

ISED Consultation:

Improving Indigenous Access to Spectrum:

**Draft Indigenous Priority Window
Spectrum Policy Framework
SPB-002-24**

Reply Comments from the First Mile Connectivity Consortium

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October 1, 2024

Introduction

1. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers known as “community/regional intermediary organizations.” Our associate members are university and private sector researchers and others interested in Indigenous and community communications and telecommunication services for the public good. Our work focuses on innovative solutions to digital infrastructure and services with and in rural and remote regions and communities across Canada. More details about our members and activities are available at: <http://firstmile.ca>

2. FMCC represents the following First Nations organizations, (listed geographically from the Western to the Eastern regions of Canada):

- First Nations Technology Council (B.C.)
- Clear Sky Connections (Manitoba)
- Broadband Communications North (BCN) (Manitoba)
- Keewaytinook Okimakanak K-Net Services (Ontario)
- Western James Bay Telecom Network (Ontario)
- Matawa First Nations Management (Ontario)
- First Nations Education Council (FNEC) (Quebec)
- Eeyou Communications Network (Quebec)
- Atlantic Canada’s First Nations Help Desk (Atlantic Canada)

3. FMCC welcomes this proceeding on the development of an Indigenous Priority Window (IPW) to better facilitate First Nation, Métis, and Inuit access to electromagnetic spectrum. We appreciate ISSED’s attention to the consultative and systemic barriers that Indigenous service providers, businesses and communities accessing and utilizing spectrum licenses.

4. In this submission FMCC makes several recommendations to ISSED:

- adopt the UNDRIP Act (2021)¹ to ensure Indigenous rights and title, and treaty rights, are reflected in all aspects of ISSED’s activities, including but not limited to spectrum license allocations, funding programs, and consultation activities;
- working with other government departments and agencies, initiate a separate forum to review the broad issue of spectrum sovereignty and related matters;
- develop a Centre of Expertise for Indigenous spectrum matters to allow for inclusive, open and transparent discussion on the technical and process matters and policy options regarding Indigenous spectrum, and digital infrastructures and services more broadly;
- publish more information and more actively promote consultations associated with the spectrum licensing process – including for satellite licensing;
- work with the CRTC to set and enforce affordable access standards for all Canadians;
- improve mechanisms for subordinate licensing, and ensure that any such agreements clearly outline the rights and responsibilities of each party;
- adopt Indigenous spectrum license conditions with flexible deployment timeframes; and
- enable Indigenous-mandated organizations to define Indigenous spectrum license conditions and avoid basing coverage on population size or density alone.

¹ <https://www.justice.gc.ca/eng/declaration/index.html>

5. In this submission we raise the following issues in response to question 1.c. that asks what other measures should be considered to further support Indigenous connectivity, and then address specific questions posed by ISED.

Section A: Other Measures to support Indigenous Connectivity

Developing a “Centre of Expertise” with Indigenous rights-holders

6. FMCC stresses the need to clarify jurisdiction over electromagnetic spectrum in First Nation, Métis, and Inuit communities. While the broad issues of spectrum sovereignty and resource extraction extend beyond the scope of this consultation, and involve other government departments and agencies, it is essential for the Government of Canada to work with Indigenous peoples to clarify these matters. Spectrum rights have not been ceded, and the current spectrum licensing regime does not recognize First Nation, Métis, and Inuit entities as rights-holders.

7. Decision-making processes related to spectrum should be reviewed and redefined in a manner that respects and upholds First Nations’ rights, title and treaty rights as well as Canada’s obligation to bring federal legislation, law, and policy into alignment with the Government of Canada’s *UNDRIP Act*. This includes ensuring that First Nations are engaged as rights-holders – not simply stakeholders.

8. Spectrum policy extends beyond access and connectivity – it must include considerations of sovereignty and shared decision-making. An appropriate decision-making process regarding these matters includes First Nations leadership and First Nations-mandated entities meeting on an ongoing basis with federal departments and agencies including ISED, the CRTC and Indigenous Services Canada.

9. FMCC supports the Assembly of First Nations’ (AFN’s) proposal that the Government of Canada support and fund the development of a Centre of Expertise to assist First Nation communities across the country to develop, implement, and operate their own infrastructure. This Centre reflects past Industry Canada initiatives, such as the successful development of First Nations “Regional Management Organizations” to design and deliver First Nations SchoolNet.

10. We agree with AFN’s recommendation that the “creation of a Centre of Expertise must include the co-development of a First 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.”²

11. In 2002, the First Nations Regional Management Organizations set up a national network to discuss challenges, best practices, and strategic development related to First Nations broadband development and service delivery. That network became known as the Assembly of First Nations’ ICT Working Group. For almost two decades, FMCC members including K-Net, FNEC and Atlantic Canada’s First Nations Help Desk worked closely with the AFN on matters related to digital connectivity through this ICT working group.

² See: AFN resolution: 19/2020, Supporting First Nations with connecting to the Internet, p.5

12. FMCC members are ideal candidates for the development of a national Centre of Expertise. They have extensive experience building and operating networks in some of the most challenging geographies and climates in Canada. They also hold extensive technical and policy expertise in areas including telecommunications development and operations.

Overview of FMCC member organizations

13. First Nations Education Council (FNEC) in Quebec has been deploying and maintaining broadband connectivity since 2004 and supports all its member 26 schools and all public sectors (over 300) with fiber optic access. As owners of the fiber optic infrastructure, the First Nations delegate FNEC as the manager of their Fiber optic infrastructures, which provides a cost-effective and strategic approach to Broadband management at the public sector level. The FNEC also helped develop transport infrastructure to deliver fibre to the home in three First Nations communities.

14. Eeyou Communications Network (ECN) is a Cree majority- owned and operated not-for-profit telecommunications company that provides broadband carrier services for the 9 Cree communities of Eeyou Istchee and 5 municipalities of the James Bay region. ECN has built an independent all fibre network: an IP transit and ISP and have deployed FTTH systems to over 9,000 homes with 50Mbps unlimited internet, along with 200 channels of TV and toll-free phones, local access video and audio channels and an emergency information channel. They deliver advanced, reliable and cost-effective network access to health services including two hospitals and health boards, and about 30 points of service with a tele-health link to specialists and hospital centres. Their services to the education sector include two school boards, about 30 schools and post-secondary institutions, with a total of about 6,800 students with a need for distance education.

15. In recent years, ECN has worked with our Northern neighbours in Nunvik to run an undersea cable from Chisasibi to Whapmagoostui/Kuujujrapik which joins the Kativik Regional Government's (KRG) line along coast and function be the bridge between the southernmost point of ECN's network in Montreal. ECN has also extended its network south, working with the Atikamekw who are situated just south of the Eeyou Istchee region to improve their connectivity.

16. ECN is a founder of Eeyou Mobility Inc (EMI). Incorporated in 2019 through a partnership with SSI Canada and James Bay Eeyou Corporation, EMI is currently offering cellular services in all communities in the Eeyou Istchee James Bay region. EMI has finished cellular build out in communities and towns and is currently working on road coverage, including the Billy Diamond Highway.

17. Western James Bay Telecom Network (WJBTN) has provided cost effective fiber optic Internet and telecommunications services along the Western coast of James Bay since 2010. WJBTN offers carrier class services to the communities of Fort Albany, Kashechewan and Attawapiskat. These services include Transport Services, VLAN Services, LAN Extension, T1, Dark Fiber Leasing as well as tower collocation on our tower in Kashechewan.

18. Our fibre-to-the-home network – completed in 2022 – provides all our served communities with Internet access once only available in larger urban centres. Every home and business have access to Internet speeds up to 1Gbps.

19. WJBTN is proud to be a not-for-profit Indigenous-owned company that returns a significant amount of funds back into the communities through sponsorships and bursaries.

20. K-Net is Indigenous owned and provides Information and Communication Technologies (ICTs), telecommunication infrastructure and applications that support First Nation communities across Ontario as well as in other remote regions in Canada. This modern telecommunications network of fibre, coaxial cable, wireless and mobility focuses on providing affordable broadband for remote Indigenous communities in Northern Ontario who own, control and operate their first mile networks. Broadband enables remote communities to access critical services such as telemedicine, e-learning, telehome care, tele-justice, real time water quality monitoring, administration, employment, entrepreneurship, banking and everyday communications. Indigenous communities use broadband for everyday communication in their language and have developed language apps to strengthen the language. Indigenous youth are remaining connected to the land while strengthening their language, culture, heritage and traditional skills. KNet has the largest number of connections and the most diverse Indigenous broadband network in North America serving more than 100 Ontario First Nations and First Nation organizations.

21. Matawa Communications established The Broadband Project to improve the internet services and enhance the overall quality of life in 5 remote Matawa First Nation communities. The 5 communities that are part of the Broadband Project are: Eabametoong, Marten Falls, Neskantaga, Nibinamik, and Webequie with interconnection at Aroland. A working group was also formed by representatives of the 6 communities along with Matawa First Nations Management to find ways on how to access affordable high-speed internet for all community members within the remote communities. As a result of identifying the need to build a broadband network to the remote communities, the working group then formed the Rapid Lynx Telecommunications Corporation which will be owned and operated by the Matawa First Nation communities.

22. Broadband Communications North (BCN) is a not-for-profit incorporated entity, governed by a Board of Directors that is made up of representatives from tribal councils, territorial political organizations, and independent First Nation communities. Incorporated in 2002, BCN now services over 62 rural, northern, and remote communities in Manitoba. The BCN network is one of the largest Indigenous community networks in Canada, spanning over 1000 km, encompassing a large portion of the province of Manitoba. Services provided facilitate access to critical services, including health care (telehealth), education, justice, and governance.

23. Clear Sky Connections is a Not-For-Profit incorporated on March 31, 2017. The Assembly of Manitoba Chiefs (AMC) passed several resolutions that support the Building the Manitoba First Nations Network of the Future Initiative.³ Clear Sky Connections was incorporated under the authority of the Canada Not-for-profit Corporations Act and was registered as a not-for-profit organization on March 31, 2017. Its purpose action is to facilitate and support the deployment of affordable, reliable, high-speed Internet in all Manitoba First Nations communities where high-speed Internet is not available or otherwise being deployed and facilitate and support the training and employment of First Nations Community residents in the deployment, operation, and maintenance of high-speed internet.

³ ECC AUG.18-02, JUN-12.07, MAY-09.01, and ECC OCT-03.13

24. The First Nations Technology Council (FNTC) is an Indigenous-led, innovative non-profit mandated by First Nations leadership in British Columbia. We work to advance digital literacy, improve internet connectivity and provide guidance on data and digital technology for all 204 First Nations across the province.

ISED must reform its subordinate licensing regime

25. FMCC members note that current policies and practices, such as those related to the subordinate licensing process, can hinder First Nations-led telecommunications development. We urge ISED to reform its subordinate licensing regime to ensure that any such agreements clearly outline the rights and responsibilities of each party.

26. Several FMCC members have expertise with the existing subordinate licensing process. To our knowledge, the large commercial telecommunications providers that hold most of the spectrum licenses in Canada have no engagement protocol to guide their interactions and agreements with Indigenous partners. This is important to enable Indigenous telecommunications providers to develop and utilize spectrum licenses and resources in an efficient manner that benefits affected Indigenous communities. There is also no need to provide annual updates to sublicensees or ISED, such as requirements to demonstrate that they have engaged in consultation with participating Indigenous communities and are responsive to requests.

27. ISED should develop a more formal sub licensing regime that includes an engagement protocol (potentially informed by the Indigenous consultation and engagement guidelines being developed through the CRTC's review of the Broadband Fund (CRTC 2023-89)). Large telecom companies should provide an annual report to ISED that provides information about deployment activities by subordinate license holders.

28. Such requirements can help address barriers faced by Indigenous telecommunications providers. For example, KNet has offered cellular services in 26 communities in its service territory since 2015 through a subordinate licensing agreement with Rogers. KNet would like to expand those services but is prevented from doing so because of subordinate licensing conditions that stipulate that any installation of equipment must be approved by Rogers. Despite multiple attempts to gain permission, KNet has been unable to get Rogers to respond to its requests. This has effectively limited KNet's ability to provide services in communities that nobody else wants to service.

29. Clear Sky Connections in Manitoba reports challenges in providing cellular services when spectrum licenses restrict the number of repeaters in a territory. As Lyttonnet's intervention indicated, geographic features like mountains often require multiple repeaters to service communities that are in proximity.⁴

30. FMCC recommends that ISED require primary spectrum license holders to be more proactive and transparent in publishing information associated with the spectrum licensing process.

⁴ See Comments of Lyttonnet, April 30 2024

Section B: Comments on Indigenous Priority Window Policy objective

31. FMCC agrees with ISED's stated policy objective to support Indigenous applicants' access and use of spectrum to better provide vital services in their communities. However, as several parties indicated, access to spectrum alone will not adequately address current digital disparities. As noted during the September 17, 2024, Information Session on the IPW, while access to electromagnetic spectrum is critical, a spectrum license is not enough to solve digital divides.

32. The primary objective of this policy is to support Indigenous applicants' access and use of spectrum to better provide vital services in their communities, and FMCC members stress that Indigenous ownership of spectrum is an important aspect of this goal.

33. FMCC also agrees with Matawa Communications statement that spectrum is an important resource for First Nation Communities and essential to community safety, governance and well-being.⁵

34. However, spectrum is not the only requirement to provide communication services to Indigenous communities. We agree with Norway House's comments: "Spectrum aside, Norway House would like to see funding for backhaul fibre made available. Canadian First Nations vastly trail behind the rest of the nation in relation to connectivity. We laud ISED for the opportunity that spectrum provides, but need to ensure other factors, such as off-tariff leases, MVNO wholesale lease rates are reasonable, and allow for new innovative, Indigenous led approaches."⁶

35. FMCC advocates for a First Mile approach that prioritizes community needs and works to develop capacity to deploy and manage spectrum resources in First Nations communities. Currently, there is no available funding or assistance for feasibility studies and the initial stages of development of spectrum resources. Many First Nation communities lack in-house technical expertise and must hire consultants. These costs can act as a barrier to community network development. ISED and CRTC should collaborate to develop funding and technical support for First Nation, Métis, and Inuit communities to build and operate their own networks.

Section C: Eligibility for Indigenous Priority Spectrum

36. FMCC members note that in First Nations territories, the ultimate authority on development decision-making is with the elected leadership of communities. Elected leadership cannot transfer that authority to other groups or individuals.

37. Clear Sky advocates for a community-based licensing process in which the individual community owns and licenses spectrum to third-party entities. These entities must fulfill deployment requirements. In this scenario, the community owns the license and may choose to offer a subordinate license to another entity for an amount of their choosing.

38. ECN indicates that a community-based license is aligned with their own protocols and practices regarding development in the region. The Cree Nation Government is mandated by the

⁵ Comments of Matawa Communications, October 1, 2024.

⁶ See Comments of Norway House, April 30, 2024

communities to engage with the federal government on matters related to resource development, management and use.⁷

39. KNET feels strongly that a community-based option would effectively put First Nations in control of development. WJBTN agrees, noting that any solution to issues such as poor connectivity must come from the community.

Section D: Time-limited Window

40. We note that there is some variance in the initial submissions made by FMCC members regarding ISED's proposed time-limited window. It is difficult to recommend a specific time limit given the issues of jurisdiction of spectrum and its use have not been resolved in the context of First Nation treaties and agreements with the federal government.

41. ISED should be flexible regarding deployment timeframes to allow for potential delays and disruptions due to variable conditions such as short seasonal construction windows, equipment/material shortages, etc. This flexible approach to deployment timelines is reflected in other funded projects. For example, the CRTC approved requests by Northwestel to adjust deployment timelines for its FTTH project in Enterprise, based on the impacts of wildfires in the NWT.⁸ The Commission indicated that it would continue to consider change requests for events like wildfires, which represent only one of the many challenges operating in Canada's most remote regions.

42. The U.S. Federal Communications Commission (FCC) has granted 355 licenses for use of unassigned 2.5 GHz spectrum over rural Tribal lands. Initially, FCC required Tribal licensees to meet an interim deadline within two years of receiving their license, and a final deadline within five years. We note that the FCC has since extended these deadlines. Now, it requires Tribal Window licensees to meet an interim deadline within **four** years of an initial license grant and a final deadline within **eight** years of an initial license grant.⁹

43. ISED should adopt similar deadlines to those used by the FCC.

Section E: Conditions of License

44. ISED should not charge Indigenous parties fees for licenses issued through the IPW. If fees are required, they should only be nominal amounts used wholly to help administer the IPW program, such as to establish and maintain a government database of IPW license-holders.

45. License requirements in rural/remote regions should not only be based on population size or density. ECN's intervention demonstrates that in their service territory, a service provider could feasibly meet ISED's coverage requirement by offering services in the largest two non-Cree communities and not offer service to any Cree communities or major transportation routes.¹⁰

⁷ See Comments of CNG, ECN, JBCCS, April 30, 2024

⁸ See Telecom Order CRTC 2024-179

⁹ Federal Communications Commission. Public Notice. WIRELESS TELECOMMUNICATIONS BUREAU WAIVES 2.5 GHZ RURAL TRIBAL WINDOW SPECIFIC INTERIM AND FINAL PERFORMANCE DEADLINES. July 8, 2022.

¹⁰ See Comments by Cree Nation Government (CNG), Eeyou Communications Network (ECN), and James Bay Cree Communications Society (JBCCS), April 30, 2024.

46. IPW license should be provided on a long-term basis to provide more stability to Indigenous telecommunications providers.

47. Any IPW license renewal processes should be efficient and streamlined. One potential challenge for First Nations is that license renewal requirements that require demonstrated community support can be extremely time consuming (at least a year) and require human resources that are not always available. There is a need to make this process more efficient.

48. One suggestion to streamline the IPW spectrum license renewal process is to use a similar process to that used by the telcos when they increase tariffs. They are obligated to file and publish a public notice of any changes to tariffs and if any parties have concerns with those changes, they have an opportunity to respond within a specific timeframe. Otherwise, the license is approved for renewal.

49. ISED should reform and enforce its “use it or lose it” policy for spectrum licenses in underserved areas. FMCC members would like to obtain licenses in such regions directly (rather than through subordinate agreements), but the unused licenses are currently owned by telcos. ISED should have a mechanism for requiring such licenses to be released, if they are unused after a certain period of time.

Section F: Engagement

50. ISED’s Indigenous Spectrum Team has improved its efforts to meet with Indigenous parties through its active presence at conferences, virtual roundtables and discussions. We commend their efforts. However, there are many First Nation, Métis, and Inuit communities that are entirely unaware of this proceeding and its implications.

51. To reach these groups, ISED should continue its communication and outreach efforts and use a range of platforms including radio, social media, paper pamphlets mailed to Band Offices, and webinars.

52. ISED should also provide the Indigenous Spectrum Team with sufficient resources to allow for travel to communities. Visiting communities is the most effective means of communicating what the IPW is and how it can potentially benefit people. It is also an opportunity for policy makers to learn about the on-the-ground challenges and needs across diverse regions and geographies.

53. Organizations such as the Northern Innovation Centre and Blue Sky Net have mandates from communities and are used to disseminate information and funding. These and other organizations could assist in expanding participation and engagement with the IPW process. If helpful, FMCC can introduce ISED’s Indigenous Spectrum Team to these and other organizations.

Conclusion

54. We appreciate the opportunity to contribute to this Draft Policy Framework and remain available to address any questions or further issues.

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