

**Innovation, Science and
Economic Development Canada**

Spectrum Management and Telecommunications

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Notice No. SLPB-006-21

***Consultation on a Policy and Licensing Framework for
Spectrum in the 3800 MHz Band***

**Reply Comments
of
Xplornet Communications Inc.**

March 21, 2022

INTRODUCTION AND EXECUTIVE SUMMARY

1. Xplornet Communications Inc. (“Xplornet”) has reviewed comments filed by interested parties with respect to the *Consultation on a Policy and Licensing Framework for Spectrum in the 3800 MHz Band* (“Consultation”) currently being undertaken by Innovation, Science and Economic Development Canada (“ISED”) and is pleased to provide its Reply Comments.
2. In our Comments, we provided a number of recommendations to ISED concerning its proposals for the structure of its upcoming auction process to allocate spectrum in the 3800 MHz band. In this submission, we respond to comments made by other parties and expand upon our recommendations.
3. The most important matter that ISED must address in the present Consultation concerns the identification and adoption of appropriate pro-competitive measures. ISED has sought comments on the potential use of a set-aside, a spectrum cap, or a combination of both a set-aside and spectrum cap, and various parties have argued in support of all of ISED’s proposals. Given the diverse and conflicting views presented by interested parties, Xplornet submits that ISED must carefully consider the policy objectives it wishes to promote through the use of pro-competitive measures and select the tool(s) that can best achieve these results.
4. In this submission, Xplornet has taken note of ISED’s stated pro-competitive policy objective, namely to ensure that regional providers are positioned to act as strong competitors to the national providers, and provided an assessment of how effectively the use of a set-aside or a spectrum cap can achieve ISED’s desired result. Following the guiding principles for the use of pro-competitive measures set out in ISED’s Framework for Spectrum Auctions in Canada (“Auction Framework”), we conclude that the use of a set-aside will directly achieve ISED’s policy objective.
5. Based on the guidance from the Auction Framework, we submit that ISED should reject calls to implement a spectrum cap. A spectrum cap will not achieve ISED’s policy objective and it risks causing significant and long-term distortion in the wireless marketplace.

6. With respect to the design of a set-aside, Xplornet makes a number of recommendations to ensure that the set-aside will most effectively promote federal wireless policy objectives. Specifically, we recommend that:
 - Like other dominant providers who have the incentive and ability to block competitive providers from obtaining spectrum, SaskTel should be restricted from bidding on set-aside spectrum in Saskatchewan;
 - The quantity of spectrum that should be set aside should be increased from 50 MHz to 100 MHz to align with the proportion of spectrum that has been set aside in past auctions and ensure that regional providers are not disadvantaged in deploying 5G services;
 - To ensure set-aside spectrum is allocated to regional competitors who are best positioned to compete in the marketplace, ISED should require service providers to demonstrate they have a retail sales presence in the relevant Tier 2 service area to be eligible to bid on set-aside spectrum; and
 - To promote transparency in the auction process, ISED should publish the names of set-aside-eligible bidders in each Tier 2 area prior to the auction.
7. Xplornet supports ISED's proposed structure for the bidding process, as ISED's proposal seeks to leverage the recent process successfully used in the 3500 MHz auction. Xplornet agrees that ISED should use this process again and discourages ISED from implemented proposals to allow more complex bidding patterns, such as all-or-nothing bids, in the 3800 MHz auction.
8. Xplornet supports ISED's proposed assignment process, including its proposal to automatically assign spectrum beginning at 3650-3660 MHz to a successful bidder that already holds the 3540-3650 MHz spectrum block in the tier. This will support the allocation of contiguous spectrum for all licensees in the tier.

9. Xplornet is concerned that the 3800 MHz licences that are set to be auctioned in early 2023 will not be available for use until 2025 or 2027. Xplornet agrees with other service providers that successful bidders should not be required to pay for licences that are not available for use. Final payments representing 80% of the bid price should be delayed until spectrum is available for deployment.
10. Xplornet fully supports calls to remove restrictions on the deployment of 5G spectrum to accommodate altimeters. Current standards for altimeters are outdated and the aviation industry should be updating its equipment to coordinate with 5G deployments. If funds are needed by the aviation industry to support the adoption of new equipment, funds could potentially be allocated from the proceeds of the 3500 MHz or 3800 MHz auction processes.
11. Finally, Xplornet re-iterates its submission that no measures are necessary as part of the 3800 MHz auction to support 50/10 Mbps broadband connectivity. As Xplornet demonstrated in its Comments, the federal government is much closer to meeting its rural broadband deployment targets than it realizes. In light of this, and the numerous funding programs and licensing initiatives that are currently underway to support rural broadband deployments, no further measures to support 50/10 Mbps connectivity are required as part of the 3800 MHz auction process. The most significant barrier to rural broadband deployment has become the lack of a comprehensive federal framework providing oversight over access to support structures. Xplornet encourages ISED to promote amendments to the *Telecommunications Act* to empower the Canadian Radio-television and Telecommunications Commission (“CRTC”) to effectively oversee access to support structures in a comprehensive manner.

APPROPRIATE PRO-COMPETITIVE MEASURES ARE ESSENTIAL TO THE 3800 MHz AUCTION

12. As ISED makes its determinations with respect to the structure of the 3800 MHz auction, it is guided by the Spectrum Policy Framework for Canada (“Spectrum Policy Framework”). The Spectrum Policy Framework sets out an overarching objective that directs ISED to develop spectrum policies that will “maximize the economic and social benefits that Canadians derive from the use of the frequency spectrum resource.” The enabling guidelines set out in the Spectrum Policy Framework provide more detailed instructions to ISED on how to achieve this overarching objective.
13. In the present Consultation, ISED has proposed to implement pro-competitive measures in order to ensure that the objective of the Spectrum Policy Framework is promoted. While the use of an auction promotes the operation of market forces in the allocation of scarce spectrum resources, as required by enabling guideline (a) of the Spectrum Policy Framework, certain controls are required to regulate bidding in order to ensure that spectrum is made available to support a range of services that are in the public interest (enabling guideline (b)).
14. In this regard, ISED has articulated that the purpose of the pro-competitive measures it would implement as part of the 3800 MHz would be to ensure that competitive providers are able to access the spectrum that they require to effectively compete with the dominant providers:

“43. There is a risk that competition in the post auction marketplace could be affected without measures to facilitate access to spectrum for service providers other than the three NMSPs. ISED is of the view that larger service providers likely have the means and incentive to prevent other service providers, in particular smaller ones, from acquiring spectrum licences in an open auction. Furthermore, the Competition Bureau has asserted that the NMSPs have market power in the provision of retail mobile wireless services, most recently in its intervention to the Canadian Radio-television and Telecommunications Commission’s (CRTC) review of mobile wireless services. The intervention also included a commissioned study (the Matrix Study), which found that prices are 35%-40% lower across all carriers in areas where wireless disruptors (strong regional competitors) have achieved a market share above 5.5%.”

15. In order to address these concerns, ISED has sought comments on three different sets of potential pro-competitive measures, including:

1. A set-aside;
2. A spectrum cap; or
3. Both a set-aside and a spectrum cap.

16. Interested parties have provided diverse and conflicting views concerning the pro-competitive measures that ISED should adopt. As ISED considers which pro-competitive measures should be adopted as part of the 3800 MHz auction, Xplornet submits that ISED must carefully consider how effectively each of the potential pro-competitive tools can achieve the specific results ISED is seeking to achieve in the 3800 MHz auction. Implementing appropriate pro-competitive measures is essential to an effective auction design.

17. In the following section, we assess the potential measures proposed to assist ISED in making its determinations.

A SET-ASIDE WILL DIRECTLY ADDRESS ISED’S COMPETITIVE CONCERNS

18. Despite the conflicting recommendations put forward by interested parties concerning the adoption of pro-competitive measures, Xplornet notes that there is broad support for the adoption of a set-aside in the 3800 MHz auction from a range of national and regional service providers. Indeed, alongside Xplornet, the British Columbia Broadband Association (“BCBA”)¹, CanWISP², Cogeco³, Comcentric⁴,

¹ BCBA, response to Q5.

² CanWISP, paragraph 34.

³ Cogeco, paragraph 34.

⁴ Comcentric, paragraph 27.

Eastlink⁵, ECOTEL⁶, Iristel⁷, Rogers⁸, Quebecor⁹, SaskTel¹⁰, Sogetel¹¹ and Terrestar¹² have all supported the adoption of a set-aside in the 3800 MHz auction. Only Bell and Telus have opposed a set-aside.

19. Xplornet submits that the use of a set-aside will directly address the competitive concerns that ISED has raised in the Consultation.

20. In its Auction Framework, ISED has set out two guiding principles that it will consider when establishing pro-competitive measures for an auction process. Principle 1 describes the circumstances when certain entities should be restricted from holding certain licences (i.e., a set-aside should be implemented):

“Principle 1: Restricting Participation in the Wireless Market

Industry Canada may decide that an entity that currently provides telecommunications services should be restricted from holding certain licences if:

(a) the entity possesses market power in the supply of one or more telecommunications services in a region covered by the licence to be auctioned;

(b) a new entrant is likely to use the licence to provide services in competition with the entity’s existing services; and

(c) the anti-competitive effects of the entity acquiring a licence are not outweighed by the potential economies of scope arising from the integration of the spectrum in question into the entity’s existing network.”

21. These circumstances are directly applicable to the present auction. By adopting a set-aside in the present auction, ISED would be preventing the national mobile service providers from bidding on a portion of spectrum in the auction. With respect to part (a) of Principle 1, Xplornet notes that the national providers are well

⁵ Eastlink, paragraph 7.

⁶ ECOTEL, paragraph 40.

⁷ Iristel, paragraph 35.

⁸ Rogers, paragraph 139.

⁹ Quebecor, paragraph 48.

¹⁰ SaskTel, paragraph 74.

¹¹ Sogetel, paragraph 31.

¹² Terrestar, paragraph 23.

established to have market power in the supply of both retail and wholesale mobile wireless services in Canada (as is SaskTel in the province of Saskatchewan, which is addressed below). This dominance has been recently confirmed by the CRTC.¹³ Accordingly, it is unambiguous that the conditions described in part (a) are present with respect to present auction process.

22. If the national providers are prevented from holding spectrum in the 3800 MHz auction process, new entrant regional providers are provided an opportunity to use these licences to compete with the national providers, and historical evidence demonstrates that they are able to do so:

- As noted at paragraph 43 of the Consultation, excerpted above, regional providers are effectively competing with the national providers;
- The CRTC is currently working to facilitate the expansion of regional providers into new areas of the country through the establishment of a facilities-based mobile virtual network operator (“MVNO”) service; and
- The set-aside that was established in the 3500 MHz auction successfully allocated spectrum to regional providers who are aggressively building competitive 5G networks across Canada.

23. Accordingly, there is little question that new entrant providers will effectively deploy the frequencies if they are allocated licences that national providers are restricted from holding, consistent with part (b) of Principle 1.

24. Finally, in relation to part (c) of Principle 1, public policy does not favour the national providers being enabled to hold these frequencies at the expense of new entrants. Federal wireless policy has had a clear objective of increasing the competitive strength of regional wireless carriers. The federal government has recently explicitly directed the CRTC to exercise its powers to encourage competition, foster affordability and lower prices, and to reduce barriers to competition for

¹³ Telecom Regulatory Policy CRTC 2021-130, *Review of mobile wireless services* [“TRP 2021-130”], paragraphs 152, 154 and 279.

regional service providers¹⁴ and the CRTC has taken significant steps to promote competition from regional wireless carriers.¹⁵ The Minister of Innovation, Science and Industry (“Minister”) has consistently promoted a clear objective to support competition in the wireless marketplace, including as recently as in his March 3, 2022, public statement, in which the Minister affirmed his strong commitment to the Government of Canada’s “policies to promote competition and ensure cell phone affordability for Canadians”.¹⁶

25. As enabling the national providers to hold all spectrum in the 3800 MHz auction would run completely counter to these policy statements, it is clear that the anti-competitive impacts of allowing the national providers to hold all 3800 MHz spectrum licences are not outweighed by potential economies of scope.
26. For all of these reasons, Xplornet submits that the circumstances for the adoption of a set-aside as set out in Principle 1 are present with respect to the 3800 MHz auction. The adoption of a set-aside directly addresses the competitive concerns that ISED has raised in the Consultation, as it is tailored to promoting competition from regional providers. This approach was highly successful in the 3500 MHz auction and is broadly supported by service providers in the present Consultation. Xplornet submits that ISED should adopt a set-aside in the present auction.

A SPECTRUM CAP DOES NOT ADDRESS ISED’S COMPETITIVE CONCERNS AND WILL RESULT IN SIGNIFICANT AND LONG-TERM MARKET DISTORTION

27. Xplornet is concerned that a number of parties have attempted to persuade ISED to adopt spectrum caps in the 3800 MHz auction, as the adoption of spectrum caps would not address ISED’s concerns about ensuring that regional providers are able to obtain the spectrum that they require to bring strong competition to the dominant providers, as set out at paragraph 43 of the Consultation.

¹⁴ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, SOR/2019/227

¹⁵ See TRP 2021-130.

¹⁶ See, <https://www.canada.ca/en/innovation-science-economic-development/news/2022/03/minister-of-innovation-science-and-industry-reaffirms-that-competitiveness-is-central-to-a-vibrant-telecommunications-sector.html>

28. In establishing the framework for the 3500 MHz auction, ISED was also seeking to promote the same objective of the present Consultation through the adoption of pro-competitive measures. As ISED stated in that proceeding:

“However, without pro-competitive measures it is unlikely that the 3500 MHz auction would support ISED’s policy objectives. Notably, there is a risk that competition in the 5G mobile wireless market could suffer if regional service providers do not acquire sufficient spectrum.”¹⁷

29. As part of the 3500 MHz process, ISED rejected the adoption of a spectrum cap, noting that a spectrum cap would not address its policy concern:

“While spectrum caps have been used in past auctions to prevent excessive spectrum concentration, the application of a cap in the 3500 MHz auction – as a standalone measure or combined with a set-aside – would not support ISED’s policy objectives.”¹⁸

30. As discussed below, Xplornet submits that these determinations remain relevant, and a spectrum cap should not be adopted in the 3800 MHz auction.

31. The second guiding principle for the adoption of pro-competitive measures in an auction set out in ISED’s Auction Framework discusses the use of spectrum aggregation limits, or caps. It states as follows:

“Principle 2: Spectrum Aggregation Limits

It is the view of Industry Canada that, when multiple licences for the use of spectrum in a given geographic area are auctioned, and when these can be used to provide closely substitutable service, aggregation limits may be required on the amount of spectrum that any single bidder is allowed to acquire so as to ensure competitive markets. Spectrum aggregation limits may be imposed in the following circumstances:

- (a) a bidder that acquires an amount of spectrum beyond a certain level would not face effective competition from providers of closely substitutable services; and
- (b) the anti-competitive effects arising from the acquisition of an amount of spectrum beyond a certain level by a single bidder would not be offset by

¹⁷ SLPB-001-20, *Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, paragraph 37.

¹⁸ *Ibid.*, paragraph 42.

lower prices or higher valued services resulting from a single entity holding this amount of spectrum.

In the analysis of the above-noted competition principles, it is appropriate to consider the current Canadian market, activities of other regulators who deal with the wireless industry and the experience of other countries.”

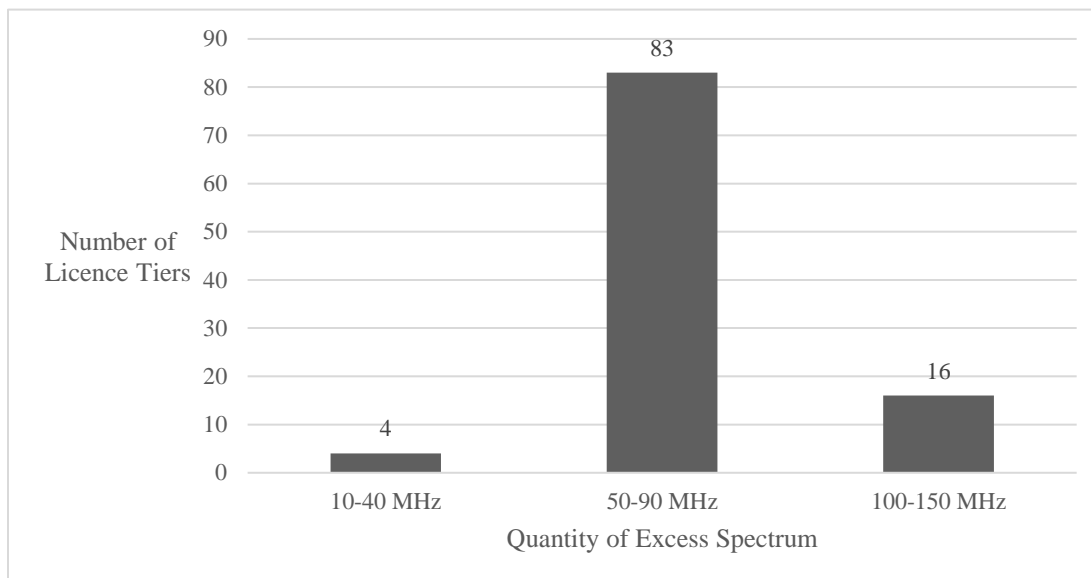
32. As described in part (a) of Principle 2, the purpose of a spectrum cap is not to ensure that new entrant providers have access to spectrum in an auction in order to compete with the national providers. The purpose of a spectrum cap is to ensure that a given provider is not able to foreclose effective competition through the acquisition of spectrum.
33. Instead of addressing ISED’s competitive concerns, which are directly and efficiently managed through a set-aside, the adoption of a cap in the 3800 MHz auction will introduce competitive problems and distort the marketplace.
34. For example, Rogers has correctly detailed that the adoption of a cap will actually cause the very market asymmetries that Principle 2 of the Auction Framework states that the use of a cap is meant to address. Indeed, Rogers has raised real concerns that it will be held back in competing with Bell and Telus if a spectrum cap is adopted. Given that Bell and Telus could pool spectrum won in the 3500 MHz and 3800 MHz auctions, the cap would allow the shared Bell and Telus network to access twice as much 5G spectrum as Rogers, hindering Rogers’ ability to effectively compete.¹⁹
35. Accordingly, Xplornet submits that the circumstances of part (a) would actually be exacerbated by the adoption of a cap instead of mitigated.
36. Furthermore, the adoption of a 100 MHz cap does not appropriately balance anti-competitive effects from spectrum concentration against Canadians’ need for higher value services, as discussed in part (b) of Principle 2. As Rogers has described in its Comments, adopting a 100 MHz cross-band cap will establish a minimum of five providers in each licence tier, each operating a 5G network with

¹⁹ Rogers, Comments, paragraph 34.

100 MHz of spectrum or less (except for a joint Bell-Telus network, as noted above, which would have access to 200 MHz of spectrum). Restricting the spectrum resources available to Canada's 5G networks in this manner will impair Canada's position as a leader in 5G technology. As noted in the Consultation, in other jurisdictions, service providers are operating with considerably more than 100 MHz of spectrum in their 5G networks. Irish operators are using up to 150 MHz of mid-band spectrum, for example. Canadian operators will not be able to maintain a leadership role if they are not allocated the spectrum resources required to do so. This over-segmentation of Canada's spectrum resources will hold back the service offerings available to Canadians. Accordingly, Xplornet submits that a 100 MHz cap does not appropriately balance the service demands of Canadians with the need to promote competition. It unduly and unnaturally fragments Canada's spectrum resources at the expense of service quality and jeopardizes Canada's position as a leader in 5G.

37. Moreover, when considering the Canadian context, Xplornet submits that the imposition of a 100 MHz cap will distort the wireless marketplace in a significant and permanent manner.
38. The primary reason for this market distortion is caused by the large amount of spectrum that is available in licence tiers all across Canada. By implementing a cross-band cap, existing licensees of 3500 MHz spectrum will be limited to bidding on 3800 MHz spectrum only to top up their current 3500 MHz holdings to a total of 100 MHz of mid-band spectrum. If it is assumed that all existing 3500 MHz licensees were to top up their holdings to 100 MHz in the 3800 MHz auction, there continue to be large amounts of spectrum available in the majority of licence tiers. As illustrated in Figure 1, below, in 104 of 172 licence tiers there would be up to 150 MHz of additional spectrum that would be available to new licensees who currently hold no 3500 MHz spectrum.

Figure 1 – Excess Spectrum Supply in 104 (of 172) Licence Tiers after All Existing 3500 MHz Licensees Are Allocated 100 MHz of 5G Spectrum



39. Looking at Halifax, Nova Scotia (Licence Tier 4-010), as an example, following the 3500 MHz spectrum auction, Bell, Rogers and Eastlink each holds 3500 MHz spectrum in the amounts of 90 MHz, 60 MHz and 50 MHz, respectively. Assuming each of these entities tops up their holdings to 100 MHz in the 3800 MHz auction, this would still leave 150 MHz of spectrum in Halifax to new bidders in the 3800 MHz auction.
40. With these service providers removed from bidding, this would allow another provider – likely Telus – to win a full 100 MHz of spectrum with little to no competition, and there would still be 50 MHz of spectrum available for another entity. This presents an undue windfall for Telus and encourages speculative bidding in the auction. Similar results will occur in tiers across the country.
41. It is clear that a 100 MHz cap is simply not appropriate. In many licence tiers across the country, the cap will reduce demand in circumstances where there is no supply concern. This unduly interferes with the operation of market forces, contrary to enabling guideline (a) of the Spectrum Policy Framework.

42. If ISED were to adopt the proposed 100 MHz cap, this would beg the question why ISED is holding an auction at all. ISED's Auction Framework states that auctions are used to allocate spectrum when demand exceeds supply:

“Where the demand for spectrum is not expected to exceed the supply, Industry Canada generally uses a first-come, first-served licensing process to award spectrum licences. In instances where the demand for spectrum is expected to exceed supply, a competitive licensing process, such as an auction, is generally used.”²⁰ [Emphasis added]

43. Given that a 100 MHz cap will artificially reduce demand well below supply, ISED should not be allocating mid-band spectrum using auction processes. ISED should instead allocate 100 MHz blocks of spectrum on a first-come, first-served basis.
44. ISED, however, has already held an auction for 3500 MHz spectrum. ISED's 3500 MHz auction was the highest grossing auction in Canada of all time, raising \$8.9 billion in proceeds. Service providers who won spectrum in this auction built their bidding strategies on the basis that prime 5G spectrum was not subject to a cap, and the amounts bid reflected the value of this spectrum to licensees on this basis.
45. By artificially depressing demand, ISED will enable parties, like Telus, to benefit from massive windfalls through the ability to win prime 5G spectrum at very low cost, given that there will be little to no competition from other bidders. This will also re-rate the value of previously-allocated 3500 MHz spectrum, stripping the value from the spectrum licences that bidders in the 3500 MHz auction have made historic investments to obtain.
46. Re-rating the value of 3500 MHz spectrum assets through the imposition of a cap in the 3800 MHz process will have significant long-term impacts for the wireless marketplace. For service providers, their spectrum portfolios represent one of their largest assets. The value of these assets is critical as collateral to raise funding to support capital expenditures. For example, the billions of dollars that service providers are committing to deploy advanced broadband networks to rural Canadians are being raised through financing that is backed in part by using

²⁰ Auction Framework, section 1.

spectrum assets as collateral. If the value of these assets is suddenly significantly reduced because of spectrum caps in the 3800 MHz auction, this will reduce access to capital and compromise the ability of service providers to execute on their investment strategies.

47. For smaller companies, this could impair an entity's existence. For example, there are a number of small entities that hold 3500 MHz licences. These licences may be among their most important assets. By devaluing these assets, these companies may no longer have access to the capital they require to operate in the marketplace. Beyond this though, the application of caps may also prevent larger providers that already hold 100 MHz of 5G spectrum from purchasing a failing business, further reducing the corporate valuations of smaller companies and harming investment in Canadian telecommunications.
48. These are significant, long-term consequences that are likely to arise by the adoption of caps in the 3800 MHz auction.
49. Xplornet agrees with Rogers that there is no slight adjustment to the proposed caps that addresses these concerns. Given the large amount of excess supply that will remain in licence tiers across the country, the cap would need to be raised to at least 150 MHz to prevent competitive distortions.
50. Instead of trying to manage demand through the adoption of caps, and causing severe distortions to the marketplace, ISED should manage its competitive concerns through the adoption of a set-aside. With the adoption of a set-aside, ISED can directly address its competitive concerns and ensure that regional providers are well equipped to compete in a 5G world. Beyond a set-aside, ISED should avoid interfering with market forces and allow market forces to put Canada's prime 5G spectrum resources to work to serve Canadians.

A SET-ASIDE SHOULD BE STRUCTURED TO PROMOTE WIRELESS POLICY OBJECTIVES

51. It is clear from the above that a set-aside alone should be adopted as part of the 3800 MHz auction. ISED has sought input on how a set-aside should be structured

to best achieve its objectives. Xplornet believes that adopting the following recommendations will enable ISED to design a set-aside that will best achieve federal policy objectives.

Recommendation 1: SaskTel should not be permitted to bid on set-aside spectrum in Saskatchewan

52. ISED has proposed to adopt eligibility criteria to bid on set-aside spectrum that replicate those used in the 3500 MHz auction. Under these criteria, set-aside-eligible bidders are those parties that are *“registered with the CRTC as facilities-based providers that are not NMSPs [National Mobile Service Providers], and that are actively providing commercial telecommunications services to the general public in the relevant Tier 2 service area of interest, effective as of the date of application to participate in the 3800 MHz auction.”*
53. Xplornet submits that ISED’s proposed eligibility criteria are not well aligned with federal mobile policy.
54. As noted in the Consultation, the purpose of a set-aside is to ensure that larger service providers who have the means and incentive to prevent smaller providers from acquiring spectrum in the auction process are not able to do so. Xplornet submits that, if SaskTel is permitted to bid on set-aside spectrum, it has the incentive and the means to prevent other set-aside eligible providers from accessing spectrum to expand their network operations within Saskatchewan.
55. In the proceeding leading to TRP 2021-130, the CRTC recently undertook an extensive review of competition in the mobile wireless marketplace. From its analysis, the CRTC determined that the national wireless carriers together exercise market power in the provision of retail and wholesale mobile wireless services in all provinces except Saskatchewan.²¹ Within the province of Saskatchewan, the CRTC determined that SaskTel exercises market power in the provision of both retail and wholesale mobile services.²²

²¹ TRP 2021-130, paragraphs 152 and 279.

²² *Ibid.*, paragraph 154 and 279.

56. The CRTC also recognized that Canada's regional providers are uniquely positioned to bring effective competition to the dominant providers²³ and mandated the introduction of new wholesale MVNO services to support the accelerated expansion of regional carriers to reach more Canadians. Bell, Rogers and Telus were mandated to offer MVNO services in all provinces except Saskatchewan. SaskTel was mandated to offer MVNO services within Saskatchewan.
57. The CRTC structured this MVNO service to provide a temporary support to catalyze the expansion of regional carriers' networks. This service will only be available to regional carriers in areas where they hold mobile spectrum licensed at the Tier 4 level or higher. The MVNO service will be phased out after a period of seven years.
58. Based on the above, Xplornet submits that SaskTel is fully incented to take actions during the 3800 MHz auction to prevent new competitors from obtaining access to spectrum licences that would enable them to expand their operations within Saskatchewan through access to SaskTel's mandated MVNO service. Indeed, SaskTel's behaviour in the 3500 MHz auction bears this out.
59. In relation to the 3500 MHz auction, SaskTel clearly entered this process with the intention of winning all set-aside spectrum. Through each round of the 3500 MHz auction, SaskTel ardently renewed its demand for all set-aside licences to block other set-aside-eligible bidders from obtaining any of this spectrum. Ultimately, no other set-aside-eligible bidder was able to compete with SaskTel, and SaskTel walked away with every set-aside spectrum block that was available in the province of Saskatchewan. The prices that SaskTel paid for the set-aside licences in Saskatchewan are among the highest prices paid for any set-aside licences won anywhere in the country. SaskTel's clear ability to outbid other set-aside eligible bidders is illustrated by the results of the 3500 MHz auction.
60. Given what happened in the 3500 MHz auction, the 3800 MHz auction is a critical opportunity for regional carriers to obtain commercial mobile spectrum within

²³ *Ibid.*, paragraph 283.

Saskatchewan to support the deployment of new mobile wireless services before the mandated MVNO service is phased out. If SaskTel is permitted to bid for set-aside spectrum, it will be positioned to prevent other regional providers from accessing set-aside spectrum in the 3800 MHz auction within Saskatchewan, frustrating federal policy objectives.

61. In light of the above, Xplornet submits that ISED should modify its eligibility criteria to exclude SaskTel from participating as a set-aside eligible bidder within the province of Saskatchewan.

Recommendation 2: The set-aside should be expanded from 50 MHz to 100 MHz

62. Xplornet notes that there is strong support for expanding the size of a set-aside in the 3800 MHz auction from the 50 MHz proposed by ISED. As summarized in Figure 2, below, of the 13 parties that supported a set-aside, nine argued that the set-aside should be expanded beyond 50 MHz. Xplornet supports these calls for an expanded set-aside.

Figure 2 – Party Positions Concerning the Amount of Spectrum to be Allocated to a Set-Aside (MHz)

50 MHz	Rogers Cogeco SaskTel Xplornet
60 MHz	ECOTEL
100 MHz	Comcentric Eastlink Iristel Quebecor Sogetel Terrestar
160 MHz	BCBA CanWISP

63. As described by Quebecor, ISED has proposed to only reserve 20% of available spectrum for the set-aside in the 3800 MHz auction. This is far inferior to the proportion of spectrum that ISED has reserved for set-aside bidders in previous auctions. As stated by Quebecor:

“Il convient de noter à cet égard que lors de chacune des enchères précédentes où le Ministère a utilisé une réserve, la quantité de spectre réservé était largement supérieure à 20 %. Les pourcentages en tant que tels furent les suivants : SSFE-1, 40 %; SSFE-3, 60 %; 600 MHz, 43 %; et 3 500 MHz, environ 25 % de la bande totale, mais 42 % du spectre mis aux enchères. En considération de ces précédents, ainsi que des objectifs du Ministère (soutenir la concurrence des joueurs régionaux au bénéfice des consommateurs canadiens), nous sommes d’avis que la mise en place d’une réserve de spectre de 100 MHz serait parfaitement justifiée. Les besoins en bande passante et en latence requis par la 5G sont tels que les concurrents régionaux n’auront pas d’autre choix que de maximiser les avoirs spectraux en termes de bande de fréquences moyennes.”²⁴

64. Given the importance of 3800 MHz to 5G deployments, and the federal priorities to support regional providers, Xplornet agrees that a larger set-aside is justified for the 3800 MHz auction. Furthermore, in light of the Minister’s recent comments concerning Rogers’ acquisition of Shaw’s spectrum assets,²⁵ it is possible that there will be an additional party competing for set-aside spectrum in the 3800 MHz auction that was not present for the 3500 MHz auction. Given the potential for increased demand for set-aside spectrum in the 3800 MHz auction, Xplornet submits that ISED should adopt an expanded set-aside.

65. For these reasons, Xplornet agrees with Comcentric, Eastlink, Iristel, Quebecor, Sogetel and Terrestar that ISED should adopt a set-aside of 100 MHz in the 3800 MHz auction.

Recommendation 3: Eligibility should require an active retail sales presence in the relevant Tier 2 service area

66. ISED has indicated that it is seeking to design a set-aside that would ensure that set-aside spectrum is allocated to providers who are well placed to deploy spectrum to Canadians. Currently, ISED’s proposed eligibility criteria attempt to do this by requiring parties to be “providing” commercial telecommunications services

²⁴ Quebecor, Comments, paragraph 54.

²⁵ See the March 3, 2022, statement of the Minister: "This proposal is currently under review by three separate regulators, with decisions expected in due course. As Minister of Innovation, Science and Industry and the spectrum regulator, I am strongly committed to our policies to promote competition and ensure cell phone affordability for Canadians. The wholesale transfer of Shaw's wireless licences to Rogers is fundamentally incompatible with our government's policies for spectrum and mobile service competition, and I will simply not permit it." Online: <https://www.canada.ca/en/innovation-science-economic-development/news/2022/03/minister-of-innovation-science-and-industry-reaffirms-that-competitiveness-is-central-to-a-vibrant-telecommunications-sector.html>

to the general public in the relevant Tier 2 service area of interest. The use of the term “providing” permits parties to be eligible to bid for set-aside spectrum who do not have any competitive retail sales presence in the relevant Tier 2 area. In order to ensure that parties are actively competing in the retail marketplace, in our Comments, we submitted that ISED should replace the word “providing” with “offering” in its eligibility criteria. This modification will better ensure that spectrum is allocated to parties who are best positioned to bring strong competitive offerings to Canadians.

67. We note that other providers have made similar comments. For example, Bell has argued that “actively providing commercial telecommunications services” should require a party to demonstrate a sales and distribution capability.²⁶ CanWISP has argued that ISED should require parties to be “actively marketing and providing commercial telecommunications services”.²⁷ Telus has requested that ISED better define what “actively providing commercial telecommunications services to the general public” means.²⁸

68. Xplornet continues to recommend that ISED clarify that “actively providing” services requires entities to demonstrate they have an active retail presence offering services for sale in the relevant Tier 2 area.

Recommendation 4: The relevant tier for actively providing commercial telecommunications services should be assessed at the Tier 2 level, not the Tier 4 level as proposed by certain parties

69. Xplornet opposes comments made by Bell²⁹ and Cogeco³⁰ that ISED should evaluate set-aside eligibility on a Tier 4 basis, instead of evaluating eligibility at the Tier 2 level as proposed in the Consultation.

²⁶ Bell, Comments, paragraph 53.

²⁷ CanWISP, Comments, paragraph 55.

²⁸ Telus, Comments, paragraph 56.

²⁹ Bell, Comments, paragraph 53.

³⁰ Cogeco, Comments, paragraphs 43 to 46.

70. The federal government is taking significant steps to encourage the expansion of Canada's regional service providers. As discussed above, the CRTC is in the process of developing mandated MVNO services that will help facilitate regional providers in extending their networks into new areas of the country. The CRTC's mandated MVNO services require a regional provider to hold spectrum in a given Tier 4 area in order to be eligible to access the MVNO service in that area.
71. The 3800 MHz auction process is a critical opportunity for regional providers to obtain new spectrum licences that will enable them to expand their serving areas with the assistance of the mandated MVNO services. It would run squarely against federal objectives for ISED to modify its set-aside eligibility rules to assess eligibility at the Tier 4 level instead of at the Tier 2 level, as the result of this modification would be to greatly impair the potential for regional carriers to expand outside their current serving areas.
72. Accordingly, Xplornet submits that the proposals made by Bell and Cogeco to assess set-aside eligibility at the Tier 4 level should be rejected.

Recommendation 5: ISED should be transparent about who has qualified to bid on set-aside spectrum in each Tier 2 area

73. Finally, in our Comments, we recommended that ISED should publish the names of the parties that have qualified to bid on set-aside spectrum within each Tier 2 area in advance of the auction in order to promote transparency in the auction process.
74. Xplornet highlights that this issue has been raised by other parties to this Consultation, including by both Bell³¹ and Telus.³²
75. Xplornet does not believe that publishing the names of set-aside-eligible bidders in advance of the auction would inappropriately interfere with the auction process or inappropriately influence auction outcomes. Eligibility information that must be

³¹ Bell, Comments, paragraph 53.

³² Telus, Comments, paragraph 57.

provided as part of the auction application process is largely not confidential, and parties are informed as such as part of the application documentation. There is no reason to maintain non-confidential information – such as where a provider meets the eligibility criteria to bid on set-aside spectrum – in confidence. Furthermore, publishing set-aside eligibility would not disclose the auction bidding intentions of any party. In filing their auction applications, it would be logical for parties to register their eligibility to bid on set-aside spectrum in all possible areas in order to preserve their ability to bid on this spectrum during the auction. Registering eligibility does not indicate an intention to bid in any particular area, particularly given that eligibility would be published at the Tier 2 level.

76. Accordingly, Xplornet continues to recommend that ISED publish the names of set-aside-eligible bidders, by Tier 2 service area, in advance of the auction in order to promote transparency in the auction process.

AUCTION MECHANICS SHOULD FOSTER EFFICIENCY AND MINIMIZE BURDEN FOR PARTICIPANTS

77. With respect to the mechanics of the bidding process itself, Xplornet supports ISED's approach of adopting the 3500 MHz framework for the 3800 MHz auction. By leveraging the process used for the 3500 MHz auction, ISED can promote an efficient and effective auction process that minimizes the administrative burden on auction participants. Auction participants are familiar with the process used to allocate 3500 MHz spectrum and will be well positioned to participate in an auction that largely replicates this process. Minimizing administrative burden in this manner is consistent with enabling guideline (f) of the Spectrum Policy Framework.
78. To this end, we recommend that ISED reject calls to add complexity to the 3800 MHz process through the introduction of more complex bidding patterns, such as all-or-nothing bids.³³
79. With respect to frequency assignments, Xplornet fully supports the assignment of contiguous spectrum to the greatest degree possible. There should be no pre-

³³ See Cogeco, Comments, response to Q15; Bell, Comments, response to Q18.

assigned blocks for set-aside bidders. Bell's proposal that set-aside licensees should be placed at the top of the band to be next to the Wireless Broadband Service ("WBS") frequencies should be dismissed.³⁴ Set-aside licensees should have the same rights as all other licensees to bid for the frequencies that they most desire in an assignment process. It is unfair to pre-allocate spectrum in this manner.

80. Xplornet agrees with Telus³⁵ and SaskTel³⁶ that licensees who were assigned the 3640-3650 MHz block in the 3500 MHz auction should be automatically allocated spectrum beginning at 3650-3660 MHz should they win spectrum in the same licence tier as part of the 3800 MHz auction. This initiative is appropriate because it helps foster contiguity for all licensees.
81. Lastly with respect to auction mechanics, Xplornet emphasizes that ISED should delay requirements to make payments for spectrum until it is available for use.
82. While ISED has currently indicated that it intends for the 3800 MHz auction to take place in the first quarter of 2023,³⁷ the spectrum will not be available to be deployed until it is cleared by fixed satellite service ("FSS") C-band operations and by current WBS licensees. FSS operations are not required to clear the band until March 31, 2025, and WBS licensees are permitted to continue operating in the band until March 31, 2025, or March 31, 2027, depending on the area in question.
83. Xplornet submits that it runs counter to enabling guidelines (d) and (f) of the Spectrum Policy Framework to require service providers to participate in an auction and expend significant resources in order to obtain spectrum that cannot be deployed until well into the future. Enabling guideline (d) specifically requires ISED to adopt regulatory measures that are minimally intrusive and enabling guideline (f) requires ISED to minimize the administrative burden that it places on

³⁴ Bell, Comments, paragraph 60.

³⁵ Telus, Comments, paragraph 100.

³⁶ SaskTel, Comments, paragraph 97.

³⁷ SLPB-002-21, *Decision on the Technical and Policy Framework for the 3650-4200 MHz Band and Changes to the Frequency Allocation of the 3500-3650 MHz Band*, paragraph 345.

parties. Requiring service providers to expend resources on spectrum that they cannot deploy and monetize through customer use imposes significant carrying costs on licensees, particularly smaller participants, and harms the ability for service providers to execute on their planned capital investments. It also places unnecessary administrative burden on parties. Ultimately, impairing the ability for service providers to invest in their networks by tying up significant capital resources and holding back the ability for service providers to meet the needs of Canadians frustrates the overall objective of the Spectrum Policy Framework.

84. Xplornet notes that it is not the only party that has raised these concerns. Bell³⁸, Telus³⁹, Rogers⁴⁰, and the Canadian Wireless Telecommunications Association⁴¹ have all submitted that a final payment of 80% of the purchase price should not be due until spectrum is available for use. Xplornet supports this position and recommends that this payment structure be adopted.

ISED SHOULD TAKE ACTION TO REMOVE RESTRICTIONS ON 5G TO ACCOMMODATE OUTDATED ALTIMETERS

85. Xplornet notes that numerous parties have filed comments in this Consultation to address measures to mitigate interference between 5G deployments and altimeters.
86. Xplornet agrees that measures should be adopted to protect the safety of Canadians. However, like other service providers,⁴² Xplornet is concerned that the mitigation measures described in SRSP-520 place an undue burden on service providers seeking to efficiently deploy mid-band spectrum. Xplornet agrees that these restrictions should ultimately be removed.

³⁸ Bell, Comments, paragraph 126.

³⁹ Telus, Comments, paragraph 156.

⁴⁰ Rogers, Comments, paragraph 275.

⁴¹ CWTA, Comments, paragraph 37.

⁴² See Bell, Comments, paragraph 3; Telus, Comments, paragraph 28; Rogers, Comments, paragraph 50.

87. As noted by Air Canada, the Low Range Radio Altimeter systems currently used are designed to standards that are nearly 50 years old.⁴³ It is inappropriate to restrict the efficient deployment of cutting-edge 5G networks to accommodate outdated aviation equipment.
88. Expedited work should be undertaken by the aviation industry to address equipment issues to mitigate interference and restrictions should be removed from 5G operators.
89. Should certain altimeters need to be replaced in aircraft to address potential interference concerns, the Government of Canada could consider using a portion of the proceeds from the 3500 MHz and/or 3800 MHz auction processes to create a fund to support the replacement of impacted altimeters.

PROMOTING 50/10 CONNECTIVITY IN RURAL CANADA

90. As part of the Consultation, ISED has sought comments from parties concerning potential measures that could be implemented to ensure that 3800 MHz spectrum is used to support the rural broadband goals set out in Canada's *Connectivity Strategy*.⁴⁴ As described below, Xplornet does not support the adoption of measures designed to support the deployment of 50/10 connectivity as part of the 3800 MHz auction.

ISED SHOULD NOT ADOPT NEW MEASURES TO SUPPORT 50/10 SERVICE IN RURAL CANADA AS PART OF THE 3800 MHz AUCTION

91. In its Comments, Xplornet demonstrated that new requirements are not required as part of the 3800 MHz auction in order for the Government of Canada to meet its rural connectivity objectives. Xplornet notes that this view is widely shared by

⁴³ Air Canada, Comments, page 1.

⁴⁴ *High-Speed Access for All: Canada's Connectivity Strategy* ["Connectivity Strategy"].

service providers. Bell⁴⁵, Cogeco⁴⁶, Comcentric⁴⁷, Rogers⁴⁸, Sogetel⁴⁹ and Telus⁵⁰, all encouraged ISED not to adopt new measures to support 50/10 deployments as part of this proceeding.

92. Xplornet shares the Government of Canada's objective to connect rural Canadians to high-quality broadband services, and like other providers, we are actively investing to bring advanced connectivity to rural Canadians. ISED has not been tracking the impressive progress that service providers have made in extending service to underserved areas through its National Broadband Availability Map ("Availability Map"). This map was last updated in January 2021. Because ISED's data is extremely out of date, the Government of Canada is far closer to meeting its connectivity goals than it realizes.

93. For example, over 2021, we launched our Xplore 50/10 UNLIMITED service, which provides wireless broadband download speeds of up to 50 Mbps and upload speeds of up to 10 Mbps with unlimited data. The launch of Xplornet's Xplore 50/10 UNLIMITED service in 2021 alone has brought 50/10 service to over 500,000 households and businesses that continue to be inaccurately marked as underserved by ISED's Availability Map. Numerous other subsidized projects that are currently underway are not reflected in the Availability Map, including projects being undertaken with the support of significant provincial broadband programs. Xplornet submits that the connectivity gap has closed considerably and that the Government of Canada is far closer to reaching the objective of the *Connectivity Strategy* than it currently recognizes.

94. Alongside this work, ISED has also undertaken numerous other initiatives to support rural broadband deployments. These include:

⁴⁵ Bell, Comments, paragraphs 119 to 120.

⁴⁶ Cogeco, Comments, paragraph 114.

⁴⁷ Comcentric, Comments, paragraph 91.

⁴⁸ Rogers, Comments, paragraph 290 to 297.

⁴⁹ Sogetel, Comments, paragraph 91.

⁵⁰ Telus, Comments, paragraph 142.

- SLPB-004-21: *Consultation on New Access Licensing Framework, Changes to Subordinate Licensing and White Space to Support Rural and Remote Deployment*;
- DGSO-003-21: *Consultation on Amending Cellular and Personal Communications Services (PCS) Licence Conditions*;
- SMSE-014-20: *Consultation on the Technical and Policy Framework for Licence-Exempt Use in the 6 GHz Band*; and
- DGSO-001-18: *Consultation on Licence Fees for Fixed Point-to-Point Radio Systems*.

95. Xplornet submits that market forces and subsidy programs, supported by ISED's licensing initiatives listed above, are well positioned to ensure the Government of Canada is able to achieve its connectivity goals and it is unnecessary to adopt additional measures as part of the 3800 MHz auction to support the deployment of 50/10 service.

96. Beyond simply being unnecessary, however, Xplornet further submits that it would be entirely inappropriate for ISED to adopt conditions of licence for 3800 MHz spectrum requiring parties to deploy 50/10 services. This would result in multiple providers deploying redundant fixed wireless infrastructure across the country. By mandating the deployment of rural broadband services by licensees, ISED would be inappropriately interfering with market forces and stifling the innovation and competitive differentiation that have built the world-leading networks that currently exist in Canada. Such a result would entirely conflict with the enabling guidelines and overall objective of the Spectrum Policy Framework.

ISED SHOULD ENCOURAGE AMENDMENTS TO THE *TELECOMMUNICATIONS ACT* TO FACILITATE RURAL BROADBAND

97. Although measures are not required or appropriate as part of the 3800 MHz auction to support 50/10 services, Xplornet entirely supports the comments made by Rogers encouraging ISED to take actions to help facilitate the deployment of

new rural broadband services. Reasonable and timely access to support structures is the single largest barrier that we face in deploying broadband service to rural Canadians. We fully agree with Rogers' statement:

“ISED must work with the CRTC and all levels of government to ensure all carriers have fair and reasonable access to the poles (hydro and telecom), ducts, streetlights, and municipal property that are needed to place antennas and wires. Backhaul will be crucial to 5G and carriers must be able to deploy the necessary trunks and dishes.”⁵¹

98. Rogers has also emphasized a recent report from the C.D. Howe Institute entitled, *Building Bridges for 5G: How to Overcome the Infrastructure Barriers to Deployment of Canada's Next-Generation Broadband Networks*⁵² (“C.D. Howe Report”). This report provides recommendations concerning measures that are needed to help improve access to support structures. These measures include amending the *Telecommunications Act* in order to give the CRTC more effective oversight over access to support structures.
99. Numerous calls have been made for amendments to the *Telecommunications Act*, and the C.D. Howe Report is simply the latest call to action. In January 2020, the Broadcasting and Telecommunications Legislative Review Panel issued its final report, in which it also recommended amendments to the *Telecommunications Act* to improve the CRTC's jurisdiction over support structures.⁵³
100. These amendments are long overdue and there is no sign that they are coming in the near future. Because of this, provincial governments are stepping in to effectively regulate the deployment of telecommunications in their territory. For example, the Province of Ontario is currently in the process of implementing a comprehensive legislative scheme governing the deployment of network infrastructure within the province. While provincial initiatives may help facilitate certain broadband projects, having the federal government cede its jurisdiction

⁵¹ Rogers, Comments, paragraph 259.

⁵² Milton, Leslie, Jay Kerr-Wilson and Paul Burbank. 2022. *Building Bridges for 5G: How to Overcome the Infrastructure Barriers to Deployment of Canada's Next-Generation Broadband Networks*.; available online: https://www.cdhowe.org/sites/default/files/2022-01/Commentary_615.pdf.

⁵³ See [https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/\\$file/BTLR_Eng-V3.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/$file/BTLR_Eng-V3.pdf)

over telecommunications to the provinces through inaction is not in the public interest. Canadians require a comprehensive federal regime that can be relied upon to provide reasonable and timely access to all support structures that service providers require to deploy services to Canadians.

101. Xplornet encourages ISED to push for legislative change that would empower the CRTC to exercise comprehensive oversight over access to support structures. However, no new measures should be adopted as part of the 3800 MHz auction process.

CONCLUSION

102. In this submission, we have provided numerous recommendations to ISED that are designed to help ISED achieve its policy goals as it establishes a structure for its upcoming 3800 MHz auction.

103. Our primary recommendations may be summarized as follows:

- ISED should adopt a 100 MHz set-aside and reject calls for a spectrum cap;
 - The set-aside should exclude SaskTel from eligibility in Saskatchewan;
 - Eligibility should require a retail sales presence in the relevant Tier 2 area;
- ISED should publish the names of set-aside-eligible bidders in each Tier 2 area in advance of the auction;
- ISED should leverage the bidding process used in the 3500 MHz auction and reject calls to allow new complex bidding patterns, such as all-or-nothing bids;
- ISED should adopt its proposal to automatically assign spectrum beginning at 3650-3660 MHz to a successful bidder that already holds the 3540-3650 MHz spectrum block in the tier;

- Final payments representing 80% of the bid price should be delayed until spectrum is available for deployment;
- Restrictions on 5G deployments to accommodate altimeters should be removed in favour of the adoption of new altimeter equipment; and
- No measures to promote 50/10 connectivity should be adopted as part of the 3800 MHz auction; however, ISED should promote amendments to the *Telecommunications Act* to empower the CRTC to effectively oversee access to support structures in a comprehensive manner.

104. Xplornet thanks ISED for the opportunity to provide these Reply Comments.

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