and Bell also continue to generally oppose the proposed framework for similar reasons to Rogers; Xplornet and Iristel, who more generally support the proposed framework, highlight that spectrum should only be made available for Access Licences after existing licensees have been given time to meet deployment requirements and do not meet them.<sup>58</sup> With the Department consulting on increased Cellular and PCS coverage requirements with a five-year milestone, we believe that it is a more appropriate time to consider Access Licences, though still sub-optimal. The most appropriate time would be during the renewal consultation(s) for Cellular and PCS spectrum.
81. The Department should reject the request by Advanced Interactive Canada (AIC) to license potential PCS access licences in as large a block or blocks as possible<sup>59</sup> if that spans multiple operators' holdings, certainly until after working with primary licensees to fully rationalize the PCS spectrum band. It would be wildly anti-competitive for the Department to grant access licensees contiguous holdings that allow for greater spectral and cost efficiency while not facilitating a stakeholder process for primary licensees. Re-assigning and rationalizing the PCS band will help the Department meet its mandate to manage Canadian spectrum resources effectively and efficiently, while providing both technical and economic benefits to operators who can use those gains to enhance both coverage and capacity of existing and new services. While it is theoretically possible that primary licensees could coordinate, the number of stakeholders – particularly legacy TEL area licensees – across the entire country makes it impractical. We continue to strongly recommend the Department lead an all-licensee process, whether through a stakeholder roundtable or formal consultation process, to facilitate making all operators spectrum holdings contiguous as quickly as possible for the benefit of all Canadians.

<sup>58</sup> Bell Comments, para 48; SaskTel Comments, para 64; Xplornet Comments, para 64; Iristel Comments, para 49.

<sup>59</sup> AIC Comments, pg 8.

Q21: ISED is seeking comments on any other spectrum licence bands that meet the principles proposed in section 5 that could be considered for access spectrum licensing.

82. No evidence was put on the record showing that deep rural and remote areas that do not currently have access to terrestrial wireless connectivity services require additional spectrum bands than the Department has proposed in order to provide service. Their spectrum needs are not the same as those of national operators and large regional operators, who must serve significant numbers of customers in urban and suburban areas. Further, many provide both mobile and FWA services, and concurrently maintain coverage with four distinct generations of technology (2G, 3G, 4G, and 5G). While spectrum can and will be refarmed, Canadian consumers and businesses (in particular) require access to legacy generation technologies. With a lack of evidence showing any actual need for the spectrum, the Department should not inject even greater regulatory uncertainty by contemplating an expansion of the proposed regime before it has a chance to start or assess the impacts. We note that even Communications T l signal, a supporter of the proposed Access Licensing framework, believes the two proposed bands are sufficient.<sup>60</sup> Should the Department consider additional bands in the future for access licensing, they must be subject to full consultation with industry to ensure that existing coverage and current and future band-specific technologies will not be unduly harmed.

83. There is also no evidence provided that would justify consideration of any spectrum on its initial auction term and fundamentally altering the terms that licensees purchased the spectrum, which included a set term for exclusive usage. The Department publicly consulted on the auction conditions of licence and determined the best outcome for Canada was to make the spectrum available as exclusively-licensed. For example, requests by organizations for access to the 700 MHz band, only one-third of the way through its initial auction term, are particularly egregious. To alter the conditions of licence mid-term would inject even more regulatory uncertainty into the mobile industry than the release of this consultation has already done, as it would be “an abrogation of provider rights received at the time of purchase/license.”<sup>61</sup> The Department should provide a clear, unequivocal statement that any Access Licensing regime will never apply to spectrum on its initial licensing term, particularly any auctioned spectrum licences.

<sup>60</sup> Communications T l signal Comments, pg 13.

<sup>61</sup> SaskTel Comments, para 67.

84. There is an alarming lack of discussion regarding the significant amounts of lightly-licensed and licence-exempt spectrum the Department has made available, along with the no real acknowledgement that the Department is nearly doubling the amount of spectrum available in the WBS band. It remains clear that even consideration of adding additional bands to the proposed Access Licensing regime will further disincentivize the development and Canadian deployment of these bands. It also reinforces our view that Canadians in rural and remote areas will benefit more from the Department taking steps to clear those bands and auctioning them to facilities-based operators that do value the spectrum.

Q22: ISED is seeking comments on the proposal to generally adopt the same technical requirements, including coordination requirements, as published in RSS-132 and SRSP-503 in the cellular band, and RSS-133 and SRSP-510 in the PCS band for future access spectrum licences.

85. There is near unanimous support for the proposal that the Department generally adopt the same technical requirements, including coordination requirements, as published in RSS-132 and SRSP-503 in the cellular band, and RSS-133 and SRSP-510 in the PCS band for any future access licences. There are only a few requests by small operators to be able to transmit at higher power levels than SRSP in remote areas to extend their coverage further. The Department should reject these specific requests but note that requests like these provide the evidence that access licences should include as a condition of licence that the access licensee must protect any existing coverage of the primary licensee. This condition of licence should also ensure that an access licensee must coordinate with the primary licensee for any future deployments.

86. While primary licensees should always work collaboratively and be good spectrum neighbours, the coordination obligation should be placed on the access licensee, not the primary licensee.

Q23: ISED is seeking comments on the above proposal to amend the condition of licence concerning "International and Domestic Coordination" for all existing spectrum licensees in blocks A and B of the cellular band and blocks A through F, inclusively, of the PCS band.

87. Rogers finds no convincing justification in either the Consultation or responses that supports providing a de facto veto power to an access licensee over a primary licensee looking to increase rural and remote coverage (public or private). This proposal, in fact, runs completely counter to the stated goals of the Consultation and of the Department's other policies. For certainty, Rogers does not propose that primary licensees should be able to deploy without coordinating with access licensees; however, it is access licensees – both public and private – that should bear the obligation to coordinate with primary licensees' future deployments.

88. In the alternative, we support Bell's recommendation that access spectrum licences should be limited to the grid-cells that are within the proposed three-year deployment plan of the prospective access licensee. Under Bell's proposal, there would be "no excess unused geographic area within the licence area of the access licence" and, thus, a primary and commercial subordinate licensee can continue to deploy within the relevant Tier 5 service area.<sup>62</sup> Limiting access licensees to grid-cells will also limit the interference they will cause with primary licensees' networks.

Q24: ISED is seeking comments on its proposal that existing cellular and PCS stations under spectrum licences will be protected from access spectrum licence operations and would not be required to coordinate with new access spectrum licence operations in adjacent service areas.

89. There is near unanimous support for protection of existing stations. We note that Ecotel and CCSA appear to be the only parties that propose additional coordination constraints on primary licensees. The Department should reject these proposals, as the stated purpose of the Access Licensing regime is to increase rural and remote coverage, not burden the existing coverage that rural Canadians have today.

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<sup>62</sup> Bell Comments, para 51.

Q25: ISED is seeking comments on its proposal that any future stations deployed by existing cellular and PCS spectrum licensees would be subject to the coordination rules in SRSP-503 and SRSP-510 applied at the new Tier 5 service area boundary where an access spectrum licence has been issued.

90. We find no convincing justifications or evidence as to why primary licensees should be limited in their ability to increase their own network coverage, particularly as the Department is currently proposing that the primary licensees increase their coverage in rural and remote areas in the 850 & PCS Consultation as part of their conditions of licence.

91. While we remain supportive that new installations by the primary licensee (or their commercial subordinates) should not cause harmful interference to prospective access licensees, primary licensees should not be subject to the strict SRSP-503 and SRSP-510 requirements. Instead, primary licensees should coordinate with the access licensee, with the requirement to coordinate as part of the access licensee's conditions of licence.

Q26: ISED is seeking comments on its proposal that existing radio licensees operating standard systems in the PCS band would be protected from access spectrum operations and access spectrum licensees may not trigger displacement of existing radio licences in the PCS band.

92. There again is near unanimous support for protection of existing services from both those who generally oppose and those that generally support the proposed Access Licensing framework.

93. Ecotel again finds itself as an outlier, stating that an access licensee should be able to displace existing services, as otherwise the Department would be creating "two classes of licensees".<sup>63</sup> The Department should strongly reject Ecotel's recommendation, as granting an access licensee the ability to trigger a displacement or coordination remediation on existing deployments would completely negate the Consultation's stated goal of increasing rural and remote public network coverage or private network deployments. Ecotel is not only seeking to appropriate spectrum but is also looking for the Department to eliminate its

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<sup>63</sup> Ecotel Comments, para 108.

competition. Such flagrant anti-competitive behaviour again shows why access licensees must bear the obligation to coordinate, not existing services.

Q27: ISED is seeking comments on the process for making access spectrum licences available and the options described above.

94. There is not a clear preference, with many commenters identifying issues with either of the proposed processes. As such, we are not swayed from our view that the Department should select Option 2 and release in tranches, which will likely have the best long-term outcomes for rural Canadians. As we note in our comments, the Department has consulted on increasing rural and remote deployments by primary licensees in the 850 & PCS Consultation. This will guarantee increased deployments to begin within an 18-month build cycle that will depend on certainty of spectrum, not accounting for all the new builds already planned for the 2022 construction season. Providing a more orderly approach to the introduction of any Access Licensing regime will help mitigate the worst impacts to primary network operators while also demonstrating how much actual demand for rural and remote spectrum there is and how much is economically sustainable.
95. We highlight that Ecotel appears to have no preference for either option but again takes the opportunity to suggest that they should pay minimal fees. In fact, they propose that the Cellular and PCS rate could be acceptable as long as ISED issues grid-cell access licences.<sup>64</sup> As Ecotel primarily operates private remote networks where there is no permanent population, it is likely that the official population covered would be near zero. Thus, Ecotel continues to advocate for themselves to be able to appropriate spectrum that primary licensees have invested over \$5B dollars in auction and annual fees, and to further get access to that spectrum for free. The Department should reject all such self-serving requests by prospective access licensees.

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<sup>64</sup> Ecotel Comments, para 110.

Q28: Under both options, ISED is seeking comments on its proposal to begin access spectrum licensing three months after the publication of the decision.

96. While Rogers continues to fully support the Department's overall goal of quickly increasing spectrum coverage in rural and remote parts to support Canadian consumers and businesses, we agree with SaskTel and Bell that the Department's proposal to start access licensing three months after the decision is not appropriate and unreasonable. As Bell states, ISED is seeking to expropriate a portion of existing licences without any warning, even though existing licensees have met and continue to meet their conditions of licence and that the Department will effectively punish licensees for not deploying to a target they were never required to meet.<sup>65</sup> SaskTel highlights that, "Three months is not a sufficient period of time to fairly and fully consider future deployment plans of existing spectrum licence holders. Ignoring the plans of the existing licence holders will disrupt the rural deployments by wireless service providers such as SaskTel that have demonstrated rural deployments and have a focus on bringing wireless broadband services to rural residents."<sup>66</sup> We identified a number of our own rural projects, including some with public funding, that would be at risk of having stranded investments should the Department proceed on an unduly rash timetable. We again urge the Department to always review requests with primary licensees prior to any decision to issue a specific access licence, lest they unintentionally reduce rural coverage.

97. We further agree with Bell's assertion that ISED has never imposed deployment requirements that had to be met in less than five years and thus, at a minimum, access licensing should not occur until five years after the decision.<sup>67</sup> After all, the 850 & PCS Consultation has proposed increased rural and remote deployments at the five-year mark, which Rogers has supported. In the meantime, spectrum seekers can continue to seek commercially-negotiated subordinations if they prefer to get access to Cellular or PCS spectrum. Alternatively, the Department has made significant amounts of licence-exempt and lightly-licensed spectrum available and continues to increase that supply.

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<sup>65</sup> Bell Comments, 55-56.

<sup>66</sup> SaskTel Comments, para 80.

<sup>67</sup> Bell Comments, para 56.



Q29: Under both options, ISED is seeking comments on its proposals to limit the number of access spectrum licence applications to:

Option 1: 20 per applicant per 12 month period

Option 2: 5 per applicant at the opening of the access licensing process for each tranche.

98. Upon review of submissions, Rogers maintains of the view that Option 2 overall is likely to provide a more orderly approach, as also supported by Bell, SaskTel, and CCSA.<sup>68</sup> Regardless of which option the Department ultimately selects, we remain fully supportive of any proposals to limit the number of access licence applications as having no limits risks overloading the Department with administrative burdens and injecting greater risk and disruption into primary licensees' network planning and building processes. We note that recent media stories are reporting that the Department is already "experiencing workload burden" from UBF applications,<sup>69</sup> and the proposed Access Licensing framework is likely to further increase the burden on the Department and primary licensees. However, primary licensees should always be consulted prior to the issuance of tranches or on a regular basis and allowed the right of first refusal should they have an 18-month build plan for a given Tier 5 service area. To do less risks even more challenges, if primary licensees' current coverage is impacted or new sites are unable to be put into service.

99. We also support Telus' proposal that the Department should ensure "stringent and timely deployment requirements" are used so that access licensed spectrum is put to use in short order, and that penalties such as a temporary ban on further applications for access licences should be leveled against those that fail to deploy.<sup>70</sup>

<sup>68</sup> Bell Comments, para 57; SaskTel Comments, para 81; CCSA Comments, A29.

<sup>69</sup> Hathout, Ahamd. "ISED experiencing workload burden from Universal Broadband Fund applications", 26 November 2021, *the downUP*; <https://downup.io/ised-experiencing-workload-burden-from-universal-broadband-fund-applications/>.

<sup>70</sup> Telus Comments, para 112.

Q30: Under Option 2, ISED is seeking proposals on how it should prioritize Tier 5 licence areas and spectrum blocks if it adopts a sequential release of spectrum for access spectrum licensing. Proposals should address the key considerations of equitable geographic distribution, coverage, impacts on existing licensees, potential business cases, and timeliness.

100. Rogers continues to view the primary consideration must be on the impacts on existing primary licensees that have invested billions of dollars into the acquisition and maintenance of these spectrum licences and are simultaneously ramping up their own network deployment planning and building to meet the increased coverage requirements as part of the 850 & PCS Consultation.

101. We concur with Bell's proposal, similar to our own, that ISED should focus on Tier 5 service areas with the smallest populations first, as existing primary licensees' deployments will continue to work out from the largest population centres. Each tranche should consist of an equal number of Tier 5 areas with the smallest populations from each Tier 2 area across Canada, similar to the assignment stage in the 3500 MHz auction but in reverse order.<sup>71</sup> As we state in our own comments, network operators naturally look to extend their network coverage from their current footprint to leverage existing facilities.

102. We also support SaskTel's recommendation that, "a higher priority and therefore earlier release times should be given to those access spectrum licences where the existing licence holder does not have any network infrastructure in the associated Tier 4 service area".<sup>72</sup> Providing access spectrum in a Tier 5 adjacent to where a primary licensee (or their commercial subordinate) currently provides service not only increases the risk of interference but also blunts the intended goal of the Access Licensing regime of providing coverage to Canadians in areas so remote they will take longer for expanding primary networks to reach.

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<sup>71</sup> Bell Comments, para 58.

<sup>72</sup> SaskTel Comments, para 82.

Q31: ISED is seeking comments on its proposal to issue site-specific access radio licences within rural and remote Tier 5 service areas under the Access Licensing framework.

103. There appears to be unanimous support or, at least, no objections, to the Department's proposal to issue site-specific access radio licences within rural and remote Tier 5 service areas under the Access Licensing framework. Rogers continues to strongly recommend the Department only issue site-specific access licences for both public and private network operators to limit the harms done to primary licensees. This will provide primary licensees the greatest ability to continue expanding their own network coverage in rural and remote areas, public or private, which is the ultimate objective of the Consultation.
104. However, under no circumstances should the Department issue any type of access licence, including a site-based radio licence, in a Tier 5 that already has any level of coverage. Doing so would result in an unacceptable level of interference risk to existing coverage and should only remain a possibility under voluntary commercially-negotiated subordination.

Q32: ISED is seeking comments on its proposal to follow its LMR licensing process to receive and review applications for access radio licences.

105. While there appears to be general support for the LMR licensing process, Rogers still has significant concerns about the potential for interference with existing or planned sites by primary licensees and their commercial subordinates. Relying on the SMS as a simple administrative process without having contact with the primary licensee to confirm their 18-month build plans is unreasonable and will likely result in significant disputes and coordination challenges. Further, as has been publicly recognized by the Department, as well as other submissions in this Consultation, the ISED SMS database suffers from outstanding deficiencies and limitations related to its current functionality. The platform also suffers from frequent (though improving) periods of instability, and smaller operators are on the record in this Consultation as acknowledging that they struggle to maintain accurate records. Relying solely on the SMS database without direct contact with primary licensees will undoubtedly result in interference and errors.
106. Our concerns are not simply theoretical. Rogers has regrettably experienced instances where uploaded data was missing from the SMS database. While

normally a simple administrative error, it reinforces our concern that there could be a loss of existing service to rural and remote Canadians should there be no validation with primary licensees. If the Department does ultimately elect to use the SMS system to process site-based licensing, any resulting errors from SMS system must not negatively impact primary licensees and, more importantly, the Canadian consumers and businesses that are currently receiving coverage.

107. Rogers also fully supports Bell's proposal that the Department should review each application to ensure that applicants will be able to begin quickly deploying.<sup>73</sup> However, we believe that site-based private network operators should be required to begin deployment within 6-months and be completed within 12-months, as they will generally not be subject to the same administrative and public consultation challenges as public network builders.

Q33: ISED is seeking comments on its proposal not to limit the number of access radio licence applications an applicant may submit via the Spectrum Management System for these bands.

108. Similar to Rogers, CanWISP proposes that ISED apply a limit to radio access licences in order to prevent an excessive number of applications, though they recommend a more restrictive 20 applications per 12-month period.<sup>74</sup> We continue to support the Department limiting the number of access radio licence applications to an appropriate number to reduce the potential interference and administrative burden to primary licensees.

Q34: ISED is seeking comments on potential eligibility restrictions for access radio licences.

109. We find no convincing evidence put on the record that access radio licences should not be restricted to radiocommunication users (as defined by the *Radiocommunication Regulations*), and thus not permit radiocommunication service providers the ability to acquire an access licence. The Access Licensing regime for private networks as proposed appears designed for those that lack the ability to gain spectrum at auction nor have the technical ability to operate newer

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<sup>73</sup> Bell Comments, para 60.

<sup>74</sup> CanWISP Comments, para 87.

licence-exempt or lightly-licensed bands. As such, they need access to turn-key solutions relying on the Cellular and PCS bands as the original mobile spectrum bands. Radiocommunication service providers on the other hand are (or should be) sophisticated enough users to be able to access the large amounts of spectrum available for licence-exempt or lightly-licensed usage that may not be mature enough to have turn-key solutions.

Q35: ISED is seeking comments on its proposal to apply the above conditions of licence to access radio licences.

110. There is general support for the Department's proposed conditions of licence to access radio licences, with Bell recommending that ISED should require access licensees to provide, within 30 calendar days, all information requested from the Department.<sup>75</sup> We support this recommendation and the proposal to only issue access radio licences with one-year terms. However, we still recommend that operators provide regular technical information in monthly SMS uploads, not on an as requested basis. Sites that are not uploaded two months in a row – or are uploaded showing no usage – should automatically be cancelled to prevent access licensing squatters and/or speculators from engaging in anti-competitive behaviour.

Q36: ISED is seeking comments on its proposal to allow broadband use in the 900 MHz LMR band as shown in figure 6.

111. There is broad consensus supporting the proposal to allow broadband use in the 900 MHz LMR band as shown in figure 6. Rogers continues to support the proposal, contingent on sufficient protection is ensured for existing LMR licensees. We also continue to recommend that as the SMS database shows little current licensing of 900 MHz in rural and remote Tier 5 areas, prospective private network access licensees always consider LMR spectrum prior to any consideration of access to Cellular or PCS spectrum.

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<sup>75</sup> Bell Comments, para 62.

Q37: ISED is seeking comments on its proposal to issue access radio licenses in the 897.5-900.5 MHz and 936.5-939.5 MHz portions of the 900 MHz LMR band in rural and remote Tier 5 service areas and only in locations within those service areas where there will be no interference to existing LMR operations.

112. There is a broad consensus supporting, and Rogers continues to support the proposal to issue access radio licenses in the 897.5-900.5 MHz and 936.5-939.5 MHz portions of the 900 MHz LMR band in rural and remote Tier 5 service areas, provided that existing LMR operations are always protected. Rogers supports Telus' recommendation that the Department launch a consultation in an expeditious manner to allow stakeholders to provide input on how best to affect a transition to enable mobile broadband in the 900 MHz band.<sup>76</sup>

Q38: ISED is seeking comments on availability of equipment for the proposed broadband service, including the feasibility of modifying 3GPP band 8 equipment.

113. Based on our own discussions with vendors and submissions in the Consultation, we continue to believe there will likely be a ready and growing ecosystem by the time the Department concludes any regulatory requirements to enhance the 900 MHz LMR spectrum. Some responses do appear to favour one ecosystem over another based on their own product line up or those of their suppliers, but we continue to see the U.S. ecosystem as potentially providing only specialized and limited volumes, while the EU N8 band has a more robust market and provides access to devices today in LTE and 5G. We continue to recommend the Department consider supporting both ecosystems in its SRSP and provide sufficient protection for existing narrowband systems primarily deployed in urban areas. We concur with Bell that all equipment operated in Canada must be certified by ISED.<sup>77</sup>

<sup>76</sup> Telus Comments, para 119.

<sup>77</sup> Bell Comments, para 65.

Q39: ISED is seeking comments on the potential use cases of 3/3 MHz for broadband services, including the potential for 5G deployment.

114. Several commenters highlight the value that 3/3MHz use cases, such as Bell stating that it could be used for lower-data rate and narrowband applications, and for massive Machine Type Communication (mMTC), while Cogeco suggests it could also be used as a coverage layer for Voice over LTE.<sup>78</sup> A number of rural operators' state that it is insufficient for public fixed wireless network. While we agree that 3/3 MHz broadband is insufficient spectrum capacity for public networks and that it is best-suited for low-bandwidth, wide-area usage, we again highlight that in the correct configuration it can provide material speed and sufficient capacity for private network operations.

115. Further, while some operators correctly state that 3/3 MHz carriers are not currently defined in 5G, they have overlooked the fact there is initial standards work underway to define just such a carrier for 5G. This work will need to be supported by market interest though, so the Department should take care that they are not disincentivizing investment in bands like 900 MHz LMR by incentivizing private network access licences in commercial mobile bands.

Q40: ISED is seeking comments on the feasibility of also making 896-901 MHz and 941-946 MHz available for broadband at the same time as 987.5-900.5 MHz and 936.5-939.5 MHz.

116. There is broad support for making 896-901 MHz and 941-946 MHz available for broadband at the same time as 987.5-900.5 MHz and 936.5-939.5 MHz, with a number of operators and vendors highlighting the advantages and noting that any coordination challenges/costs will be minimal. Motorola appears to be the lone outlier in opposing making the spectrum available for broadband.<sup>79</sup> The Department should reject Motorola's recommendation, as progress in spectrum management and efficiency cannot be unduly held up to protect legacy equipment.

<sup>78</sup> Bell Comments, para 66; Cogeco Comments, para 80.

<sup>79</sup> Motorola Comments, pg 7.

Q41: ISED is seeking comments on its proposal to use the same methodology for determining geographic separation for broadband service as already included in SRSP-506 for land mobile systems.

117. There appears to be no objections to the Department's proposal to use the same methodology for determining geographic separation for broadband service as already included in SRSP-506 for land mobile systems. We note that Bell makes a similar recommendation to our own, that the specific details should be reviewed by the RABC as part of standard SRSP development processes.<sup>80</sup>

Q42: ISED is seeking comments on whether the 1.5 MHz and 500 kHz of separation are sufficient to protect the adjacent band Air-Ground Radiotelephone Service, fixed service and Narrowband Personal Communications Service.

118. There again appears to be no specific concerns raised regarding the separation proposals, and we look forward to working with the Department as it develops technical rules in consultation with stakeholders via the RABC.

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.

119. While there are anecdotal comments made regarding the current state of commercial subordination, the only evidence provided on the record is that of commercial subordination working. As Bell highlights, there have been 53 subordination applications approved by ISED since 2017, covering hundreds of spectrum licences in all regions of Canada, including rural and remote areas, as well as for use by private broadband networks, including the Iron Ore Company of Canada, Ecotel Inc., Teck Resources Ltd., and Canadian Natural Resources Ltd.<sup>81</sup>

<sup>80</sup> Bell Comments, para 66.

<sup>81</sup> Bell Comments, para 70.



120. It is not just primary licences providing evidence of success. For example, FMCC highlights several partnerships that have been made possible through commercial subordination of Rogers' spectrum.

Subordinate licensing is an important policy mechanism for rural, remote, Northern and Indigenous regions. FMCC member organizations ECN and K-Net already have subordinate licensing arrangements in place. **K-Net Mobile provides mobile phone services in 15 rural/remote First Nations in Northern Ontario through a subordinate licensing agreement with Rogers.** This arrangement has resulted in a number of innovative uses of mobile technologies in First Nations contexts, such as the DiabeTEXTs initiative from KO Health and K-Net to use cellular technology to provide diabetes education and information to interested community members through SMS texting and other electronic media. **ECN works with SSi Canada, which holds a subordinate licence [from Rogers] and has partnered with Eeyou Mobility Inc (EMI) to implement infrastructure and provide cell service in the Eeyou Istchee region.**<sup>82</sup> [Emphasis added, footnotes omitted.]

121. Ecotel registers anecdotal complaints about commercial subordination and states that it must be “enforced”, while somehow omitting that they have successfully subordinated spectrum from both Rogers and Telus.<sup>83</sup> While we support Ecotel's recommendations to improve the administrative processes for spectrum subordination (that will not impact competition, particularly in urban areas), we suggest that the fact Ecotel is receiving commercial subordinations clearly proves that nothing needs to be “enforced”.

122. Again, Rogers has entered voluntarily into multiple agreements subordinating spectrum to small regional carriers serving rural and remote areas over the years, including a new subordination approved by ISED during this Consultation. These agreements have resulted in the provision of wireless services using Rogers' licensed spectrum in communities, including multiple remote First Nations communities served by local, community-based carriers, that could not otherwise have been economically served. We have also subordinated to operators providing private network coverage for remote extraction. We also remain open to entering into similar arrangements with our spectrum licences to extend coverage further and we are currently moving forward with multiple new commercial subordination

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<sup>82</sup> FMCC Comments, para 103.

<sup>83</sup> See: ISED, *Decisions on Licence Transfers of Commercial Mobile Spectrum*; 2020-12-17, Subordination of a portion of a spectrum licence held by TELUS Communications Inc. to Ecotel Inc.; 2017-11-02, Subordinate Spectrum Licences Held by Rogers Communications Canada Inc. to Ecotel Inc.

agreements, as we have provided evidence on the record. The Department's own *Decisions on Licence Transfers of Commercial Mobile Spectrum* webpage lists numerous examples of other primary licensees also subordinating their spectrum.

123. However, these should remain commercial subordination agreements. Rogers and other primary licence holders also require access to the spectrum assets that we have invested in heavily over the decades in order to meet our own rural network expansion plans and continue to be able to service our growing private network business. This need will only continue to grow in light of Rogers' own commitments to rural deployments, the increased public partnerships to support closing the Digital Divide in Canada, and 5G technological advances that will make new public and private network offerings available for rural and remote Canadians and businesses.

124. In both this Consultation and the 850 & PCS Consultation, Rogers has identified a number of specific projects where we are expanding our network coverage to previously unserved areas. These are only a handful of examples of our new network builds. In other underserved areas, we also continue to invest heavily in our FWA Internet product, which will provide broadband Internet speeds to homes and businesses that traditionally have not been able to be served economically with wireline broadband connectivity. Rogers, and other primary licence holders, will be able to use 5G flexible use infrastructure and equipment to continue to provide enhanced network capacity – but only if we have access to the exclusively-licensed spectrum we have acquired and retained through significant capital investments.

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 above.

125. Reviewing proposals by other commenters, Rogers remains supportive of the Department taking all reasonable and appropriate steps to streamline

administrative processes and reducing the administrative burden on network operators and the Department. We are generally supportive of recommendations for ISED to standardize and simplify subordination requests that will not have anti-competitive impacts, which would encompass most rural and remote public and private network subordination requests.

126. It is also important to highlight that while some parties are recommending improvements, other secondary spectrum seekers note that commercial subordination is, in fact, working. “The existing subordinate licensing process has not presented a challenge to those CanWISP members who have successfully entered into subordinate licence agreements,” a statement that is also supported by the BCBA.<sup>84</sup>
127. We also take this opportunity to note that spectrum seekers often, though not always, look to effectively transfer all the burdens of subordination requests to primary licensees, and are sometimes unwilling to accept their proposals will result in interference to current or planned sites. For instance, AIC states they do not have experience in subordinate licensing and have difficulty getting attention of providers.<sup>85</sup> Rogers has firsthand experience of AIC requesting access to our licensed 2500 MHz spectrum in Metro Vancouver for their own commercial purposes, as well as on behalf of a network services client in rural Alberta. In the case of the rural Alberta request, the 600 MHz frequencies requested were not even licensed to Rogers. In both instances we reviewed the request (including evaluating the ability to subordinate our licensed 600 MHz frequencies) and declined in a prompt manner, as the spectrum requested was being deployed nearby to support our 5G rollouts and would result in interference to our network and own customers.
128. It has been our experience that licensees review subordination requests in a timely manner and will generally approve them when the spectrum can be deployed by a public or private network without negative impacts to the primary licence holder or their commercial subordinates. Wherever possible, Rogers will continue to consider all requests to access our spectrum. It is, however, unreasonable to expect primary licensees to reduce their coverage area or network performance, or to undertake significant, additional costs that their customers will have to absorb in order to accommodate every secondary spectrum access request.

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<sup>84</sup> CanWISP Comments, para 108; BCBA Comments, pg 5.

<sup>85</sup> AIC Comments, pg 10.

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?

129. In Rogers' experience, responses to secondary spectrum access are generally in a timely manner; although, access seekers often provide limited or incomplete information required for quick analysis. Recent efforts by the Department to provide better guidance to prospective applicants (which, again, appears very similar to Rogers' own requested information) will hopefully help improve this process. With the often bespoke nature of subordination requests received, and the important due diligence steps required to evaluate internally, we would support timelines of 90 business days to provide a response as recommended by Cogeco.<sup>86</sup> However, the clock should only start once all information has been fully submitted. It is inefficient and unreasonable to expect a primary licence holder to divert specialized staffing resources to evaluate partial or incorrect information.

130. We also support proposals that the Department set timeline standards for their own review of spectrum subordination requests. In Rogers' own experience, both as a primary and subordinate licensee, ISED review and approval is generally the longest component of any subordination process by a significant margin, sometimes taking up to a year after all documentation has been submitted to the Department. While we understand that the Department itself may in fact be resourced constrained, we do not support any policy that effectively results in primary licensees having to "hurry up and wait".

131. Rogers does not support any proposals of secondary spectrum seekers to mandate that primary licensees provide detailed "valid" reasons for not entering into commercial subordination agreements. The number of completed subordinations show that the process is working where access can be reasonably accommodated. Primary licensees should not be forced to provide detailed deployment and commercial plans to their prospective and actual competitors, nor should this be required to be disclosed to the Department. As TerreStar states:

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<sup>86</sup> Cogeco Communications, para 94.

The Department's role should not extend to scrutiny of the business arrangements or the corporate, commercial and operational decision-making processes of the primary licensee. For example, one suggestion at paragraph 149 of the Consultation is that primary licensees might be required to provide "valid reasons for refusing to enter into a subordinate arrangement." With respect, ISED does not have the expertise or qualifications to assess what might or might not amount to a "valid" reason for a primary licensee's decision, and this is not an approach that TerreStar can support.<sup>87</sup>

132. Rogers fully supports general recommendations to continue improving the functionality of the SMS database, as suggested by Telus and FCM in response to Q45,<sup>88</sup> and by others elsewhere. The Department should, however, prioritize general platform stability and enhanced functionality of the site and licence databases previously requested by primary licensees before building new features to support subordination. Rogers acknowledges and supports the collaborative efforts by ISED with the RABC SMS Improvement Committee. Any changes or additional input from operators should be actually required to improve coordination and coexistence and prevent potential interference, not simply increase administrative burdens on operators.

Q46: ISED seeks comments on what additional information, if any, should be included in the draft form shown in annex D.

133. Most respondents seem generally supportive of the draft form. We support Telus' recommendation that any prospective subordination applicant who does not wish to apply for an existing tier or sub-tier licensed area should provide a geospatial representation (vector layer) of the intended area they wish to subordinate, in an industry standard format (preferably in Mapinfo .TAB format).<sup>89</sup> As Telus notes, providing a digital file of the desired subordination area would remove potential confusion around the geographical boundaries an applicant desires subordinate, should it not be on a whole Tier or Sub-tier area basis.

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<sup>87</sup> TerreStar Comments, para 15.

<sup>88</sup> Telus Comments, para 133; FCM Comments, pg 42.

<sup>89</sup> Telus Comments, para 137.

Q47: ISED is seeking comments on its proposal to remove the current restriction on database hosting in order to facilitate cloud-based database hosting solutions.

134. There are numerous submissions that echo Rogers' concerns regarding the Department's proposal to remove the current restriction on database hosting in order to facilitate cloud-based database hosting solutions.<sup>90</sup> Most support of the proposal is of a general nature and does not address the security and privacy concerns, excepting potential U.S. database operator, Microsoft. (Note, RED Technologies, a prospective French-based database operator also supports removing the geographic restriction but does not address security and privacy concerns.)<sup>91</sup> While the U.S. (and France) is a close ally of Canada and has similar data-protection and privacy laws, they are not the same and critical Canadian infrastructure data should not be hosted in a foreign jurisdiction, no matter how close an ally. Further, in the case of Microsoft, they already have significant Canadian cloud infrastructure and employees working across Canada, so it remains unclear why hosting in Canada would pose any challenge for them.<sup>92</sup>

135. No evidence is provided, nor convincing justification offered, that changes our view that the right choice for Canadian telecom policy is that all hosting of spectrum management database services – regardless of the spectrum band they coordinate – should be hosted in Canada to ensure our ability to retain data sovereignty, privacy, and security of information.

Q48: ISED is seeking comments on its proposal to allow the use of TV channels 3 and 4 by all types of WSD.

136. Most commenters support the Department's proposals to allow the use of TV channels 3 and 4 by all types of White Space Devices (WSD), with the exception of rural remote broadband system (RRBS) advocates. Rogers does not have a strong

<sup>90</sup> 6Harmonics Comments, pg 2; AIC Comments, pg 12; Bell Comments, para 82; Communications Télésignal Comments, pg 21.

<sup>91</sup> Microsoft Comments; pg 3; RED Technologies Comments, pg 2.

<sup>92</sup> See: Microsoft, *Microsoft Makes Significant Investments in Canadian Cloud to Fuel Innovation In Canada*, 9 January 2020; <https://news.microsoft.com/en-ca/2020/01/09/microsoft-makes-significant-investments-in-canadian-cloud-to-fuel-innovation-in-canada/>.

The Canadian Press, "Microsoft announces 500 new jobs coming to Vancouver this year", *CTV News*, 24 March 2021; <https://bc.ctvnews.ca/microsoft-announces-500-new-jobs-coming-to-vancouver-this-year-1.5360818>.

recommendation, provided that there is no material impact on consumers who use older TVs with analogue service, especially low-income Canadians or those found in rural vacation properties.

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

137. Rogers does not support any requests by WSD operators or equipment manufacturers to operate at higher power levels or in licensed mobile spectrum that could create harmful interference to licensed 600 MHz users.<sup>93</sup> We also have concerns that recommendations for updating RRBS standards or extending the life of the regime will also have potential interference impacts,<sup>94</sup> as licensed operators look to extend network coverage and capacity using 5G systems, including the 600 MHz spectrum, to deliver a superior FWA Internet service.

138. Our view remains the same, that as the policy goals for RRBS have been effectively supplanted by the WSD regime, it makes sense to formally retire the RRBS regime to allow all licensees and operators to harmonize coordination and protection with a single access regime. However, whether RRBS is formally sunsetted as proposed or not, there will remain access to low-band spectrum in rural and remote areas, as well as other lightly-licensed or licence-exempt bands. We find no evidence that justifies expropriating exclusively-licensed spectrum, particularly mid-term, which will likely result in challenges to primary licensees deploying their own spectrum in rural and remote areas and connecting Canadians.

139. Rogers thanks the Department for the opportunity to share its views and participate in this consultation process.

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<sup>93</sup> 6Harmonics Comments, pg 3-4.

<sup>94</sup> BCBA Comments, pg 6; AIC Comments, pg 14-16; Wilson Engineering Comments, pg 3.