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Innovation, Science and Economic Development Canada
c/o Senior Director, Spectrum Licensing Policy Branch
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**Consultation on a Technical, Policy and Licensing Framework
for Spectrum in the 600 MHz Band**

These comments are filed by Xplornet Communications Inc. in response to the above-referenced consultation. Xplornet welcomes the opportunity to comment on the proposed licensing framework for spectrum licences in the 600 MHz band.

In the pages that follow, Xplornet has commented on the issues raised by Innovation, Science, and Economic Development Canada in its consultation document.

Yours truly,

A handwritten signature in blue ink, appearing to read "C. Prudham".

Christine J. Prudham

CJP/jm
Attachment

**Comments submitted by Xplornet Communications Inc. (“Xplornet”)
in response to the *Consultation on a Technical, Policy and Licensing
Framework for Spectrum in the 600 MHz Band (the “Consultation Paper”)***

Xplornet welcomes the release of this additional mobile spectrum by Innovation, Science and Economic Development Canada (“ISED”). Having recently acquired mobile wireless spectrum to serve consumers and businesses in Manitoba, Xplornet has an interest in this auction process.

Xplornet generally supports ISED’s proposals in the Consultation Paper. However, there is have one area of concern regarding the lack of a cap on the amount of set-aside spectrum a single company may acquire. As the rules stand, it appears that a single eligible carrier could potentially win all of the spectrum in a licensed area. With 30 MHz of spectrum being auctioned in the set aside, there is sufficient spectrum available to benefit more than one carrier. In order to ensure that a single new entrant does not win all of the set-aside spectrum in a licensed area, a cap should be placed on the amount of spectrum that can be acquired out of the 30 MHz set-aside in a given licensed area. Ideally, in situations in which there are two eligible bidders, the cap should be set at 20 MHz and in cases in which there are three or more eligible bidders, the cap should be set at 10 MHz. Bidders would still be at liberty to seek more spectrum in the auction for non-set-aside spectrum.

In Xplornet’s view, the addition of this measure would result in a more equitable distribution of set-aside spectrum among new entrants.

The remainder of these comments address the questions posed by ISED in its Consultation Paper.

Q1A—ISED is seeking comments on its proposal to implement a set-aside as a pro-competitive measure in the auction process for the 600 MHz band.

Xplornet is in favour of ISED implementing a set-aside as a pro-competitive measure in the 600 MHz auction. Absent such a measure, there is a danger that the three incumbent carriers would end up with the winning bids on all of the available spectrum. Given the incumbents have the vast majority of the sub 1 GHz spectrum, it is reasonable to set aside 30 MHz for new entrants or smaller regional carriers who have a need for additional spectrum to satisfy demand for their services and provide a true alternative to the incumbents’ services. This is particularly true for Xplornet, which is poised to enter the mobile services marketplace in Manitoba. There is no reason to depart from ISED’s past history of establishing a set-aside in other auctions of mobile spectrum.

Q1B—ISED is seeking comments on its proposal to set aside 30 MHz of spectrum in the 600 MHz band for eligible entities and to have open bidding (no pro-competitive measures) on the remaining 40 MHz in the band.

Xplornet is supportive of the 30 MHz / 40 MHz split proposed by ISED. However, as indicated above, Xplornet believes that there should be an additional pro-competitive measure implemented within the 30 MHz of spectrum set aside for new entrants. That measure should limit the ability of a single entity to win all of the 30 MHz of spectrum in the set-aside where there is another new entrant bidding for spectrum in the same area. In such circumstances, Xplornet recommends that a cap of 20 MHz be established in situations where there are two eligible bidders, and a cap of 10 MHz be established in situations where there are three or more eligible bidders. This cap would not apply where there is a single bidder for the set-aside spectrum. This measure will allow both regional carriers and a new national entrant to participate, thereby creating the opportunity for more competition that would benefit Canadian consumers.

Xplornet notes in this regard that some new entrants already have significant spectrum resources won in previous auctions or in acquisitions. It is highly questionable whether these carriers require 30 MHz of additional spectrum to serve their customer base. The proposed caps would likely serve their needs and they could seek more spectrum, if they wanted more, in the other pool of non-set-aside spectrum. Some of the new entrants have significant financial resources and could reasonably be expected to compete in the auction for 40 MHz of non-set-aside spectrum. This disparity needs to be addressed in a cap on new entrant spectrum.

Further, the combinatorial elements of the auction favour larger national package bids over smaller regional package bids. Without the cap, a national carrier could push out a strong regional carrier because of the size of their respective packages. The cap acts as a counterbalance to this element of the auction and insures regional bidders will have an opportunity to be successful.

Q1C—ISED is seeking comments on its proposal to limit the eligibility criteria to bid on set-aside spectrum to those registered with the CRTC as facilities-based-providers, that are not national incumbent service providers, and that are actively providing commercial telecommunication services to the general public in the licence area of interest, effective as of the date of application to participate in the 600 MHz auction.

In its consultation paper, ISED states that this measure is designed to limit eligibility to “a particular sub-set of regional service providers that are best positioned to compete in the commercial mobile services market”.¹ However, ISED is proposing that the provider must be actively providing “commercial telecommunication services”. This is a marked departure from the AWS-3 auction where the requirement was to be “actively

¹ Consultation Paper, paragraph 29.

providing commercial mobile wireless services.”² The definition of telecommunication includes any transmission by wire, cable, radio, optical or other electromagnetic system.³ Contrary to ISED’s stated intention to limit the potential bidders, the use of “telecommunication services” instead of “mobile wireless services” opens up the field of potential bidders to include telephone and cable companies, thereby introducing the potential for spectrum speculation by those telecommunication service providers who are not, in fact, in the mobile services business. It is not hard to imagine larger non-mobile telecommunication service providers opting to bid on spectrum and warehousing it as an investment for five years.

Xplornet strongly urges ISED to reconsider this approach and to follow the approach taken in the AWS-3 auction of limiting eligible bidders for the set aside spectrum to those facilities-based providers that are actively providing commercial mobile wireless services. While that approach meant Xplornet was not eligible for the AWS-3 auction, Xplornet appreciates that ISED wanted to insure that there were real commitments to deploying the AWS-3 spectrum for the intended purpose of providing mobile wireless services. ISED has the same goal with the 600 MHz spectrum.

If the preceding changes were made, it would not be necessary or desirable to limit the right to bid on new entrant spectrum to the Tier 2 geographic region where mobile service is being provided at the time that applications to participate in the auction are due. Mobile service providers should be eligible to expand their networks into areas that they do not currently serve. As a result, ISED should constrain the eligibility to mobile wireless providers to insure the spectrum is put to the intended use and is not the subject to speculation.

TRANSFERABILITY

Q1D—ISED is seeking comments on its proposal to limit the transferability of the set-aside spectrum for the first five years of the licence term.

Xplornet agrees with this proposal for set-aside spectrum. This is consistent with past auctions and will prevent new entrants from purchasing spectrum and then flipping it to an incumbent, thereby circumventing the cap and its intended purpose.

² *Consultation on the Technical, Policy and Licensing Framework for Advanced Wireless Services in the Bands 1755-1780 MHz and 2155-2180 MHz (AWS-3)*, SLPB-004-14, July 2014, paragraph 50.

³ *Telecommunications Act*, S.C. 1993, c. 38, s.2(1).

SPECTRUM BLOCKS

Q1E—ISED is seeking comments on its proposal to auction the set-aside spectrum as three separate paired blocks of 5+5 MHz.

Xplornet agrees with this proposal. This will enable more than one carrier bidding on new entrant spectrum to possibly win spectrum. As discussed above in response to Q1B, Xplornet also urges ISED to cap the maximum amount of set-aside spectrum an eligible carrier can win where there is more than one eligible bidder.

GEOGRAPHIC TIERS

Q2—ISED is seeking comments on its proposal to use Tier 2 service areas across the country, except in the three Territories (Yukon, Northwest Territories and Nunavut) where Tier 4 service areas would apply.

Xplornet agrees with this proposal. The Tier 4 areas make sense for the three Territories where the Tier 4 areas are already large and interference issues are not as prevalent.

USE OF GENERIC LICENCES AND TREATMENT OF SET-ASIDE BLOCKS

Q3—ISED is seeking comments on:

- a) the proposal to use generic licences; and
- b) the proposal to categorize all blocks won by set-aside-eligible bidders as set-aside blocks.

Xplornet agrees with both proposals.

ANONYMOUS BIDDING AND INFORMATION DISCLOSURE

Q4—ISED is seeking comments on:

- a) the use anonymous bidding during the auction; and
- b) the information that will be disclosed to bidders during the clock rounds, as described in annex A (which would also apply to the CCA with a modified activity rule set out in annex B) and annex C.

Xplornet agrees with both proposals.

AUCTION FORMATS

Q5—ISED is seeking comments on:

- a) The advantages and disadvantages of the three auction formats being considered for the 600 MHz auction:**
 - i. Combinatorial clock auction, using the WARP-based activity rule (annex A);**
 - ii. Combinatorial clock auction, using the GARP-based activity rule (annex B);**
 - iii. Enhanced combinatorial clock auction (annex C).**
- b) Where there is a preference for one of the options, respondents are asked to provide a rationale and explanation.**

Xplornet is largely indifferent as to which of the three options is used in the 600 MHz auction. However, on balance the Enhanced combinatorial clock is the best option since it reduces the bidder's uncertainty about the base price it will have to pay for a given package of spectrum blocks.

CONTIGUOUS BLOCKS AND ASSIGNMENT STAGE

Q6—ISED is seeking comments on:

- a) The proposal that winners of more than one block in a single service area be assigned contiguous blocks; and**
- b) The proposed structure of the assignment stage, including the order of the assignment rounds and the combination of service areas into a single assignment round.**

Xplornet agrees with both proposals. In particular, the assignment of contiguous blocks will result in the more efficient use of spectrum.

INCREMENTING PRICES

Q7—ISED is seeking comments on the proposed methodology for incrementing prices during the clock rounds, as described in annex A.

Xplornet agrees with the proposed methodology.

AFFILIATED AND ASSOCIATED ENTITIES

Q8—ISED is seeking comments on the proposed Affiliated and Associated Entities rules that would apply to bidders in the 600 MHz auction.

Xplornet agrees with these proposals. These rules have been used in other mobile spectrum auctions and appear to work.

ANTI-COLLUSION RULES

Q9—ISED is seeking comments on the proposed rules prohibiting collusion and other communication rules, which would apply to bidders in the upcoming 600 MHz auction.

Xplornet also agrees with these proposed rules. They have been used in other mobile spectrum auctions and appear to work.

LICENCE TERM

Q10—ISED is seeking comments on its proposal to issue spectrum licences in the 600 MHz band with a 20-year licence term and the proposed wording of the condition of licence above.

Xplornet is supportive of a 20 year term. The level of investment required to deploy and market a public mobile network is huge and a significant period of time is required to earn a return on that investment. A longer term licence can help to reduce the risk that investors face in supporting entry into the mobile market by allowing for a longer period to achieve returns after the significant initial infrastructure investments. Carriers, and particularly smaller carriers, require the certainty that a 20 year term gives to investors, in order to raise sufficient capital to deliver a sustainable service.

TRANSFERABILITY AND DIVISIBILITY

Q11—ISED is seeking comments on the proposals on the condition of licence related to transferability and divisibility, and the proposed wording above.

Xplornet agrees with ISED's proposals on transferability and divisibility. These rules have helped prevent the incumbents from acquiring all of the mobile spectrum in the post auction period and are necessary to help foster a competitive marketplace. The general rule prohibiting the transfer of set-aside spectrum to an incumbent carrier for 5 years should be subject to an exception for swaps of comparable amounts 600 MHz spectrum between carriers, subject to ISED approval. Such swaps might be needed to rationalize spectrum held by competing network operators.

DEPLOYMENT

Q12—ISED is seeking comments on the proposed deployment condition of licence as stated above.

Xplornet agrees with the proposed deployment conditions of licence. Xplornet supports the intent of these conditions which is to prevent the stockpiling of unused spectrum resources.

CONDITIONS OF LICENCE

Q13—ISED is seeking comments on proposed conditions of licence outlined in annex G that would apply to licences issued through the proposed auction process for spectrum in the 600 MHz band.

Xplornet agrees with these conditions of licence.

OPENING BIDS

Q14—ISED is seeking comments on the proposed opening bids as presented in table 1.

Xplornet agrees with the proposed opening bids.

ELIGIBILITY POINTS

Q15—ISED is seeking comments on the proposed eligibility points for spectrum licences in the 600 MHz as outlined in table 2, and pre-auction deposits as outlined above.

Xplornet agrees with the proposed eligibility points for spectrum licences as outlined in table 2, as well as the pre-auction deposits required.

RENEWAL PROCESS

Q16—ISED is seeking comments on the proposed renewal process for spectrum licences in the 600 MHz band.

Xplornet agrees with the proposed renewal process, which is consistent with other similar spectrum auctions.

Xplornet thanks ISED for considering these comments.