



Assembly of First Nations (AFN)

Report to Innovation, Science and Economic Development on Spectrum Connectivity

September 19, 2024

About the Assembly of First Nations

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern. The AFN holds two Assemblies a year where mandates and directives for the organization are established through resolutions directed and supported by the First Nations-in-Assembly (elected Chiefs or proxies from member First Nations). The AFN comprises of more than 630 member First Nations.

In addition to the direction provided by Chiefs of each member First Nation, the AFN is guided by an Executive Committee, consisting of an elected National Chief and Regional Chiefs from each province and territory. Representatives from five national councils (Knowledge Keepers, Youth, Veterans, 2SLGBTQIA+ and Women) support and guide the decisions of the Executive Committee.

The AFN supports First Nations by coordinating, facilitating, and advocating for policy change, with the leaders of this change being the First Nations themselves. Chiefs representing First Nations must be an integral part of meeting the challenge of sustainable, transformative policy change.

The AFN is mandated by Resolution 19/2020, *Supporting First Nations with connecting to the Internet*, to call upon Innovation, Science and Economic Development (ISED) to support and work with First Nations to establish service-provider capacities, data and market information, spectrum access, a network of professionals, and policy to enable affordable access to the internet.¹

Overview of First Nations Connectivity Access

Advancing Reconciliation with Indigenous Peoples through Spectrum Access

The National Inquiry into Missing and Murdered Indigenous Women and Girls Call to Justice #5.5 recognizes reliable high-speed Internet as a right, particularly for remote communities, and calls to ensure remote communities have reliable high-speed internet.² Canada has committed, through its *High-Speed Access for All: Canada's Connectivity Strategy*, to connect 100% of Canadians to 50 megabits per second (Mbps) download and 10 Mbps upload speeds and improve mobile connectivity by 2030.³ Spectrum⁴ plays a significant role in providing wireless

¹ AFN Resolution 19/2020, *Supporting First Nations with connecting to the Internet*.

² National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, pg. 183, retrieved from: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf.

³ ISED, *High-Speed Access for All: Canada's Connectivity Strategy*, pg. 8, https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

⁴ All wireless communications signals travel over the air via radio frequency, aka spectrum

internet to homes and individuals. Spectrum's use in mobile connectivity ensures phones and mobile devices are connected to the internet at home or on the road. Spectrum continues to be a necessity for communities without fibre-to-the-home (FTTH) capabilities as Canada aims to reach its target of connecting 100% of Canadians to high-speed internet access by 2030.⁵ Reliance on fixed-wireless access, satellite and mobile cellular towers for internet access depends on service providers with access to spectrum bands that can quickly carry high-capacity data transfers. Currently, 38% of First Nations have access to high-speed wired connectivity infrastructure.⁶ For the remaining 62% of First Nations, spectrum is essential in ensuring they have access to the internet.

Without spectrum, rural, remote, and disconnected First Nations remain cut off from economic and social development opportunities. Connectivity is one of the basic prerequisites for First Nations to fully participate in the modern landscape, and spectrum access is critical to providing this connectivity.

Benefits of Access to High-Speed Connectivity

Through the many ongoing technical discussions surrounding spectrum and its access, it is important to highlight the broader impacts of connectivity on First Nations. The COVID-19 pandemic heightened the "digital divide"; the disparity in broadband and cell service for First Nations compared to the rest of Canada. Telecommunications services offer numerous economic and social benefits to First Nations, who have been significantly impacted by barriers such as geography, affordability, and smartphone-only connectivity. Indeed, access to broadband internet has become inseparable from the more commonly recognized social determinants of health, including access to healthcare, education, economic opportunities, community, and governance. With increased telecommunication services, First Nations can participate in the shifting landscape of the world and reap the benefits of each of those areas.

Healthcare

The COVID-19 pandemic altered healthcare practices, moving from in-person appointments to virtual platforms. The shift to virtual care allowed for medical consultation while minimizing health risks to medical practitioners and patients. At the same time, the practice made healthcare more flexible for both healthcare practitioner and patient availabilities. However, for many First Nations, the lack of broadband availability made accessing care even more challenging. For example, remote community fly-in nurse programs ceased due to the COVID-19 pandemic and moved to a combination of personal support workers and virtual care by nurses.

⁵ ISED, *High-Speed Access for All: Canada's Connectivity Strategy*, pg. 8, https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

⁶ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 169, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

The need for broadband service in remote communities worsened longstanding issues in accessing services.⁷

Conversely, First Nations with high-speed connectivity have access to virtual care opportunities which can significantly reduce the need for in-community healthcare professionals. The hiring and retaining of healthcare professionals are ongoing issues for rural and remote First Nations as they often have smaller populations or limited stock of quality housing and reliable utilities, which are just two examples among several factors that may deter healthcare practitioners from staying in the First Nation.⁸ Access to connectivity for virtual care alleviates the need for in-person services while maintaining healthcare services for First Nations.

A 2021 National Survey of Canadian Physicians identified that 94% of physicians use virtual care. However, the overall use of virtual care by Canadian patients has decreased since the beginning of the COVID-19 pandemic, from 60% in 2020⁹ to 33% from January 2021 to March 2022.¹⁰ Despite the short-term decline in virtual care usage, the practice will continue to be offered to access healthcare for the foreseeable future.

Connecting First Nations to high-speed broadband must be a priority to ensure that First Nations can access virtual care services. The Government of Canada has committed to co-developing distinctions-based Indigenous health legislation to foster health systems that respect and ensure the safety and well-being of Indigenous Peoples. In March 2023, the Government of Canada pledged \$2 billion over 10 years to improve access to quality and culturally safe healthcare for Indigenous peoples.¹¹

Transitioning to virtual healthcare has increased access for many First Nations but has also led to unaffordable internet costs.¹² The Auditor General's report, *Connectivity in Rural and Remote Areas*, reported that Innovation, Science and Economic Development Canada (ISED) does not provide a comprehensive analysis of the affordability of internet access. The report highlights affordability as a crucial factor in guaranteeing access to the internet.¹³

⁷ National Collaborating Centre for Indigenous Health, Education as a social determinant of First Nations, Inuit and Métis Health, pg. 3, retrieved from: <https://www.ccsa-nccah.ca/docs/determinants/FS-Education-SDOH-2017-EN.pdf>

⁸ Ibid.

⁹ Canadian Medical Association, *Virtual Care in Canada: Progress and Potential*, pg. 4, 2022, retrieved from: <https://www.cma.ca/sites/default/files/2022-02/Virtual-Care-in-Canada-Progress-and-Potential-EN.pdf>.

¹⁰ Canada Health Infoway, *Annual Report 2021-2022*, pg. 32, retrieved from: <https://www.infoway-inforoute.ca/en/component/edocman/6390-annual-report-2021-2022/view-document?Itemid=103>.

¹¹ Prime Minister of Canada Justin Trudeau, *Working in partnership to deliver high-quality health care for Indigenous Peoples*, 2023, retrieved from: <https://www.pm.gc.ca/en/news/news-releases/2023/03/02/working-partnership-deliver-high-quality-health-care-indigenous>.

¹² Public Health Agency of Canada, *What we heard: Indigenous Peoples and COVID-19: Public Health Agency of Canada's companion report*, pg. 15, 2021.

¹³ Auditor General of Canada, *Connectivity in Rural and Remote Areas*, pg. 10, 2023, https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202303_02_e.pdf.

Education

AFN research indicates that only 82% of First Nations have access to elementary and/or secondary school programming within First Nations, leaving more than 14,000 First Nation students without educational programming close to home.¹⁴ For First Nations without schools, students must leave their community to receive education.¹⁵ These students who must relocate to pursue education can also face discrimination.¹⁶ In general, First Nations students face challenges, including separation from culture, as those that move from their First Nation often attend schools that do not offer First Nations teachings, instead focusing on a Canadian and Eurocentric lesson plan.¹⁷ These challenges are often exacerbated when students relocate from their homes.

Virtual learning makes it possible for First Nations students to receive education within their communities, avoiding the need to relocate for schooling. It is essential that First Nations students stay with their families and receive cultural support in their communities. While this does not immediately resolve discrimination or address concerns with non-First Nations-related curricula, it is a substantial improvement.

Relatedly, Canada has recently reiterated its commitment to collaborating with First Nations to address discrimination and non-First Nations-related curricula. *The Innovation in Education Program: National Program Guidelines 2023 to 2024* were established by Indigenous Services Canada (ISC) to achieve this. The program aims to ensure that all First Nations students receive a culturally responsive, high-quality education while respecting First Nations' control over their education.¹⁸ These projects involve making resources available to purchase internet-enabled devices, such as laptops and smartphones that are adequate to enable virtual learning.

Economic Development

Training

The AFN collaborated with industry experts and over 400 First Nations to co-develop a landmark report with Indigenous Services Canada titled “*Closing the Infrastructure Gap by 2030: A*

¹⁴ AFN, *K-12 Fact Sheet*, retrieved from: [K-12 Factsheet - English \(bynder.com\)](https://www.afn.ca/~/media/afn/2019/04/K-12_Factsheet_-_English_(bynder.com).pdf)

¹⁵ United Nations Indigenous Peoples – Indigenous Voices, *Urban Indigenous Peoples and Migration: Challenges and Opportunities*, 2007, https://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet2.pdf.

¹⁶ National Collaborating Centre for Indigenous Health, *Education as a social determinant of First Nations, Inuit and Métis Health*, pg. 3, retrieved from: <https://www.ccnsc-nccah.ca/docs/determinants/FS-Education-SDOH-2017-EN.pdf>.

¹⁷ National Collaborating Centre for Indigenous Health, *Education as a social determinant of First Nations, Inuit and Métis Health*, pg. 3, retrieved from: <https://www.ccnsc-nccah.ca/docs/determinants/FS-Education-SDOH-2017-EN.pdf>.

¹⁸ Indigenous Services Canada, *Innovation in Education Program: National Program Guidelines 2023 to 2024*, retrieved from: <https://www.sac-isc.gc.ca/eng/1669307428813/1669307569227#cp4>.

Collaborative and Comprehensive Cost Estimate Identifying the Infrastructure Investment Needs of First Nations in Canada". The report provides an estimate of infrastructure investment needs and the impacts on First Nations. In discussions with national and regional telecommunication groups during the development of the Closing the Infrastructure Gap by 2030 report, the AFN identified the lack of skilled workers to operate connectivity infrastructure as having a significant impact on the operational capacities of First Nations.¹⁹ Low availability of skilled labour increases project costs by 50%, resulting in First Nations paying for the overage or scaling back on project scope.²⁰ The Government of Canada has committed to supporting administrative capacities for critical programs and services.²¹ Offering fully funded operational training programs in telecommunications could have a significant positive impact on First Nations. Such programs would help build the capacity to maintain and operate connectivity infrastructure, and attract and retain skilled telecom workers, thus creating economic opportunities. It's worth noting that the unemployment rate for First Nations is significantly higher (18%) than that of non-Indigenous peoples (7.4%) and providing training and jobs in telecommunications would go a long way to bridging this gap.²²

Procurement and Tendering Policies

In 1996, the Federal Government created the *Procurement Strategy for Aboriginal Business* (PSAB) to improve access by Indigenous businesses to procurement opportunities. The Canadian Government aims to increase procurement from Indigenous businesses to a minimum of 5%. First Nations businesses must expand their capacities to meet the rising procurement demands.²³ Telecommunication services provide capacity-building benefits to First Nations to meet Federal procurement demands while assisting in the business's product procurement. In June 2020, Public Services and Procurement Canada (PSPC) stated that over the past two fiscal years, 3.8% of its total awarded procurement was for Indigenous suppliers.²⁴ This was in line with the PSAB, however, it must continue to be improved toward the 5% target.

¹⁹ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg 191, retrieved from:

<https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

²⁰ Ibid.

²¹ Canada, *Advancing Reconciliation and Building a Canada That Works for Everyone*, retrieved from:

<https://www.budget.canada.ca/2023/report-rapport/chap4-en.html>.

²² National Indigenous Economic Strategy For Canada: Pathways to Socioeconomic Parity for Indigenous Peoples, p. 42, 2022, retrieved from: https://niestrategy.ca/wp-content/uploads/2022/05/NIES_English_FullStrategy.pdf.

²³ NACCA, *Transforming the Indigenous Procurement Process in Canada:*

A Literature Review, Qualitative Analysis, and Recommendations, pg. 4, 2021, retrieved from: <https://nacca.ca/wp-content/uploads/2022/05/2.-Transforming-Procurement-Process-Academic-Research-Final-English.pdf>.

²⁴ PSPC, Mandate commitment: Creation of a 5% target in procurement-Indigenous business—Standing Committee on Indigenous and Northern Affairs—June 19, 2020, retrieved from: https://www.tpsgc-pwgsc.gc.ca/trans/documentinfo-briefingmaterial/inan/2020_06_19/p6-eng.html

Many First Nations businesses are unable to access online programs due to the lack of connectivity. Disconnected First Nations businesses face challenges in accessing federal funding opportunities and completing applications or reporting in various programs. For example, the Government of Canada posts its tender and award notices and other procurement services online through “CanadaBuys.”²⁵ Digital connectivity allows First Nations businesses to find and apply for procurement opportunities within the site. Conversely, disconnected First Nations businesses cannot benefit from the platform, nor from other cost-effective and streamlined processes such as purchase orders, bill payments, and contract signings. Without virtual tools for business management, these companies face additional overhead costs. First Nations businesses disconnected from the Internet also face marketing issues that can impact their procurement opportunities with prospective clients. Within Canada, 89% of businesses have at least one type of web presence between websites, social media accounts and email marketing.²⁶ The web presence provides a means for businesses to connect with clients and present themselves as a quality business. The lack of internet impacts the reach of the First Nations businesses and can limit the overall procurement opportunities available.

The Government of Canada can support First Nations procurement through capacity funding. Programs that support the development of local resource capacity can assist First Nations in training or hiring Economic Development officers who can navigate federal tendering and procurements. Additionally, the support of joint ventures and partnerships between established providers and First Nations telecoms can provide incentives for capacity development. The creation of training criteria in connectivity funding can incentivize the providers to build capacity for First Nations through training and can assist in developing the skills required to apply for connectivity projects.

It is important to note that one possible concern is the potential of creating “shell” companies to access Indigenous procurement opportunities.²⁷ The “shell” companies create further challenges for First Nations, as the capacity funding and programs meant to support First Nations businesses are awarded to non-First Nations businesses.²⁸ Safeguards would need to be implemented to prevent such abuse. National Indigenous Economic Organizations, including the National Aboriginal Capital Corporations Association (NACCA) and the AFN, have collaborated to develop a First Nations Procurement Organization (FNPO). The FNPO was developed to support

²⁵ Canada, *Procurement Services*, retrieved from: <https://www.canada.ca/en/public-services-procurement/services/acquisitions.html>.

²⁶ StatsCan, *Digital technology and Internet use, 2021, 2022*, retrieved from: <https://www150.statcan.gc.ca/n1/daily-quotidien/220913/dq220913b-eng.htm>.

²⁷ NACCA, *Transforming the Indigenous Procurement Process in Canada: A Literature Review, Qualitative Analysis, and Recommendations*, pg. 38, 2021, retrieved from: <https://nacca.ca/wp-content/uploads/2022/05/2.-Transforming-Procurement-Process-Academic-Research-Final-English.pdf>.

²⁸ Sonntag, Ridgen, Sangster, Bird, Boutilier, *Billions in federal contracts awarded to ‘Indigenous’ enterprises without verification*, 2024, retrieved from: <https://globalnews.ca/news/10700685/federal-contracts-indigenous-enterprises-canada/>

the Government of Canada's efforts to achieve a minimum of 5% Indigenous procurement including providing support in the development of policy and legislative frameworks necessary for Indigenous procurement.²⁹ The policy and legislative framework support can include best-practice safeguards for indigenous procurement opportunities. AFN Resolution 73/2023, *First Nations-Led Procurement Organization and the National Benefits-Sharing Framework*, supports the development of the FNPO, and calls upon the Government of Canada to provide capital and financial support to the operation of the FNPO.³⁰ Additionally, NACCA established the National Indigenous Procurement Working Group (NIPWG) to facilitate the creation of Indigenous Business Definitions. NACCA has since released eight definitions of the types of Indigenous businesses and have recommended that Canada's governments adopt the definitions into procurement processes.³¹ The Indigenous Business Definitions are one area that provides clarity to procurement processes to support Indigenous procurement. AFN Resolution 49/2021, *Next Steps on First Nations and Procurement*, calls on the federal government to define First Nations businesses using a First Nations-led approach based on First Nations rights of self-determination.³² The Government of Canada must continue to work with First Nations to define First Nations businesses and incorporate the definition into their procurement processes. The Government of Canada must also provide the capacity capital required to establish the FNPO to support Indigenous businesses in reaching the 5% procurement target.

A "Centre of Expertise" that includes First Nations would support First Nations to address procurement barriers within programs. The First Nations-in-Assembly passed a resolution that directs the AFN to call on ISED and ISC to support and work with First Nations to establish a "network of professionals" to enable affordable access to the Internet.³³ Similarly, Canada's Connectivity Strategy identified the establishment of an expanded Centre of Expertise to improve Canada's connectivity coordination.³⁴ A First Nations Centre of Expertise, comprising Federal department representatives, First Nations organizations including the AFN, and First Nations connectivity expert groups such as the First Mile Connectivity Consortium (FMCC) must also be considered. A First Nations Centre of Expertise can lead program reviews to identify funding gaps, access barriers, and areas for improvement relating to procuring First Nations businesses.³⁵ The First Nations Centre of Expertise must include the co-development of a First

²⁹ NACCA, *National Indigenous Business Definition*, retrieved from: <https://nacca.ca/national-indigenous-business-definition/>

³⁰ AFN Resolution 73/2023, *First Nations-Led Procurement Organization and the National Benefits-Sharing Framework*.

³¹ NACCA, *National Indigenous Business Definition*, retrieved from: <https://nacca.ca/national-indigenous-business-definition/>

³² AFN Resolution 49/2021, *Next Steps on First Nations and Procurement*.

³³ AFN Resolution 19/2020, *Supporting First Nations with connecting to the Internet*.

³⁴ ISED, *High-Speed Access for All: Canada's Connectivity Strategy*, pg. 10, retrieved from: https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

³⁵ AFN, *Procurement in Canada: Possible Actions to Increase First Nations Opportunities and Benefits*, pg. 4, 2019.

Nations-led action plan to identify funding gaps and resources needed to build procurement expertise and support, investments in First Nations capacity, collection of quality data, changes to the contracting environment, and access to trade opportunities.

Support for Small and Medium Enterprises

Without adequate connectivity, small and medium enterprises (SMEs) lose out on processes that can significantly increase the efficiency of their operations. Indeed, as smaller enterprises, by definition, tend not to benefit from economies of scale, business tools are disproportionately impactful on whether they can be profitable, competitive, and sustainable. It is essential that SMEs be empowered to access computer networks, cloud computing, industry-specific software, and internet-connected devices that assist in the operational capacity of the business.³⁶ These processes can include fundamental business operations such as scheduling, invoicing, and human resource management.

The availability of internet-enabled software and functions is limited for First Nations that do not have adequate access to high-speed connectivity, resulting in slower and more costly operations. For example, agricultural practices can use high-speed connectivity for real-time monitoring of crops and irrigation system automation. Using the technology made available from high-speed connectivity helps streamline processes that would have previously taken more time from the business.³⁷

Access to connectivity for SMEs also gives access to online marketplaces. In 2021, 36% of Canadian medium-sized and 32% of small businesses had made e-commerce sales.³⁸ For First Nations without high-speed access, their SMEs are limited in consumer reach and access to the offline marketplace. Canadian companies are increasingly using the internet to build a web presence, with 89% of Canadian businesses having at least one type of web presence between websites, social media accounts and email marketing.³⁹ An online web presence allows businesses to connect with potential clients, run advertising campaigns to attract new clients and provide information on the industry. First Nations businesses without high-speed connectivity are disconnected from the internet and their potential clientele, resulting in less

³⁶ StatsCan, *Digital technology and Internet use, 2021, 2022*, retrieved from:

<https://www150.statcan.gc.ca/n1/daily-quotidien/220913/dq220913b-eng.htm>.

³⁷ Cropin, *Internet of Things in Agriculture: What is IoT and how is it implemented in agriculture?*, retrieved from:

<https://www.cropin.com/iot-in-agriculture>.

³⁸ StatsCan, *Digital technology and Internet use, 2021, 2022*, retrieved from:

<https://www150.statcan.gc.ca/n1/daily-quotidien/220913/dq220913b-eng.htm>.

³⁹ Payments Canada, *Rebound and Grow- Canadian Payment Methods and Trend Report 2022*, pg. 7, retrieved from:

https://payments.ca/sites/default/files/PaymentsCanada_Canadian_Payment_Methods_and_Trends_Report_2022_En_0.pdf.

revenue overall.

Attracting, Retaining, and Expanding Businesses

Without adequate high-speed connectivity on First Nations, businesses are limited in their operational capacity, often making First Nations unappealing to operate in. The lack of connectivity impacts basic operations such as payment transaction methods. In 2021, Canadian credit payments increased 33%, debit card payments increased 10%, online transfers increased 469%, and cash payments dropped 62% from the previous year.⁴⁰ Debit, credit and online transfers all require internet access to process payments, and the lack of connectivity prevents consumers from using their preferred payment method when making payments to a business. The impact on retail companies may deter them from operating on an unconnected First Nation.

The integration of advanced digital infrastructure significantly enhances a company's productivity, enabling First Nations to become more appealing to potential investors. This, in turn, can attract and retain businesses on First Nations, providing them with the opportunity to expand their operations and strengthen their foothold in the market.

Governance

Widespread internet availability has significantly changed communication between First Nations and their members. For those with access, this advancement has unlocked numerous benefits, such as improved access to information on governance activities, job opportunities, and community events. It also has the potential to promote transparency and efficiency in governance, making the process more streamlined and effective.

Another significant advantage of this development lies in the fact that community members can now actively participate in decision-making processes and policy development through online platforms and tools. This phenomenon can be measured by tracking website creation, usage statistics, and member engagement in online consultations, as well as quantifying the increase in participation rates in online surveys, virtual meetings, and other governance-related activities.

The adoption of digital tools has triggered a positive paradigm shift in communication and governance in Indigenous communities, with immense potential for growth and development in the future.

Community and Social

⁴⁰ Ibid.

Within the First Nations membership, access to the internet provides them with opportunities to connect with others, within and outside of their First Nation. For youth, high-speed connectivity provides access to educational resources, online employment opportunities, and social connections. Connection to the internet can provide benefits that include improved mental health, reducing the feeling of isolation for members, and increased educational attainment.

As identified in the Auditor General of Canada's 2023 report entitled *Connectivity in Rural and Remote Areas*, the number one challenge rural and remote communities identify as impeding their economic growth is access to affordable high-speed Internet.⁴¹ For the First Nations members, addressing affordability challenges reduces barriers to accessing the internet, and can ensure more community members, including youth, can access digital resources.

Enhanced connectivity enables better access to community services, such as digital libraries, online learning, and virtual event registrations. Benefits include increased access to information, improved service delivery, and enhanced community engagement.⁴²

Emergency Services and Management

Reliable internet connectivity can significantly improve emergency response capabilities, leading to faster response times and enhanced crisis coordination.⁴³ Increases in emergency response capabilities can improve safety for individuals and reduce emergency-related risks.⁴⁴

Access to connectivity also provides safety and security for First Nations members. Projects like the Highway of Tears connectivity initiative can contribute to the safety of Indigenous communities, particularly for vulnerable groups like Missing and Murdered Indigenous Women and Girls.⁴⁵

Reliable internet can also impact policing activities. The National Inquiry into Missing and Murdered Indigenous Women and Girls Call to Justice #5.5 recognizes reliable high-speed Internet as a right, particularly for remote communities, due to the growing reliance on

⁴¹ Office of the Auditor General of Canada, *Connectivity in Rural and Remote Areas*, pg. 10, 2023, retrieved from: https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202303_02_e.pdf.

⁴² Ontario Library Association, *Internet, Connectivity and Broadband*, retrieved from: <https://accessola.com/internet-connectivity-and-broadband/>.

⁴³ Damaševičius, R.; Bacanin, N.; Misra, S. *From Sensors to Safety: Internet of Emergency Services (IoES) for Emergency Response and Disaster Management*, J. Sens. Actuator Netw, 2023, 12, 41, Retrieved from: <https://doi.org/10.3390/jsan12030041>.

⁴⁴ Ibid.

⁴⁵ Canada, *Complete cellular connectivity coming to "Highway of Tears"*, 2021, <https://www.canada.ca/en/innovation-science-economic-development/news/2021/04/complete-cellular-connectivity-coming-to-highway-of-tears.html>.

information management systems, particularly around major and inter-jurisdictional criminal investigations.⁴⁶

First Nations Spectrum Licensing

The AFN supports First Nations access to spectrum through resolutions passed by the First Nations-in-Assembly. Resolution 19/2020, *Supporting First Nations with connecting to the Internet*⁴⁷ and Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty*⁴⁸ call upon Canada and its departments to support First Nations access to spectrum. Further, Resolution 08/2023 calls for a review of the spectrum licensing processes to uphold First Nations rights, titles, and Treaty rights, and to align the related spectrum policies with the United Nations Declaration on the Rights of Indigenous Peoples (UNDIP), the principles of free, prior and informed consent (FPIC), and the Crown's duty to consult.⁴⁹

First Nations Experiences in Accessing Spectrum Licensing

The experiences of First Nations and First Nations organizations highlight the difficulties in accessing spectrum for First Nations connectivity. First Nations have limited success in obtaining spectrum licenses under the spectrum license auction approach. One success for First Nations in obtaining a spectrum license was in the 2024 Auction of Residual Spectrum Licenses. The auction included an allocation of four licenses to the "Chief and council on behalf of the Norway House Cree Nation" for nearly \$600,000.⁵⁰ Aside from the Norway House Cree Nation, First Nations service providers have mainly relied on alternative measures to access spectrum. For example, the FMCC member organizations have not obtained spectrum licenses under the auction approach and have relied on partnerships and subordinate licenses to service their local First Nations. One member, Eeyou Communications Network (ECN), partnered with SSI Canada and James Bay Eeyou Corporation in 2019 to form Eeyou Mobility Inc. (EMI) to provide cellular service to communities in the Eeyou Istchee James Bay region. EMI participated in the 600 MHz spectrum license auction; however, the cost of the spectrum was beyond an affordable level for EMI.⁵¹ The successful licensees for the Eeyou Istchee James Bay region in the Tier 2-007 service area were Rogers and Vidéotron, who spent an overall total of \$1.7 billion and \$255 million,

⁴⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, pg. 183, retrieved from: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf.

⁴⁷ AFN Resolution 19/2020, *Supporting First Nations with connecting to the Internet*

⁴⁸ AFN Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty*

⁴⁹ Ibid.

⁵⁰ ISED, *2024 Auction of Residual Spectrum Licences - Provisional Results*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/node/2188#Nor>

⁵¹ FMCC, *FMCC Comments to the AFN on the IPW Framework*, unreleased.

respectively, to obtain multiple licenses under the 600 MHz spectrum auction.⁵² To obtain spectrum access, EMI's partner, SSI Canada, secured a subordinate license through an agreement with Rogers. Similarly, K-Net and Broadband Communications North (BCN) are relying on subordinate licenses to provide coverage for First Nations. K-Net's spectrum comes through an agreement with Rogers; however, there have been difficulties in receiving additional spectrum from Rogers. This has prevented K-Net from expanding their reach to include coverage to more First Nations. Another FMCC member, the First Nations Education Council (FNEC), is an association comprised of First Nations in Quebec. Three First Nations within the FNEC are negotiating to gain subordinate licenses from incumbent service providers. Only one First Nation in the FNEC has successfully negotiated an agreement and the remaining two are unserved.⁵³

Difficulties including costs for licensing and non-standard negotiations for subordinate licensing are barriers for First Nations in accessing spectrum. The Government of Canada must continue to engage with First Nations and use the experiences shared to remove these and other barriers and provide new measures to access spectrum.

The IPW Policy Framework Objectives

The current policy objectives outlined in section 3.1 of the Indigenous Priority Window Spectrum Policy Framework are a step forward in First Nations access to spectrum; however, the objectives do not adequately address the needs of First Nations in spectrum management. The scope of the objective is limited and does not consider First Nations rights and titles. The electromagnetic spectrum is a **natural resource**,⁵⁴ and the policy objectives must align with First Nations rights over resource management within their territory. Canada has committed to implementing the principles and rights set out in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) through the release of the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) Action Plan.⁵⁵ Article 26 (i) of UN Declaration declares that "Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired."⁵⁶ The IPW's exclusion of Indigenous Peoples' rights towards spectrum as a resource in their territories fails to uphold Canada's commitment to advance reconciliation through implementing the principles and rights set out in the UN Declaration.

⁵² ISED, *600 MHz Auction- Final Results*, 2019, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/auctions/auction-spectrum-licences-600-mhz-band/600-mhz-auction-final-results#Rogers>

⁵³ FMCC, *FMCC Comments to the AFN on the IPW Framework*, unreleased.

⁵⁴ ISED, *What is Spectrum*, retrieved from: <https://ised-isde.canada.ca/site/communications-research-centre-canada/en/what-spectrum>

⁵⁵ Canada, *The Action Plan*, retrieved from: <https://www.justice.gc.ca/eng/declaration/ap-pa/index.html>

⁵⁶ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, pg. 19, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

The IPW Policy Framework provides Indigenous applicants with priority to access spectrum; however, it does not provide First Nations with control over its management within their territories. . Article 32 of UNDRIP declares that “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”⁵⁷ Due to its limited scope, the IPW Policy Framework fails to uphold Canada’s commitment to advance reconciliation by implementing the principles and rights set out in the UN Declaration. First Nations must be given greater control or jurisdiction over spectrum management within First Nations territories. The lack of jurisdiction can contribute to the continued underservicing of First Nations and to the loss of economic and social opportunities that access and control over spectrum management can provide. Within the policy, First Nations inherent rights over natural resources within their territories must be recognized to ensure First Nations rights are upheld.

Measuring the Success of the IPW Spectrum Policy Framework

Data is an essential requirement in measuring Canada’s spectrum policies and processes. Collecting and organizing spectrum licensing data provides a means to assess the objectives outlined in the policy framework. Recording the number of First Nations spectrum licenses distributed after adopting the IPW is a way to measure the success of the proposed IPW Spectrum Policy Framework. Additionally, ISED can provide the number of Indigenous applications and the types of partnerships.⁵⁸ A low adoption rate for spectrum licenses within the Indigenous Priority Window could relate to barriers in First Nations accessing spectrum. Continued efforts to adjust the IPW must be made to ensure First Nations barriers to accessing spectrum are removed. Overall, the success of the IPW can be measured through the success of applicants in providing wireless services to their target areas⁵⁹ in a way that does not undermine existing wireless service providers that focus on improving Indigenous connectivity.⁶⁰

⁵⁷ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, pg. 23, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁵⁸ Charles Bighead, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Charles Bighead Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁵⁹ Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁶⁰ Cree Nation Government, Eeyou Communications Network, James Bay Cree Communications Society, *Submission to Innovation, Science, and Economic Development (ISED)*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key->

Using the IPW Spectrum Framework in the Future

The bands of spectrum allocated to the IPW Spectrum Framework are limited to the unused portions of the 800 MHz and 1900 MHz spectrum bands.⁶¹ After the initial rollout of the IPW Spectrum Framework, the framework must be adopted for use in future spectrum access initiatives. Applying the IPW Framework to different bands of spectrum, such as Tier 4 and Tier 5 spectrum bands, must be considered.⁶² As technology advances, 5G services will be in more demand. To meet the demand, First Nations must have access to sought-after high-frequency bands of spectrum capable of use in 5G technologies. Providing First Nations with priority to newly available or unused spectrum allows for greater access for First Nations and will assist in First Nations connectivity initiatives.

Spectrum Access Measures to Support First Nations Connectivity

Canada has committed to enhance mobile connectivity and connect 100% of Canadians to high-speed internet access by 2030.⁶³ While the IPW Policy Framework provides the first step for First Nations access to spectrum, additional measures must be taken to support First Nations connectivity to ensure First Nations have high-speed internet by 2030.

The First Nations-In-Assembly passed Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty* that called for a stop to all sales and renewals of any spectrum licenses and permits on Indigenous traditional territories until consultations on the issue of spectrum have been completed with First Nations governments and mandated organizations.⁶⁴ In February 2024, the Assembly of First Nations delivered a letter to the Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry of Canada that also called for a moratorium to be placed on spectrum licensing. First Nations remain diverse in their experiences and preparedness for accessing spectrum, and the co-development of First Nations-specific connectivity strategy, a flexible First Nations spectrum licensing framework, and the allocation of additional spectra through set-asides are some of the next steps towards addressing the unique needs of First Nations in connectivity and spectrum management.

[documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window](https://ISED-Isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/spectrum-and-indigenous-priority-window)

⁶¹ ISED, *Spectrum and the Indigenous Priority Window*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/spectrum-and-indigenous-priority-window>

⁶² Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁶³ ISED, *High-Speed Access for All: Canada's Connectivity Strategy*, pg. 8, https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

⁶⁴ AFN Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty*

First Nations Spectrum Set-Asides

ISED must make spectrum bands available for First Nations through a no-cost set-aside process. ISED has previously allocated set-asides for service providers within their auctions as pro-competitive measures.⁶⁵ A similar process for First Nations with a no-cost approach must be supported to remove barriers for First Nations in accessing spectrum licenses. The Report of the Standing Committee on Indigenous and Northern Affairs, *Barriers to Economic Development in Indigenous Communities*, has identified limited access to capital as a barrier to advancing economic development.⁶⁶ Additionally, First Nations service providers have expressed challenges in attaining spectrum licenses due to the costs associated with bidding on spectrum licenses, and the impacts that have restricted their economic development opportunities.⁶⁷ Another example of First Nations costs to access spectrum includes the 2024 Auction of Residual Spectrum Licenses. The auction included an allocation to the “Chief and council on behalf of the Norway House Cree Nation”. The Norway House Cree Nation won four licenses in total, however, the total price for the licenses was \$600,000.⁶⁸

First Nations face an estimated \$5.2 billion connectivity infrastructure gap.⁶⁹ The estimated gap is based on the costs to provide all First Nations with fibre backbone, last mile, and mobile infrastructure costs, but does not include spectrum licensing costs. First Nations access to capital for spectrum licenses is limited as the Universal Broadband Fund (UBF)⁷⁰ and the CRTC’s Broadband Fund⁷¹ do not support the use of project funds for spectrum licensing. First Nations limited access to capital prevents many First Nations from feasibly participating in auctions to secure spectrum licenses. A no-cost approach to set-asides for First Nations provides licenses to First Nations without further reducing their capital capacity and can contribute to closing the connectivity gap. This process would go beyond a priority window to ensure First Nations are allocated spectrum bands for use within their territories and to advance their economic opportunities.

⁶⁵ ISED, *3500 MHz band spectrum auction*, retrieved from: <https://www.canada.ca/en/innovation-science-economic-development/news/2020/03/3500-mhz-band-spectrum-auction.html>

⁶⁶ Standing Committee on Indigenous and Northern Affairs, *Barriers to Economic Development in Indigenous Communities*, pg. 10, retrieved from:

<https://www.ourcommons.ca/Content/Committee/441/INAN/Reports/RP11714230/inanrp02/inanrp02-e.pdf>

⁶⁷ FMCC, Re: Consultation on Policy Changes in the 3500 MHz Band (3475-3650 MHz) and a New Licensing Process in Rural Areas. Reference number (DGSO-003-14): Canada Gazette, Part I, August 2014, 2014, retrieved from: <http://firstmile.ca/wp-content/uploads/FMCC-Comments-3500MHz-Consultation-Oct7.pdf>

⁶⁸ ISED, *2024 Auction of Residual Spectrum Licences - Provisional Results*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/node/2188#Nor>

⁶⁹ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 26, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

⁷⁰ ISED, *Universal Broadband Fund: Application Guide*, retrieved from: <https://ised-isde.canada.ca/site/high-speed-internet-canada/en/universal-broadband-fund-application-guide>

⁷¹ CRTC, *Telecom Regulatory Policy CRTC 2018-377*, retrieved from: <https://crtc.gc.ca/eng/archive/2018/2018-377.htm>

Internationally, similar processes for Indigenous groups have been adopted to ensure the Indigenous peoples have access to spectrum. The New Zealand Government has signed a Memorandum of Understanding (MOU) with the Māori Spectrum Working Group (MSWG). As part of the MOU, the New Zealand Government would allocate 20% of future commercial spectrum allocations, at no cost, to the Māori through the establishment of a Māori Spectrum Entity (MSE).⁷² The adoption of a similar process for First Nations in Canada would allow for First Nations to readily have access to spectrum at no cost. Under the set-aside process, First Nations can continue to build upon their networks and adapt to future technology requirements.

First Nations Spectrum Licensing Framework

To support First Nations connectivity, the Government of Canada must consider the co-development of a First Nations spectrum licensing framework. AFN Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty* calls for the Government of Canada to revisit, review, and redefine decision-making processes related to spectrum licensing. This process must be done in a way that upholds First Nations' rights, title, and Treaty rights in alignment with the UN Declaration and the principles of FPIC.⁷³ The co-development of a distinctions-based First Nations spectrum licensing framework will continue to remove barriers for First Nations in accessing spectrum while ensuring spectrum licenses within First Nations territories are allocated with First Nations consent and upholding First Nations rights.

The co-development of a First Nations spectrum licensing framework can address the jurisdictional shortcomings of the IPW Policy Framework. First Nations must be given greater jurisdiction over spectrum management within First Nations territories. An opportunity to identify First Nations jurisdictions and processes in spectrum management is through the development of a First Nations spectrum licensing framework. UN Declaration Article 32 declares that "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."⁷⁴ Within the First Nations spectrum licensing framework, the inclusion of First Nations' recognition of the inherent rights of natural resources within their territories ensures First Nations rights are upheld. The continued lack of First Nations jurisdiction over spectrum can contribute to the connectivity gap and the loss of economic and social opportunities that access and control over spectrum management can provide. The First Nations spectrum licensing

⁷² Howell & Tang, *Using spectrum allocations to address indigenous rights claims: The case of New Zealand, Telecommunications Policy*, Volume 47, Issue 10, 2023, retrieved from: <https://www.sciencedirect.com/science/article/pii/S0308596123001532>

⁷³ AFN Resolution 08/2023, *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty*

⁷⁴ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, pg. 23, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

framework can determine how to allocate spectrum within First Nations territories while ensuring First Nations are part of the process and benefitting from the licensing.

An area to support First Nations access to spectrum is re-defining spectrum licensing measures for current licensing mechanisms. The First Nations spectrum licensing framework can address spectrum licensing measures such as subordinate licensing to allow First Nations service providers increased access to spectrum in their regions. A subordinate license supports access to spectrum through agreements between a licensed party and a non-licensed party.⁷⁵ Under the current measures, First Nations connectivity organizations have faced challenges in entering agreements with license holders for subordinate licensing due to the lack of incentives for sharing spectrum with potential competitors.⁷⁶ The 2018 Auditor General of Canada's report on Connectivity in Rural and Remote Areas also identifies the challenge of incentivizing license holders to make spectrum available through subordinate licensing.⁷⁷ To assist with spectrum sharing, the 2023 Auditor General of Canada's report recommended publishing a map and a database with accurate information on licenses, including the names of licensees and the coverage area.⁷⁸ Within the First Nations spectrum licensing framework, the subordinate licensing process can be redefined to encourage First Nations access to spectrum, and additional measures can be outlined to support subordinate licensing for First Nations. Since the adoption of spectrum licensing auctions in Canada, spectrum licenses have been allocated for billions of dollars. The 3500 MHz band auction alone resulted in nearly nine billion dollars in spectrum licensing revenue for Canada.⁷⁹ These licenses have included First Nations territories within the spectrum zones;⁸⁰ however, licenses have not been allocated to First Nations nor have the First Nations received any benefits from the revenues generated or monetary compensation for its use on their territories.

Article 28 of the UN Declaration recognizes the rights of First Nations in seeking restitution or compensation for resources used without their free, prior, and informed consent.⁸¹ First Nations must be provided compensation for spectrum licenses within their territories that were allocated without the free, prior and informed consent of the First Nation. The co-development

⁷⁵ Industry Canada, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, pg. 6, retrieved from: https://publications.gc.ca/collections/collection_2022/isde-ised/iu64/lu64-41-4-2015-eng.pdf

⁷⁶ AFN Discussions with FMCC, September 2024

⁷⁷ Office of the Auditor General of Canada, *Report 1—Connectivity in Rural and Remote Areas*, 2018, retrieved from: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html#hd4c

⁷⁸ Auditor General of Canada, *Connectivity in Rural and Remote Areas*, pg. 18, 2023, https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202303_02_e.pdf.

⁷⁹ ISED, *Auction of Spectrum Licences in the 3500 MHz Band*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/auctions/auction-spectrum-licences-3500-mhz-band>

⁸⁰ ISED, *Service areas for competitive licensing*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/service-areas-competitive-licensing>

⁸¹ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, pg. 20, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

of a First Nations spectrum licensing framework can include processes for spectrum licensing revenue-sharing to First Nations. Additionally, it provides a revenue stream that First Nations can use to invest in areas such as connectivity within the First Nation.

For previous auctions that have licensed spectrum within First Nations territories without the free, prior, and informed consent of the First Nations, Canada must consider retroactive payments to First Nations. Canada has policies and processes to address specific claims through negotiations with First Nations.⁸² A similar process can provide First Nations with revenues from previous spectrum auctions that included First Nations territories. The AFN's Closing the Infrastructure Gap by 2030 (CTIG) report identified an investment of \$5.2 billion required to close the First Nations connectivity gap.⁸³ The co-development of a spectrum licensing framework that includes remittance of license sales to First Nations would provide funds that could assist in closing the gap.

First Nations Connectivity Strategy

The co-development of a First Nations connectivity strategy is an opportunity for ISED to identify an action plan for connecting First Nations to high-speed connectivity. The strategy would provide a First Nations focus to connecting to high-speed internet services and would align with Canada's existing 2030 target. A First Nations connectivity strategy has been recommended through AFN Resolutions 32/2018, *Strengthening on-reserve connectivity*,⁸⁴ and 30/2021, *Government Income Support Programs and First Nations Digital Connectivity*.⁸⁵ Within the resolutions, the First Nations-In-Assembly resolved to call upon ISED to collaborate with First Nations on a comprehensive broadband strategy with measurable deliverables and dedicated First Nations broadband width. Since the passing of the 2018 AFN resolution, Canada has released the rural economic development strategy, *Rural opportunity, national prosperity: An Economic Development Strategy for rural Canada*⁸⁶ and the connectivity strategy, *High-Speed Access for All: Canada's Connectivity Strategy*.⁸⁷ Both of the strategies failed to include First Nations-specific targets and measures for accessing high-speed connectivity.

The lack of targets and measures has resulted in First Nations being the lowest connected group within Canada, with only 38% of First Nations having access to high-speed wired

⁸² Crown-Indigenous Relations and Northern Affairs Canada, *The Specific Claims Policy and Process Guide*, retrieved from: <https://www.rcaanc-cirnac.gc.ca/eng/1100100030501/1581288705629>

⁸³ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 26, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

⁸⁴ AFN Resolution 32/2018, *Strengthening on-reserve connectivity*

⁸⁵ AFN Resolution 30/2021, *Government Income Support Programs and First Nations Digital Connectivity*

⁸⁶ ISED, *Rural opportunity, national prosperity: An Economic Development Strategy for rural Canada*, retrieved from: <https://ised-isde.canada.ca/site/rural/sites/default/files/documents/red-strategy-e.pdf>

⁸⁷ ISED, *High-speed Access for All: Canada's Connectivity Strategy*, retrieved from: https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

services,⁸⁸ and 8% to mobile services of 4G (LTE) or above.⁸⁹ The co-development of a First Nations connectivity strategy can identify First Nations-specific connectivity targets based on the needs of First Nations. The targets would support First Nations connectivity by creating a data comparison point between First Nations' current connectivity levels and the expected targets. This data can be used for new First Nations-specific funding programs and funding streams to ensure funded projects support First Nations in reaching the connectivity strategy targets.

The co-development of a First Nations connectivity strategy can also address areas within Canada's existing connectivity strategy to further support First Nations. The strategy can expand upon existing information to identify First Nations funding gaps, dedicated connectivity funding programs, and measures to advance the collection of First Nations-specific data relating to connectivity access. The strategy could also expand upon collaboration efforts to include First Nations in connectivity policy development. AFN Resolution 19/2020, *Supporting First Nations with connecting to the Internet*, calls upon ISED to work with First Nations to establish a network of professionals.⁹⁰ Similarly, Canada's connectivity strategy committed to establishing an expanded "Centre of Expertise" to improve broadband coordination.⁹¹ ISED, through collaboration with First Nations, can expand upon the Centre of Expertise within the First Nations connectivity strategy to include First Nations and First Nations connectivity organizations in the existing Center of Expertise, and for the creation of a First Nations-specific Centre of Expertise. The inclusion of First Nations within the Centre of Expertise can identify barriers for First Nations in accessing broadband and can provide technical advice relating to First Nations connectivity.

Eligibility Criteria

ISED has outlined three options for eligibility criteria for applications to the IPW: community support-based, applicant-based, and project-based options. First Nations are diverse in preparedness and experience in spectrum management. The adoption of rigorous eligibility criteria does not provide the flexibility needed to support First Nations. First Nations must be able to choose the eligibility option they identify as meeting their needs. Flexible eligibility criteria will allow for First Nations greater control over the spectrum process and can lead to

⁸⁸ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 169, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

⁸⁹ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 188, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

⁹⁰ AFN Resolution 19/2020, *Supporting First Nations with connecting to the Internet*

⁹¹ ISED, *High-speed Access for All: Canada's Connectivity Strategy*, pg. 10, retrieved from: https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

greater adoption of the IPW and First Nations access to spectrum licenses, while a blanket approach may create a gap for First Nations in accessing spectrum.

Beyond the IPW Spectrum Policy Framework deadline, ISED must continue to consult with First Nations to determine eligibility criteria that meet their needs. ISED must also ensure First Nations rights to make decisions that affect their lands, resources, and connectivity are upheld within applications to the IPW, and is completed with the free, prior, and informed consent of the applicable First Nations within the spectrum licensing zone. To ensure these processes are followed, ISED must provide feedback mechanisms for First Nations to express their experiences with the eligibility process. ISED must also have the flexibility to refine the eligibility process in the future using the feedback from the First Nations. Additionally, ISED must provide capacity-building programs and training opportunities to enable First Nations to actively participate in the IPW, access spectrum, and provide feedback to the framework.

Community Support-Based Approach

First Nations must have increased jurisdiction over their resources within their territories. The community support-based approach provides the initial step toward ensuring First Nations have control over spectrum within their territories. The community support-based approach requires written support from the community, band council, settlement, or a relevant governing body.⁹² With this option, applications may be considered eligible if they can demonstrate support from the Indigenous communities within the license area through documentation such as letters of support from the community leaders, a band council resolution, or similar documentation based on the governing structure of the First Nation. Demonstrating support from a First Nation is critical to ensure First Nations rights are upheld. Applicants under this approach must prioritize meaningful engagement with the First Nations by involving the First Nations members, leaders, and stakeholders from the outset to ensure the application aligns with the First Nations goals, plans and strategies. Requiring IPW applicants to demonstrate First Nations support also allows for increased control in spectrum management. First Nations have control over determining the organizations they wish to support. This can lead to economic opportunities such as collaborations with prospective applicants, and the option to approve initiatives that benefit their members and economy.⁹³

The potential challenges for First Nations include having limited capacity to ensure applications benefit the First Nation. Historically, First Nations have had limited access to spectrum and may

⁹² ISED, *Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework*, 2024, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/improving-indigenous-access-spectrum-draft-indigenous-priority-window-spectrum-policy-framework>

⁹³ Charles Bighead, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Charles Bighead Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

have resulted in gaps in First Nations spectrum management preparedness. This gap includes spectrum knowledge, skilled worker capacity, and limited resources to properly evaluate applicant's proposals. Additionally, there is the potential for creating "shell" companies that use the partnership to access Indigenous procurement opportunities.⁹⁴ This approach also raises concerns that allocation to non-Indigenous organizations can impact Indigenous ownership of the spectrum in the future.⁹⁵ ISED, in partnership with Federal departments such as ISC, must support First Nations with capacity initiatives and funding to ensure First Nations have the knowledge, skills, and resource capacity to evaluate IPW spectrum proposals.

Applicant-Based Approach

The applicant-based approach adopts the definitions and criteria the Government of Canada applies when awarding contracts to Indigenous businesses. This approach includes requirements such as being registered in Canada's Indigenous Business Directory or being registered in a beneficiary business list to acquire a spectrum license.⁹⁶ The applicant-based approach ensures First Nations businesses will have access to the spectrum instead of private and public sector entities.⁹⁷ It also allows for the quick validation of applicants and can avoid delays in licensing spectrum that verification of Indigenous businesses brings.⁹⁸ Utilizing the applicant-based approach must include NACCA's Indigenous Business Definitions⁹⁹ to ensure Indigenous-led definitions are used to clarify eligibility for the IPW. Similarly, AFN Resolution 49/2021, *Next Steps on First Nations and Procurement*, calls on the federal government to define First Nations businesses using a First Nations-led approach based on First Nations rights of self-determination.¹⁰⁰ The Government of Canada must continue to work with First Nations

⁹⁴ NACCA, *Transforming the Indigenous Procurement Process in Canada: A Literature Review, Qualitative Analysis, and Recommendations*, pg. 38, 2021, retrieved from: <https://nacca.ca/wp-content/uploads/2022/05/2.-Transforming-Procurement-Process-Academic-Research-Final-English.pdf>

⁹⁵ Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁹⁶ ⁹⁶ ISED, *Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework*, 2024, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/improving-indigenous-access-spectrum-draft-indigenous-priority-window-spectrum-policy-framework>

⁹⁷ Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁹⁸ Broadband Communications North, *Comments to ISED re Notice on Improving Indigenous Access to Spectrum*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

⁹⁹ NACCA, *National Indigenous Business Definition*, retrieved from: <https://nacca.ca/national-indigenous-business-definition/>

¹⁰⁰ AFN Resolution 49/2021, *Next Steps on First Nations and Procurement*.

to define First Nations businesses and incorporate the definitions into their procurement processes.

The concerns against the applicant-based approach include the lack of capacity for Indigenous businesses to be registered in the federal government's Indigenous Business Directory. Further, First Nations that are expanding capacity through partnerships with non-Indigenous organizations could be ineligible to qualify for the IPW under the applicant-based approach for 51% Indigenous business ownership.¹⁰¹ Additionally, this process provides a business-first approach that relies on a self-declaration process that lacks verification on Indigenous identity.¹⁰² This process does not recognize First Nations decision-making within the process, nor does it ensure the First Nations within the spectrum territories have control over the spectrum within their territory. ISED, and the Government of Canada more broadly, must ensure First Nations rights are upheld within processes in accordance with the UN Declaration, and the principles of FPIC by including First Nations in the application selection process. Additionally, the adoption of NACCA's Indigenous Business Definitions within the application process can provide clear definitions for verification purposes as part of the IPW.

Time-limited Window

In February 2024, the AFN submitted a letter to the Honourable François-Philippe Champagne, the Minister of Innovation, Science, and Industry. The letter requested a moratorium on spectrum licensing and permits within First Nations' traditional territories until consultations with First Nations can take place for the co-development of a refined spectrum license decision-making process that aligns with First Nations rights and titles. Within the letter, the need for prolonged periods of consultations was highlighted to ensure First Nations are supported in connecting to the internet. A similar position applies to the IPW time-limited window, where First Nations decisions must be acknowledged through a priority period longer than 12 months. ISED must provide prolonged periods for application intakes and extended application deadlines for First Nations to adequately inform and accommodate First Nations with limited resources and capacity.

A priority window must prioritize First Nations seeking access to spectrum licenses. The priority window requires a prolonged period to ensure that the spectrum within First Nations is allocated in a way that supports First Nations in connecting to the Internet. From submitted calls for comments on the IPW, First Nations respondents recognized the complexities of

¹⁰¹ Cree Nation Government, Eeyou Communications Network, James Bay Cree Communications Society, *Submission to Innovation, Science, and Economic Development (ISED)*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹⁰² Sonntag, Ridgen, Sangster, Bird, Boutilier, *Billions in federal contracts awarded to 'Indigenous' enterprises without verification*, 2024, retrieved from: <https://globalnews.ca/news/10700685/federal-contracts-indigenous-enterprises-canada/>

assigning a deadline for an application window to the IPW. Concerns for a period longer than 12 months included the impact it may have on broader connectivity efforts.¹⁰³ Other responses noted that access to spectrum as a natural resource is a non-ceded right¹⁰⁴ and timelines should reflect the need to accommodate First Nations' priorities and lived realities, especially in rural and remote areas.¹⁰⁵ A recommendation from the first round of submitted comments called for the time-limited window to be extended to 24 months, or two years, to reflect the realities of First Nations businesses operating in rural and remote areas.¹⁰⁶ Additionally, considerations were made for the spectrum deployment timeline and the need to reflect challenges faced in rural and remote regions.

First Nations are unique in experiences and priorities. A 12-month window may not provide First Nations with enough time to become informed of the available spectrum, nor to set aside the resources and capacity needed to apply or review applications to the licenses in the framework.¹⁰⁷ A pan-Indigenous approach will not provide the length required for many First Nations to apply to the IPW. Outreach is essential to ensure First Nations are aware of connectivity opportunities, and to hear feedback from them. ISED must continue their outreach efforts to First Nations. The process requires more time and involvement than providing an email campaign, especially to disconnected Nations. One outreach activity should include a forum hosted by ISED for First Nations, First Nations businesses and technicians to discuss spectrum. Within the forum, First Nations may provide a time-limited window target that fits the needs of First Nations.

Outside of the proposed IPW framework, an extended period process must also be followed for consultations on any ISED policy relating to First Nations. The Government of Canada is bound by the duty to consult and to accommodate Indigenous and Treaty Rights.¹⁰⁸ A prolonged consultation period accommodates First Nations through extended opportunities to hear of the consultation and provide feedback to inform ISED's policy development. ISED has already taken similar measures to provide a longer period to accommodate First Nations feedback as shown in the six-month IPW Policy Framework consultation period. While it was a step toward flexible timelines to accommodate First Nations, further measures to extend consultation periods must

¹⁰³ Ibid.

¹⁰⁴ Broadband Communications North, *Comments to ISED re Notice on Improving Indigenous Access to Spectrum*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Charles Bighead, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Charles Bighead Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹⁰⁸ Crown-Indigenous Relations and Northern Affairs Canada, *Government of Canada and the duty to consult*, retrieved from: <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>

be considered. ISED must consider adopting a First Nations consultation policy, in co-development with First Nations, to determine adequate consultation periods for First Nations in responding to policy developments.

Conditions of License

The conditions to hold and renew spectrum licenses include areas such as deployment requirements, fees, reporting requirements, and adherence to technical standards.¹⁰⁹ ISED must ensure First Nations are provided licenses under the IPW. Given First Nations' limited involvement in Canada's spectrum licensing processes to date, there may exist challenges for First Nations in meeting the level of preparedness to comply with current conditions of licenses. The process requires ISED to engage with First Nations and First Nations organizations to identify barriers in the existing conditions of license and adopt flexible requirements to ensure First Nations can access the spectrum within their territory.¹¹⁰ As part of Canada's Connectivity Strategy, *High-Speed Access for All*, the Government of Canada is committed to provide improved mobile access for Canadians by 2030.¹¹¹ Spectrum licensing conditions that seek to improve spectrum access to First Nations will support Canada in meeting its mandates. ISED, in collaboration with Federal departments including ISC, must provide First Nations with capacity funding, resources and training to reduce the barriers to accessing spectrum for mobile connectivity for First Nations.

Deployment Requirements

The current deployment requirements create barriers for First Nations in accessing spectrum licenses. For example, population statistics as a license requirement for rural and remote regions is a barrier that must be reviewed with meaningful First Nations consultations. Applying broad population statistics, internet service providers can meet requirements for servicing a licensed area without needing to service First Nations.¹¹² This is especially possible for First Nations in licensing zones with low populations. For example, in the FMCC's 2014 submission to the *Consultation on Policy Changes in the 3500 MHz Band (3475-3650 MHz) and a New*

¹⁰⁹ ISED, *Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework*, 2024, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/improving-indigenous-access-spectrum-draft-indigenous-priority-window-spectrum-policy-framework>

¹¹⁰ Broadband Communications North, *Comments to ISED re Notice on Improving Indigenous Access to Spectrum*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹¹¹ ISED, *High-speed Access for All: Canada's Connectivity Strategy*, pg. 8, retrieved from: https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

¹¹² Cree Nation Government, Eeyou Communications Network, James Bay Cree Communications Society, *Submission to Innovation, Science, and Economic Development (ISED)*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

Licensing Process in Rural Areas, the FMCC highlighted the service coverage of the Northern Ontario Tier 2-009 license zone.¹¹³ Within the example, Northern Ontario First Nations were serviced by K-Mobile, a community-based service provider, rather than Tier 2-009 spectrum license holders, including Rogers, Bell, and TELUS.¹¹⁴

First Nations must be consulted to determine the processes and requirements needed to determine coverage for the licensing process. First Nations control over spectrum licensing within their territories ensures First Nations will be covered under the license conditions.¹¹⁵ To further ensure First Nations are supported in accessing spectrum, the conditions can include geographic-based license requirements that include First Nations. The inclusion of servicing First Nations within a license area will ensure that First Nations are factored into coverage requirements. Adopting this condition can lead to increased wireless coverage for First Nations.¹¹⁶ The conditions can also support First Nations connectivity by ensuring license holders collaborate on the service delivery with local First Nations. The service delivery would include collaboration between the First Nation and the license holder for fibre expansion and tower leases.¹¹⁷ As only eight percent of First Nations have 4G (LTE) mobile or higher services,¹¹⁸ increasing incentives to address spectrum infrastructure and service delivery on First Nations can assist in closing the connectivity gap.¹¹⁹

Fees

¹¹³ FMCC, *Re: Consultation on Policy Changes in the 3500 MHz Band (3475-3650 MHz) and a New Licensing Process in Rural Areas*. Reference number (DGSO-003-14): *Canada Gazette, Part I, August 2014*, 2014, retrieved from: <http://firstmile.ca/wp-content/uploads/FMCC-Comments-3500MHz-Consultation-Oct7.pdf>

¹¹⁴ Canada, *Final Results — 700 MHz Auction (2014)*, 2014, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/spectrum-allocation/auctions/700-mhz-2014/final-results-700-mhz-auction-2014>

¹¹⁵ Cree Nation Government, Eeyou Communications Network, James Bay Cree Communications Society, *Submission to Innovation, Science, and Economic Development (ISED)*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹¹⁶ Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

¹¹⁷ Ibid.

¹¹⁸ AFN *Closing the Infrastructure Gap*, pg. 187, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

¹¹⁹ Ian Phillips, *Comments received on SPB-002-24 - Improving Indigenous Access to Spectrum: Draft Indigenous Priority Window Spectrum Policy Framework: Norway House Cree Nation Online Submission*, retrieved from: <https://ised-isde.canada.ca/site/spectrum-management-telecommunications/en/learn-more/key-documents/consultations/comments-received-spb-002-24-improving-indigenous-access-spectrum-draft-indigenous-priority-window>

Fees for spectrum licenses create a barrier for First Nations to access spectrum. The Auditor General's report, *Connectivity in Rural and Remote Areas*, reported that ISED does not conduct a comprehensive analysis of the affordability of internet access. The report highlights affordability as a crucial factor in guaranteeing access to the internet.¹²⁰ First Nations face realities such as geographic location or low population bases that deter internet service providers from servicing First Nations. Internet service providers that provide connectivity to First Nations may also have low returns on investments.¹²¹ The costs to access spectrum licenses, including through sub-licensing processes, can require the internet service providers to charge higher prices for their services.¹²²

Eliminating costs to First Nations in accessing spectrum reduces the expenses incurred for connectivity within the First Nation and can impact consumer pricing and adoption. A reduced consumer cost can result in more First Nations members being connected to the internet. The elimination of spectrum fees also reduces overall costs for connectivity projects. First Nations service providers have expressed challenges in attaining spectrum licenses due to the costs associated with bidding on spectrum licenses. The prohibitive costs for spectrum licenses have created restrictions in establishing or expanding telecommunication operations.¹²³ The cost reduction provides a stronger business case for service providers to connect rural and remote First Nations and supports small internet service providers in expanding their scale of operations. The Government is committed to providing increased mobile connectivity access and wired high-speed coverage by 2030.¹²⁴ As only 38% of First Nations have access to high-speed wired services,¹²⁵ and 8% to mobile services of 4G (LTE) or above,¹²⁶ eliminating the fees to license spectrum for First Nations is a step toward closing the gap and reaching the 2030 targets.

¹²⁰ Auditor General of Canada, *Connectivity in Rural and Remote Areas*, pg. 10, 2023, https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202303_02_e.pdf.

¹²¹ Mundie, *Many Indigenous communities lack internet infrastructure. Some are building it themselves*, retrieved from: <https://nationalpost.com/feature/left-behind-indigenous-communities-internet>

¹²² GSMA, *The Impact of Spectrum Prices on Consumers*, pg. 13, retrieved from: <https://www.gsma.com/connectivity-for-good/spectrum/wp-content/uploads/2019/09/Impact-of-spectrum-prices-on-consumers.pdf>

¹²³ FMCC, Re: Consultation on Policy Changes in the 3500 MHz Band (3475-3650 MHz) and a New Licensing Process in Rural Areas. Reference number (DGSO-003-14): Canada Gazette, Part I, August 2014, 2014, retrieved from: <http://firstmile.ca/wp-content/uploads/FMCC-Comments-3500MHz-Consultation-Oct7.pdf>

¹²⁴ ISED, *High-speed Access for All: Canada's Connectivity Strategy*, pg. 8, retrieved from: https://ised-isde.canada.ca/site/high-speed-internet-canada/sites/default/files/attachments/ISED_19-170_Connectivity_Strategy_E_Web.pdf

¹²⁵ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 169, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

¹²⁶ AFN, *Closing the Infrastructure Gap by 2030*, 2023, pg. 188, retrieved from: <https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf>

Canada has committed to implementing the principles and rights set out in the UN Declaration through the release of the UNDA Action Plan.¹²⁷ Article 26 (i) of UNDRIP declares that “Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired.”¹²⁸ As spectrum is a natural resource within First Nations territories, the Government of Canada, to maintain their commitment to implementing the UN Declaration, must eliminate fees for spectrum licenses for First Nations use within their territories. This process acknowledges First Nations' rights over resources within their territories and provides spectrum at no cost for connectivity development.

Reporting Requirements

Reporting requirements must be conducted through a co-development process with First Nations to accommodate for First Nations' unique experiences and priorities. Using existing reporting requirements creates barriers for First Nations in providing timely reporting and can place an administrative burden on First Nations. The Report of the Standing Committee on Indigenous and Northern Affairs, *Barriers to Economic Development in Indigenous Communities*, recognizes administrative burdens as a barrier to Indigenous economic development.¹²⁹ The co-development of First Nations spectrum licensing reporting requirements removes barriers by adjusting the reporting to fit the needs of First Nations. This process can reduce the administrative burden First Nations face.

Additionally, the co-development process can include requirements that provide First Nations-specific data that can be used to assess the impact of the spectrum licensing and capture connectivity data within First Nations to identify priority areas for connectivity projects. ISED must continue to consult with First Nations in the co-development of reporting requirements for First Nations spectrum licensing including ensuring data-collection processes follow the First Nations principles of Ownership, Control, Access and Possession (OCAP) to support First Nations jurisdiction over data collection within their First Nation.¹³⁰ The reporting requirements must also provide flexible timelines to reduce the administrative burden and ensure spectrum licenses are held and renewed by First Nations within their territories.

Engagement with First Nations to Advance Economic Reconciliation

Engagement with First Nations requires a willingness to work closely with First Nations rightsholders. The Government of Canada is bound by the duty to consult and to accommodate

¹²⁷ Canada, *The Action Plan*, retrieved from: <https://www.justice.gc.ca/eng/declaration/ap-pa/index.html>

¹²⁸ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, pg. 19, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹²⁹ Standing Committee on Indigenous and Northern Affairs, *Barriers to Economic Development in Indigenous Communities*, 2022, pg. 1, retrieved from: <https://www.ourcommons.ca/Content/Committee/441/INAN/Reports/RP11714230/inanrp02/inanrp02-e.pdf>

¹³⁰ FNIGC, *The First Nations Principles of OCAP*, retrieved from: <https://fnigc.ca/ocap-training/>

Indigenous and Treaty Rights.¹³¹ The UN Declaration outlines the principles of FPIC on any resource use within First Nations.¹³² FPIC is a mandatory process for working with First Nations. ISSED should lead consultations fairly, equitably, and transparently. In addition, the total cost of entering meaningful consultation with First Nations shall be the responsibility of Canada, including but not limited to providing technical and financial resources so that First Nations do not bear any costs of the consultation process. Should aspects of consultation and accommodation be delegated to the proponent, ISSED must maintain an oversight role over the entire process unless the First Nation requests otherwise.

As each First Nation has the right to self-determination, no one-size-fits-all approach will adequately guide engagement with all First Nations. Connectivity-related initiatives inherently require connection to disconnected parties. Several alternatives to emailing can be utilized to contact First Nations on available spectrum auctions, including:

- i. Calling First Nations band offices.
- ii. Mailing announcements to First Nations band offices.
- iii. Attending in-person National and Regional First Nations conferences and assemblies to provide information on spectrum licensing opportunities.
- iv. Travelling to identified disconnected First Nations to provide announcements on opportunities.
- v. Work with the Assembly of First Nations and other National Indigenous Organizations.
- vi. Post the information on various First Nations media outlets.
- vii. Utilize the Government of Canada's existing distribution systems.

Outreach is essential to ensure First Nations are aware of connectivity opportunities. The process requires time and engagement, especially in disconnected First Nations. ISSED must provide prolonged periods for application intakes and extended application deadlines for First Nations. The extended periods for First Nations provide time to inform First Nations and can accommodate First Nations with limited resources and capacity. The extended periods also allow for more time for First Nations to provide their feedback on opportunities without creating administrative burdens that shortened timelines produce.

As one listed approach to reporting First Nations mentions, collaborating with National Indigenous Organizations such as the AFN can enable the utilization of existing outreach

¹³¹ Crown-Indigenous Relations and Northern Affairs Canada, *Government of Canada and the duty to consult*, retrieved from: <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>

¹³² UNDRIP, Article 32 (ii), pg. 23, retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

frameworks, strategies, and contacts to ensure that First Nations are appropriately notified of any spectrum-related opportunities. While collaboration is a critical concept in outreach activities, ISED must ensure that funding is available for outreach activities to raise or maintain the capacities of National Indigenous Organizations or other collaborators to assist with outreach efforts.

Concluding Comments

As it stands, many First Nations are disconnected from an increasingly interconnected world and we can no longer allow for this. The broad impacts of connectivity play an essential role in the future of First Nations economic and social determinants. To continue the work, it is necessary for First Nations capacity funding, resources, and training to reduce barriers to connecting First Nations. The Government of Canada must continue to engage with First Nations to remove barriers and provide new measures for connectivity access including spectrum. A First Nations Centre of Expertise, comprising federal department representatives, First Nations organizations including the AFN, and First Nations connectivity expert groups must be considered to address barriers to connecting First Nations.

For spectrum, a moratorium on all sales and renewals of any spectrum licenses and permits on Indigenous traditional territories is needed, until proper consultations have been completed with First Nations governments and mandated organizations. First Nations must be given greater control and jurisdiction over spectrum management within First Nations territories. Recognition of First Nations inherent rights over natural resources within their territories is a step toward advancing First Nations jurisdiction and ensuring their rights are upheld.

First Nations continue to face barriers in accessing spectrum, including costs for licensing. To eliminate this barrier and provide greater accessibility for First Nations, ISED must make spectrum bands available for First Nations through a no-cost set-aside process and the elimination of fees for spectrum licenses within First Nations territories. Compensation must be provided to First Nations for spectrum licenses within their territories that were allocated without the free, prior, and informed consent of the First Nations, and considerations must be made for retroactive payments to First Nations. The co-development of a First Nations spectrum licensing framework is an opportunity to address spectrum licensing revenue-sharing while upholding First Nations' rights, title, and Treaty rights in alignment with the UN Declaration and the principles of FPIC.

ISED must continue to engage with First Nations rightsholders on spectrum access and deployment within First Nations territories. A great way to engage with First Nations is through a forum hosted by ISED for First Nations, First Nations businesses, and technicians to discuss spectrum. As part of the engagement, and extending to any application processes, ISED must provide adequate time for intakes and extended deadlines for First Nations to adequately inform and accommodate First Nations with limited resources and capacity. ISED must consider

adopting a First Nations consultation policy, in co-development with First Nations, to determine adequate consultation periods for First Nations in responding to policy developments.

For the IPW, data must be made available for First Nations to identify barriers to accessing spectrum. Data on First Nations spectrum licenses and the number of Indigenous applications and partnership types are two data sets that can provide information on the prosperity of an IPW. For broader use, applying the IPW Framework to different bands of spectrum, such as Tier 4 and Tier 5 spectrum bands, must be considered. Beyond the IPW Spectrum Policy Framework deadline, ISED must continue to consult with First Nations to determine eligibility criteria that meet their needs. ISED must also ensure First Nations rights to make decisions that affect their lands, resources, and connectivity are upheld within applications to the IPW, and are completed with the free, prior, and informed consent of the applicable First Nations within the spectrum licensing zone.

It is also necessary to re-iterate that the recommendations from the Assembly of First Nations should not be considered as a replacement for consultations with First Nations rightsholders.