

**Innovation, Science and  
Economic Development Canada**

**Spectrum Management and Telecommunications**

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**Notice No. SLPB-004-21**

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

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**Reply Comments**

**of**

**Xplornet Communications Inc.**

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**December 7, 2021**

## **INTRODUCTION AND EXECUTIVE SUMMARY**

1. Xplornet Communications Inc. (“Xplornet”) has reviewed comments filed by interested parties with respect to the *Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment* (“Consultation”) and is pleased to provide its Reply Comments to Innovation, Science and Economic Development Canada (“ISED”).
2. In the present Consultation, ISED is proposing to adopt further measures to increase access to spectrum for rural Canadians. Specifically, ISED is proposing:
  1. To establish a new access licensing framework that would enable providers to deploy rural spectrum that has been licensed to another party but remains undeployed;
  2. To allocate spectrum for use by industrial and enterprise users to deploy private networks;
  3. To implement measures to facilitate and support subordination arrangements; and
  4. To enable mobile use on certain white space spectrum where this is currently not permitted.
3. Xplornet largely supports these measures. As we described in our Comments, we support ISED’s proposals for items two through four, above. In this submission, we are focusing our comments on item one, ISED’s proposed access licensing framework, as we are concerned that ISED’s access licensing proposal undermines the Spectrum Policy Framework for Canada<sup>1</sup> (“Spectrum Policy Framework”).
4. Enabling guideline (h) of the Spectrum Policy Framework requires ISED to clearly define the obligations and privileges that are conveyed in its spectrum

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<sup>1</sup> DGTP-001-07, *Spectrum Policy Framework for Canada*.

authorizations. ISED does this by setting out the obligations and privileges that accompany a licence through conditions of licence. Licences confer a privilege to have exclusive use of the licensed frequencies for a period of time, provided that the licensee meets certain obligations, including meeting established deployment conditions that govern the use of the spectrum.

5. Xplornet is concerned that ISED's proposed access licensing framework seeks to interfere with these established obligations and privileges by stripping a licensee of the privilege to use its spectrum despite the fact that it has not failed to meet any condition of licence. Xplornet submits that this undermines the Spectrum Policy Framework and that ISED's access licensing framework must be modified to rectify this problem.
6. In order to avoid undermining the privileges and obligations that have been conferred to licensees, Xplornet submits that ISED should continue to rely on deployment conditions as its primary tool to manage spectrum usage. Access licensing should be implemented as an enforcement tool that would allow third parties to access licensed spectrum in the event that a primary licensee fails to meet the deployment conditions that apply to its spectrum.
7. By implementing access licensing as an enforcement tool, Xplornet submits that ISED can expand access to rural spectrum, and also encourage primary licensees to enter into voluntarily subordinate relationships, without undermining the integrity of ISED's licensing processes.
8. Furthermore, implementing access licensing as an enforcement tool would position access licensing to be applied in an expanded manner, as many interveners have requested. Access licensing could be relied upon to promote compliance with the deployment conditions that apply to spectrum licences of all frequencies, in all parts of Canada, whether urban or rural.

**ACCESS LICENSING MUST BE IMPLEMENTED IN A WAY THAT DOES NOT CONFLICT WITH THE SPECTRUM POLICY FRAMEWORK**

9. As noted in our Comments, Xplornet supports ISED's recent measures to facilitate access to spectrum in order to better address the broadband needs of rural Canadians. By ensuring that rural spectrum resources are effectively leveraged to meet the needs of Canadians, ISED can directly further the objective of the Spectrum Policy Framework.
10. In the present Consultation, ISED has sought comment on four additional regulatory measures that it proposes to introduce to further increase the availability of spectrum in rural Canada. These measures include:
  1. Establishing a new access licensing framework that would enable providers to deploy rural spectrum that has been licensed to another party but remains undeployed;
  2. Allocating spectrum for use by industrial and enterprise users to deploy private networks;
  3. Implementing new measures to facilitate and support subordination arrangements; and
  4. Enabling mobile use on certain white space spectrum where this is currently not permitted.
11. Having reviewed the comments filed by parties to the Consultation, Xplornet believes that there is general consensus among parties that ISED should implement measures two through four. Xplornet continues to support these items, as noted in our Comments.
12. In contrast, ISED's proposal to introduce a new access licensing framework has been particularly polarizing, with numerous parties both strongly supporting and strongly opposing this new licensing framework. In these Reply Comments, Xplornet will focus its discussion on this element of the Consultation.

13. Many parties to this proceeding have asked ISED for increased access to licensed spectrum. Parties who have supported the proposed access licensing framework have also asked to broaden and expand its application. For example, Cogeco<sup>2</sup>, Ecotel<sup>3</sup>, Iristel<sup>4</sup>, Motorola<sup>5</sup>, Seaboard Group<sup>6</sup> and Telus<sup>7</sup> have all asked ISED to extend access licensing to frequency bands beyond those currently being proposed in the Consultation. Cogeco<sup>8</sup>, Redline Communications (“Redline”)<sup>9</sup> and Telus<sup>10</sup> also want to expand access licensing from being available in only rural Tier 5 areas to both rural and urban Tier 5 areas across the country. Redline<sup>11</sup> and Telus<sup>12</sup> have each made proposals promoting the mandatory subordination of spectrum. An unusually high number of organizations have also participated in the present Consultation to advocate for increased deployment of spectrum in rural areas of the country. Clearly, there is a very high degree of interest in increasing the deployment of licensed spectrum.
14. Xplornet supports ISED’s work to allocate spectrum to serve rural Canadians. Enabling guideline (b) of the Spectrum Policy Framework explicitly directs ISED to ensure that spectrum is made available for a range of services that are in the public interest. ISED must continue its efforts to ensure spectrum is made available to support rural broadband.
15. While Xplornet is a strong supporter of rural broadband, we have significant reservations about the design of ISED’s proposed access licensing framework. We are concerned that, as proposed, ISED’s access licensing framework

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<sup>2</sup> Cogeco, Comments, paragraph 37.

<sup>3</sup> Ecotel, Comments, paragraph 58.

<sup>4</sup> Iristel, Comments, paragraph 50.

<sup>5</sup> Motorola, Comments, Response to Q21.

<sup>6</sup> Seaboard Group, Comments, Response to Q7.

<sup>7</sup> Telus, Comments, page 5.

<sup>8</sup> Cogeco, Comments, paragraph 18.

<sup>9</sup> Redline, Comments, paragraph 26.

<sup>10</sup> Telus, Comments, page 5.

<sup>11</sup> Redline, Comments, paragraph 32.

<sup>12</sup> Telus, Comments, page 5.

fundamentally interferes with the integrity of ISED's licensing process and undermines the objective of the Spectrum Policy Framework.

16. In creating spectrum policy, enabling guideline (h) of the Spectrum Policy Framework explicitly requires ISED to clearly define the obligations and privileges that are conveyed in its spectrum authorizations. These obligations and privileges are set out in conditions of licence. Before allocating new spectrum by auction, ISED will hold a policy consultation to establish the conditions of licence that will apply to the licences to be allocated. The matters set out in conditions of licence include items such as licence term and deployment conditions.
17. Licences for commercial mobile spectrum are generally allocated with a licensing term that lasts multiple decades and that provides for a high expectation of renewal at the end of the licence term. Long, stable licensing terms are required to accommodate the time and investment required to deploy the spectrum resources for Canadians. Deployment conditions are generally established that apply throughout the licence term.
18. Accordingly, when parties participate in auction processes to obtain commercial mobile spectrum, they formulate their bids using long-term business plans that consider numerous factors including their business goals, the licence term length and the deployment conditions that must be met.
19. ISED's recent 3500 MHz auction provides an illustrative example of how ISED clearly sets out the obligations and privileges that are provided for in its spectrum licences. In the case of 3500 MHz spectrum, these licences were allocated with 20-year licence terms and graduated deployment conditions. Over the 20-year term of these licences, general deployment conditions have been set at the 5- (or 7-) year mark, the 10-year mark, and the 20-year mark.<sup>13</sup> At each milestone, the percentage of the population that must be covered by a licensee's deployment increases. For example, in many Tier 4 licence areas that include an urban centre, the licensee will be required to extend its coverage to serve 30% of the population

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<sup>13</sup> SLPB-001-20, *Policy and Licensing Framework for Spectrum in the 3500 MHz Band* ["3500 MHz Decision"], D25.

within 5 years, to 50% of the population within 10 years, and to 70% of the population within 20 years.<sup>14</sup>

20. Xplornet submits that a new access licensing framework must not interfere with these clear obligations and privileges. For example, ISED has proposed that its access licensing framework could be applied after the first deployment milestone that applies to spectrum licences has passed. Using the example of 3500 MHz licences, enabling access licences to this spectrum at this stage would fundamentally interfere with the privileges that were conveyed to parties through the auction process. Based on the deployment conditions that have been established for 3500 MHz spectrum, in most Tier 4 areas with a large urban population centre, it is reasonable to expect a licensee to have deployed to 30% of the population at the first deployment milestone. Clearly a licensee's deployment is not complete at this point in time: the licensee will be required to meet more rigorous deployment milestones at the 10- and 20-year marks. Licensees have collectively invested \$8.9 billion to secure 20-year licenses to this spectrum and will have developed 20-year deployment plans for this spectrum. It would be inappropriate for a licensee who is successfully executing on its deployment strategy – in compliance with ISED's deployment conditions – to have portions of its rural spectrum taken away through ISED's access licensing framework. This would undermine the integrity of ISED's licensing process.
21. Other parties<sup>15</sup> have emphasized these same concerns to ISED as part of their comments. Indeed, Rogers has made specific comments concerning the facts that the proposed access licensing framework interferes with both the long-term deployment plans that licensees maintain for spectrum and the privileges that ISED grants to spectrum as part of its allocation processes:

“13. One of the most significant flaws in the Department's Access Licensing proposal is that it fails to contemplate the current and future expansion plans of the existing mobile spectrum licensees. There is no

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<sup>14</sup> 3500 MHz Decision, Annex F, Table F1.

<sup>15</sup> See for example, Rogers, Comments, paragraphs 13 and 79, and Eastlink, Comments, paragraph 8.

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. As it stands, the proposed framework introduces significant uncertainty and risk, undermining ongoing investment by existing mobile spectrum licensees.

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79. These spectrum auctions all have clearly defined conditions of licence, which ISED publicly consults on. These conditions of licence have included an initial 20-year term with exclusive rights. To materially alter the auctioned licences' conditions in any way, including as they relate to the licence area, would jeopardize the integrity of ISED's spectrum auction processes and undermine confidence in future auctions. In addition to the recent additional technical constraints announced by the Department with respect to the 3500 MHz auction just weeks after generating \$8.9B, proposing to allow access licensing at any 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."

22. While Xplornet supports ISED's goal to increase the spectrum available to rural Canadians, Xplornet submits that ISED should modify its proposed access licensing framework to ensure that it does not undermine the integrity of its licensing processes and the objective of the Spectrum Policy Framework.

### **ISED SHOULD MANAGE SPECTRUM USAGE THROUGH DEPLOYMENT CONDITIONS, NOT ACCESS LICENSING**

23. It is clear from the proceeding record that there is spectrum in Canada that could be deployed to better serve rural Canadians. As part of the Consultation, ISED has demonstrated that, with respect to 800 MHz spectrum, Block A remains undeployed in 83 rural Tier 5 licence areas and Block B remains undeployed in 18 Tier 5 licence areas.<sup>16</sup> With respect to PCS blocks A-F, in each of blocks A through F, this spectrum remains undeployed in between 97 and 346 rural Tier 5 licence areas.<sup>17</sup> There is a significant opportunity for this spectrum to serve rural Canadians.

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<sup>16</sup> Consultation, Table 2.

<sup>17</sup> Consultation, Table 3.



24. Xplornet notes that ISED is running a separate process concurrently with this consultation to consider establishing deployment conditions for these licences<sup>18</sup>, as deployment conditions currently do not apply to this spectrum. ISED is thus currently considering two tools that it could leverage to increase the deployment of this spectrum: deployment conditions and access licensing.
25. Xplornet emphasizes that ISED must choose only one of these measures, as they cannot coexist. As discussed above, where deployment conditions exist, licensees build deployment plans to meet the deployment conditions that apply to their spectrum. Therefore, because spectrum has not yet been deployed in a given area does not mean that the licensee does not have plans to deploy the spectrum. If ISED establishes deployment conditions for spectrum, licensees must be afforded the privilege to use the spectrum associated with their licences in order to meet the applicable obligations.
26. If ISED were to implement both deployment conditions and access licensing, ISED would be implementing conflicting measures that would seek to strip licensees of the privileges associated with their spectrum licences as they are actively deploying the spectrum to comply with ISED's licence conditions. This would be entirely unfair and undermine the integrity of ISED's spectrum licensing processes, directly counter to enabling guideline (h) of the Spectrum Policy Framework. Xplornet submits that ISED must respect the privileges and obligations that have been conferred as part of its licensing processes and not seek to take spectrum away from licensees who are complying with their conditions of licence.
27. Xplornet submits that ISED's primary tool to manage spectrum deploy should be to establish deployment conditions that attach to licences, as deployment conditions best ensure that spectrum will be deployed to promote the objective of the Spectrum Policy Framework. By setting deployment conditions, ISED can determine the degree to which spectrum should be deployed in order to best serve Canadians and require licensees to deploy to achieve these goals. In contrast,

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<sup>18</sup> DGSO-003-21, *Consultation on Amending Cellular and Personal Communications Services (PCS) Licence Conditions*.

access licensing does not allow ISED to ensure that Canadians benefit from Canada's spectrum resources. By relying on access licensing, ISED would make certain spectrum *available* for deployment by parties other than the primary licensee. However, ISED cannot ensure that the spectrum is in fact deployed by anyone. Numerous organizations have participated in this Consultation in order to emphasize their need for additional spectrum resources to be deployed to serve their constituents.<sup>19</sup> ISED cannot ensure that the needs of these organizations and other Canadians are met through access licensing. Only through deployment conditions can ISED directly ensure that the spectrum that Canadians require is put to use to serve them.<sup>20</sup>

### **ACCESS LICENSING CAN BE AN EFFECTIVE ENFORCEMENT TOOL TO SUPPORT DEPLOYMENT CONDITIONS**

28. While Xplornet submits that ISED's primary tool for managing spectrum deployment should be to rely on deployment conditions set out as conditions of licence, that does not mean that there is not a role for an access licensing framework to support Canadians.
29. Xplornet submits that access licensing should be used by ISED as an enforcement tool to backstop the deployment conditions that are imposed on primary licensees.
30. Today, ISED has limited enforcement tools that it can draw upon in the event that a primary licensee fails to meet its deployment conditions. For example, if a licensee fails to deploy its spectrum to meet its conditions of licence, the licensee can face losing its spectrum licences. Unfortunately, the complete loss of a spectrum licence can oftentimes have significant negative impacts for Canadians. The complete loss of the licence would mean that the Canadians who are being served by the spectrum would also lose access to the resource.

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<sup>19</sup> See, for example, the submissions of the Canadian Canola Growers Association, the Canadian Federation of Agriculture and the submission of the Canadian Horticultural Council and Canadian Produce Marketing Association.

<sup>20</sup> As additional point, Xplornet submits that ISED should not alter deployment conditions outside of a licence renewal process; however, in situations where it considers it necessary to do so, it should ensure that licensees are provided with a reasonable period of time to meet new deployment conditions that may be established.

31. ISED could implement access licensing as a means to ensure that spectrum is deployed in the event that a primary licensee fails to meet its deployment conditions. Specifically, should a licensee fail to deploy its spectrum to meet its conditions of licence, instead of revoking the licence, ISED could make the licence available for access licensing, inviting third parties to deploy in parts of the licence area where the primary licensee has not deployed.
32. Xplornet submits that this would have two benefits. Firstly, where access licenses are made available, access licensees could be relied upon to increase the deployment of the spectrum.
33. However, secondly, Xplornet agrees with other parties<sup>21</sup> that the possibility that access licensing will be applied to their spectrum will encourage primary licensees to subordinate their spectrum voluntarily. If the primary licensee is not going to be able to meet its deployment conditions, it is in its interest to enter into a voluntary subordinate licensing arrangement (and monetize its spectrum asset), instead of having ISED implement access licensing with respect to its spectrum.
34. Xplornet submits that implementing access licensing as an enforcement tool would balance the interests of parties who support ISED's proposed access licensing framework, as well as those who oppose it. Indeed, implementing access licensing as an enforcement tool would make more spectrum available to service providers, as it would encourage voluntarily subordination relationships, and enable access to licensed spectrum directly where a primary licensee fails to meet its deployment conditions. By implementing access licensing as an enforcement tool, ISED could easily expand the scope and application of its framework as service providers who have supported the proposal have requested. ISED could apply its framework to support the deployment conditions imposed on spectrum of all frequency bands, in all regions of the country (urban and rural), for example.
35. At the same time, implementing access licensing as an enforcement tool, and relying on deployment conditions as a primary tool for managing spectrum usage,

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<sup>21</sup> See for example, Iristel, Comments, paragraph 71.

also responds to the concerns of service providers who have opposed ISED's proposed access licensing framework. By relying on deployment conditions as a primary tool, and only enabling access licensing where a primary licensee fails to meet its conditions of licence, ISED would not be interfering with the privileges and obligations that have been conferred through its spectrum licensing process.

36. Accordingly, by implementing access licensing as an enforcement tool, and relying on deployment conditions as a primary tool for managing spectrum usage, Xplornet submits that ISED can ensure that it adopts policies that support the Spectrum Policy Framework.

## **CONCLUSION**

37. In these Reply Comments, Xplornet has provided comments concerning ISED's proposed access licensing framework. Our comments recommend that ISED continue to rely on deployment conditions as its primary tool to manage spectrum usage.
38. Xplornet submits that ISED should implement access licensing as an enforcement tool to support compliance with deployment conditions. Under this model, third parties would be provided with access licences to licensed spectrum in the event that a primary licensee fails to meet the deployment conditions that apply to its spectrum.
39. By implementing access licensing as an enforcement tool, Xplornet submits that ISED could expand the scope of its framework to apply to all types of spectrum in all areas of the country. Implementing access licensing in this manner would equally encourage primary licensees to enter into voluntary subordinate relationships, increasing the deployment of licensed spectrum for the benefit of Canadians.
40. Xplornet thanks ISED for the opportunity to provide these Reply Comments.

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