

August 2, 2019

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Innovation, Science, and Economic Development Canada  
c/o Senior Director  
Spectrum Licensing and Auction Operations  
235 Queen Street (6<sup>th</sup> Floor, East Tower)  
Ottawa, Ontario K1A 0H5

Dear Sir/Madam:

**Re: *Canada Gazette, Part I, June 5, 2019, Notice No. SLPB-002-19 – Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band – Eastlink’s comments***

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Please find attached the comments of Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), in response to Canada Gazette Notice SLPB-002-19 – *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band*, and Notice No. SLPB-004-19 – *Extension to the comment period*.

We appreciate the opportunity to provide our views to the Department.

Sincerely,



Natalie MacDonald  
VP Regulatory

**INNOVATION, SCIENCE, AND ECONOMIC DEVELOPMENT CANADA  
CONSULTATION ON A POLICY AND LICENSING FRAMEWORK FOR SPECTRUM  
IN THE 3500 MHZ BAND**

**CANADA GAZETTE, PART I, June 5, 2019 (SLPB-002-19)**

**COMMENTS OF  
BRAGG COMMUNICATIONS INC., OPERATING AS EASTLINK**

**eastlink**

**August 2, 2019**

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), appreciates the opportunity to provide comments on the issues raised under SLPB-002-19 – *Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band* (the “Consultation”).
2. Under the Consultation, Innovation, Science and Economic Development Canada (“ISED”) seeks comments on its proposed auction and licensing framework for the spectrum available in the 3500 MHz band. Eastlink herein provides our comments. Eastlink submits that any failure to comment on a specific issue should not be interpreted as support or opposition where doing so is inconsistent with Eastlink’s interest. Eastlink reserves the right to comment on any additional issues in the reply phase of this consultation.

### **Spectrum critical to sustainable competition**

3. Eastlink supports and shares ISED’s clear objectives for this 3500 MHz policy and auction framework, which are intended to:
  - foster innovation, investment and the evolution of wireless networks by enabling the development and adoption of 5G technologies
  - support sustained competition, so that consumers and businesses benefit from greater choice
  - facilitate the deployment and timely availability of services across the country, including rural areas
4. Eastlink fully supports ISED’s view that for competition to exist to the benefit of Canadians, it must be facilities-based and sustainable competition. Eastlink submits that the above objectives demand a framework that ensures that wireless service providers already investing in mobile wireless networks and serving Canadian consumers have a reasonable opportunity to access the 3500 MHz spectrum, and particularly that regional service providers with limited resources compared to their large national competitors have reasonable access to the limited spectrum available under this auction.
5. Regional service providers have been investing hundreds of millions of dollars in mobile wireless networks since 2008, and access to this mid-band spectrum is critical for us to continue with our network expansion and service offerings, including for the provision of future 5G services.

6. ISED's proposal to auction this spectrum at Tier 4 levels (a proposal Eastlink supports), is consistent with the objective of facilitating deployment of services to rural areas. In fact, licensing spectrum over Tier 4 licence areas ensures that smaller operators are able to participate in the auction without being precluded from bidding on areas of interest that would otherwise be too costly (or outside their core service areas) at a Tier 2 level. However, the benefit of Tier 4 spectrum licence areas is lost if the auction does not also ensure that the very companies seeking access to the spectrum are reasonably able to bid on the spectrum. In this regard, it is also important that the pro-competitive measures be established to facilitate access to spectrum by service providers other than the national incumbents. If a set-aside is not established, the only successful bidders will be the national incumbents.
7. ISED's decisions to set aside spectrum in 2008, and in subsequent auctions, was instrumental to the entry of new regional competitors and has had a strong and positive impact on Canada's mobile wireless retail market, with per-use prices steadily declining, the most advanced networks in the world being widely deployed, and increasingly consumer-friendly policies and programs launching each year, driven largely by the competition from regional service providers. While a number of challenges remain, and will also need to be addressed (such as a review of roaming rates which are still excessive, and challenges in accessing wireless towers and infrastructure within a reasonable time and on reasonable terms), regional providers' access to this spectrum is a key component toward furthering the governments' objectives of increased wireless competition.
8. It is critical that a set-aside be established so that regional operators will have some chance at obtaining access to this important spectrum. It is also consistent with ISED's broader rural initiatives. ISED has repeatedly emphasized the importance of rural networks to ensure that all Canadians can participate equally in the digital economy, and is undertaking programs worth hundreds of millions of dollars to promote deployment of mobile wireless and other broadband services in rural areas in order to support these same policy objectives.<sup>1</sup> Eastlink submits that ensuring regional service providers have a reasonable opportunity to acquire this much needed spectrum under this auction is an economically efficient means of supporting rural deployment, as service providers with sufficient spectrum will make significant

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<sup>1</sup> Connect to Innovate <https://www.canada.ca/en/innovation-science-economic-development/programs/computer-internet-access/connect-to-innovate.html>

investments in rural areas, minimizing the need for reliance on Government funding for rural deployments or other funding initiatives.

9. Eastlink has responded to a number of ISED's questions below. We have not commented on all questions, but reserve the right to do so in the reply phase of this consultation.

### **Consultation questions**

***Q1A—ISED is seeking comments on its proposal to implement pro-competitive measures in the 3500 MHz auction.***

***Q1B – ISED is seeking comments on the use of a set-aside, an in-band spectrum cap, or a combination of both, including the amount of spectrum that should be applied for the use of a set-aside, and/or the amount of spectrum that should be subject to an in-band spectrum cap. Provide supporting rationale for your responses.***

10. Eastlink agrees with ISED's determination that the 5G auction presents a "key opportunity to further support the competitiveness of the regional service providers by ensuring that they will have an opportunity to acquire spectrum to effectively compete with the NMSPs, as 5G technology is initially deployed."<sup>2</sup> ISED has a considerable record of experience with which to base its determination that the NMSPs will always purchase as much spectrum as possible and will thereby prevent regional service providers from acquiring any open market spectrum.
11. Regional service providers have consistently attempted to acquire open market spectrum in ISED's auctions – as evidenced by the price discovery round bidding – and, with just a few exceptions, have typically been able to acquire only the set-aside or spectrum cap-protected licences. In its consultation ISED correctly recognized that "there is a risk that competition in the post auction marketplace could suffer without measures to facilitate regional service providers' and WISP's access to spectrum."<sup>3</sup> Eastlink fully supports ISED's proposal to implement pro-competitive measures in the 3500 MHz auction, indeed such measures are critical if regional service providers are to have any chance of acquiring this important spectrum.

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<sup>2</sup> Consultation, Paragraph 27

<sup>3</sup> Consultation, Paragraph 28

12. This auction is unique in that although ISED has proposed to auction 200 MHz of spectrum in each service area, the reality is that in many of these service areas a large portion of this spectrum is already allocated to existing licence holders. In some service areas, there is as little as 30 MHz of spectrum available with the existing spectrum owned by both open market and set-aside eligible bidders. Without a set-aside regional providers will have no chance to successfully acquire any spectrum in this auction, and even with a set-aside, there will be some licence areas where regional providers may not be able to acquire their desired amount of spectrum in this band (noting that much of it is already encumbered).
13. Eastlink's position is that ISED must establish a set-aside that provides regional operators with a reasonable opportunity to acquire this important spectrum. Had the full 200 MHz of spectrum been unencumbered, Eastlink's proposal would be that the spectrum should be divided equally between the set-aside bidders and the open bidders, such that each group would have access to 100 MHz of spectrum. Unfortunately this is not the case. However, regional service providers like Eastlink should not be penalized by being precluded from a fair opportunity to secure a meaningful share of this important spectrum just because the national incumbents or other operators were able to secure it many years ago.
14. In this regard, Eastlink submits that it is appropriate for ISED to establish a set-aside of 100 MHz per service area as a necessary pro-competitive measure. We also agree with ISED's view that in areas where there is less than the set-aside (100 MHz, in the case of our proposal) no spectrum will be available in the open market as the NMSPs already own a significant amount spectrum. The reason Eastlink proposes 100 MHz is that much of the existing encumbered spectrum is already held by national incumbents (vis-à-vis the Inukshuk partnership, whereby Bell and Rogers are the effective spectrum holders, and whereby Telus can also benefit from access to this spectrum through its network sharing arrangement with Bell). Moreover, there are numerous Tier 4 areas where the available spectrum is already significantly lower than the 100 MHz (for instance, in many cases there is as little as 30 MHz of spectrum available), such that many of these Tier 4 areas should already be automatically allocated to the set-aside group of bidders.
15. Eastlink determined that 100 MHz is the appropriate amount of set-aside by considering the total amount of spectrum available in each area, along with the amount of spectrum already encumbered. Eastlink has significant concerns about any set-aside below 100 MHz, as it would result in areas where the NMSPs would have access to more of this important spectrum

than the regional service providers would have an opportunity to realistically acquire. For example, in the case of Montreal, there is 140 MHz of unencumbered spectrum available, with the NMSPs (via Inukshuk ownership) already possessing 60 MHz. With a set-aside of 100 MHz, regional operators would have a realistic opportunity of acquiring 100 MHz of spectrum. In this scenario, NMSPs would be able to bid on 40 MHz, bringing their total access to spectrum to 100 MHz, when you consider the 60 MHz they already own. In a case where the spectrum set-aside is lower than 100 MHz the NMSPs would have access to more spectrum than regional operators. For instance, in the case of the Montreal example, even with a set-aside of 70 MHz, NMSPs would have access to 70 MHz of unencumbered spectrum in addition to their 60 MHz of existing spectrum, bringing their total spectrum amount to 130 MHz, while regional operators could realistically only acquire up to 70 MHz. Such an outcome would provide the NMSPs an even further advantage given their significant overall spectrum holdings compared to regional operators. ISED has acknowledged that NMSPs already own significant amounts of spectrum such that where there the total spectrum available is less than the set-aside it should all be allocated to set-aside eligible bidders. Noting the disparity of total spectrum holdings that NMSPs possess compared to any other operators in the country, Eastlink submits that our proposed set-aside is appropriate and necessary.

16. While a set-aside is critical, Eastlink submits that this should be combined with an in-band spectrum cap for all bidders. Eastlink proposes an in-band spectrum cap of 100 MHz so that in areas where existing licence holders already hold a significant portion of the spectrum there will be spectrum available for other service providers to bid on. We note, for example, that set-aside eligible bidders own as much as 60 MHz of spectrum. Eastlink proposes that those bidders only be able to acquire an additional 40 MHz of spectrum. This approach would allow for a more equitable distribution of spectrum, and would ensure that other regional providers have the opportunity to acquire at least some of this important mid-band spectrum.
17. The Inukshuk spectrum is owned and operated by Rogers and Bell (and can be used by Telus, given their network sharing arrangement). Any spectrum currently owned by Inukshuk, should count towards each companies' respective spectrum cap. This is crucial to ensuring that regional providers have the opportunity to effectively compete with the NMSP.

If a set-aside is to be applied:

***Q1C—ISED is seeking comments on its proposal to limit the eligibility criteria to bid on set-aside spectrum licences to those registered with the CRTC as facilities-based providers that are not National Mobile Service Providers, and that are actively providing commercial telecommunication services to the general public in the relevant Tier 2 service area of interest, effective as of the date of application to participate in the 3500 MHz auction.***

18. ISED proposes the use of a set-aside so that “regional service providers and WISPs could benefit from an opportunity to acquire access to additional spectrum to support network improvements to meet the wireless traffic demands of their growing subscribership.”<sup>4</sup> ISED further states that “the ability to bid on set-aside spectrum should be limited to a particular sub-set of service providers that are best positioned to compete in either the commercial mobile services market or as a rural wireless Internet service provider”<sup>5</sup>.

19. Given that the purpose of the set-aside is to ensure that regional service providers and WISPs be given the opportunity to acquire additional spectrum Eastlink submits that ISED’s proposed eligibility criteria should be modified so that eligibility to bid on the set-aside spectrum be limited to those registered with the CRTC as facilities-based providers that are not National Mobile Service Providers, and that are actively providing commercial **mobile or fixed wireless** telecommunication services to the general public in the relevant Tier 2 service area of interest...” [phrase added]

20. Specifically, Eastlink submits the definition of “set-aside-eligible bidders” should be “...**those registered with the CRTC as facilities-based providers that are not National Mobile Service Providers, and that are actively providing commercial mobile or fixed wireless telecommunication services to the general public in the relevant Tier 2 service area of interest, effective as of the date of application to participate in the 3500 MHz auction.**”

***Q1D— ISED is seeking comments on its proposal that any set-aside licences acquired by set-aside-eligible bidders would not be transferable to set-aside-ineligible entities for the first five years of the licence term.***

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<sup>4</sup> Consultations, Paragraph 37

<sup>5</sup> Consultations, Paragraph 39

21. Eastlink supports ISED's proposal to limit the transferability of the set-aside spectrum for the first five years of the licence term.

**If a spectrum cap is to be applied:**

***Q1F—ISED is seeking comments on the inclusion of grid-cell and sub-divided licences towards the spectrum cap, and the proposal to allow the return of these licences in order to increase a licensee's eligibility to bid on additional spectrum within the related licence area.***

22. Eastlink submits that all existing licences whether they are grid-cell licences, sub-divided licences or licences shared with other parties should count towards the spectrum cap. Existing licence holders who own grid-cell or sub-divided licences had the option of deploying service to the entire service area, and were only awarded partial licences because they failed to meet their deployment requirements, or chose to sub-divide these licences. They should not get access to more spectrum than any other licensee because they did not meet their licence requirements.

***Q2— ISED is seeking comments on its proposal to use Tier 4 service areas for the 3500 MHz licensing process.***

23. Eastlink agrees with ISED's proposal to use Tier 4 service areas for the 3500 MHz licensing process. Tier 4 service areas will provide regional service providers who wish to launch service in rural and remote service areas the opportunity to bid on spectrum in areas which otherwise would not be made available to them due to high cost.

***Q3A — ISED is seeking comments on its proposal to include all remaining spectrum (including partially encumbered Tier 4 areas) as part of the auction as shown in table A1 of annex A.***

24. As we stated in our initial comments in relation to SLPB-004-18, Eastlink's view is that ideally all spectrum would be returned to ISED (with the exception of spectrum being used to serve retail end-users in very remote areas for fixed wireless) in advance of the auction. We further stated that in the event ISED is determined to adopt one of the two mechanisms being proposed, we supported the proposal where all licensees be issued flexible use licences for one-third of their current spectrum holdings rounded to the nearest 10 MHz with a minimum

of 20 MHz. That proposal would have ensured that there was a reasonable number of blocks available in this auction for other facilities-based providers who had not yet had an opportunity to enter the wireless market when the 3500 MHz spectrum was previously made available, i.e, regional new entrants. Given the decision ISED made to allow existing licence holders to maintain a much larger portion of their existing licences, and the very small share of spectrum remaining in some areas Eastlink submits that all remaining spectrum, including partially encumbered Tier 4 areas, should be part of the auction.

***Q3B—ISED is seeking comments on its proposal to consider all spectrum acquired through the auction and only Tier 4 licences that will be issued through the transition process, simultaneously in the assignment round of the auction, in order to determine the specific frequency assignments of all licences in the 3500 MHz band.***

25. Eastlink agrees with ISED's proposal that both auctioned licences and licences obtained through the transition process be assigned specific frequencies at the same time in the assignment round.

***Q3C - ISED is seeking comments on the proposal that licensees who acquire multiple flexible use Tier 4 licences in a given area, either as a result of the auction or as a result of the transition process, be assigned contiguous spectrum, and that this also apply to partial area licences acquired through the auction.***

26. Eastlink agrees with ISED's proposal that licensees who acquire multiple flexible use licences be assigned contiguous spectrum.

**If a spectrum cap is applied:**

***Q3F—ISED is seeking comments on the proposal that the bundled encumbered blocks would not count towards the spectrum cap during the auction, but that any transfers of the licences post-auction would be subject to the spectrum cap and the conditions of licence as described in section 11.2.***

27. Eastlink disagrees with ISED's proposal that bundled encumbered blocks not count towards the spectrum cap during the auction. Eastlink does not see why licence holders who did not fully deploy the spectrum be given the opportunity to acquire more spectrum than any of the other auction participants. They had the opportunity to fully deploy the spectrum and decided

not to do so, we fail to see why they should be given special treatment for this business decision. As such, we propose that bundled encumbered blocks should count towards the spectrum cap.

***Q4A - ISED is seeking comments on its proposal to use generic licences.***

28. Eastlink supports ISED's proposal to use generic licences. We also agree that if a set-aside is applied the set-aside would consist of unencumbered spectrum and that any remaining unencumbered spectrum be open to all bidders. Furthermore, we support ISED's proposal that set-aside eligible bidders be able to bid on and win more than the number of blocks available for the set-aside in a service area.

**If a set-aside is applied (with or without a spectrum cap):**

***Q4B - ISED is seeking comments on its proposal to categorize all blocks won by set-aside-eligible bidders as set-aside blocks.***

29. Eastlink agrees with ISED's proposal that all blocks won by set-aside eligible bidders be treated as set-aside blocks.

***Q4C - ISED is seeking comments on its proposal to create separate categories for encumbered and unencumbered blocks, as well as open and set-aside blocks.***

30. Eastlink agrees with ISED's proposal to create separate categories for open and set-aside blocks. Without separate categories the regional providers would have to compete with the much larger NMSPs who will have significantly more resources to spend in this auction. To ensure that the price is not inflated to set-aside bidders, the price for each generic licence should be increased based on demand for that particular category so that there is no risk of activity in the open market inadvertently increasing the value of the set-aside licence to the point that no regional service provider could afford it.

**If only a spectrum cap is applied:**

***Q4D - ISED is seeking comments on its proposal to create separate categories for unencumbered and for various encumbered block in a service area.***

31. Eastlink reiterates our position that a set-aside is critical for this auction; without a set-aside, regional service providers will not have a reasonable opportunity to acquire any of this important spectrum. As to the creation of separate categories for unencumbered and encumbered blocks of spectrum, Eastlink reserves the right to comment on this issue at reply phase.

***Q5—ISED is seeking comments on the use anonymous bidding during the auction.***

32. Eastlink submits that anonymous bidding generally favours large national incumbent bidders as they inherently have more information available to them during the price discovery rounds, as they have the information about their own much larger bids which enables them to have greater insight into bidding activity. As a result, Eastlink generally opposes anonymous bidding as it disadvantages smaller, regional service providers.

33. Under an anonymous format, any information provided serves only to further the advantage held by the large national service providers. As a result, in the event ISED maintains its proposed anonymous format, the same disclosure rules it used in the 600 MHz should be applied. Specifically, each bidder would receive details on the aggregate demand every round, with the exception of the final clock round, and the prices of the open market and set-aside generic licences for the next clock round.

***Q6— ISED is seeking comments on its proposal to use a clock auction format for the 3500 MHz spectrum auction.***

34. Aside from the uncertainties mentioned in response to Q7, Eastlink takes no issue with ISED's proposal to use a clock auction format.

***Q7—ISED is seeking comments on the proposed structure of the clock stage and on the proposed methodology for calculating processed demands and posted prices after each clock round, as described in annex C.***

35. Eastlink has two primary concerns regarding the auction format. The first is ensuring that NMSPs are not able to influence the price paid by the regional providers. The second is that it discourages bidders "parking points" in service areas they are not really interested in, which only increases the price for those who need to obtain spectrum in the area to maintain or grow their existing business. Based on Eastlink's preliminary view of the proposed auction format

it appears that as long as ISED creates a set-aside product, the auction has been structured to address these issues.

36. Based on Eastlink's review of ISED's proposed methodology it is our understanding that a bidder may not be able to reduce demand in an area if that would result in unsold blocks. Eastlink assumes these additional measures are meant to ensure companies do not engage in excessive point parking as has been the case in previous auctions. We reserve the right to provide further comments at the reply stage.

***Q8—ISED is seeking comments on the proposed range of percentage increments.***

37. Eastlink does not support any proposed auction format where a price increase in the open market may influence the set-aside price. As such, we do not agree with ISED's proposal that when a set-aside is applied, and the price range for the set-aside overlaps with the price range for the open market, the price increment for the set-aside product will be adjusted so that the clock price of the set-aside product equals the clock price of the open product, if that could lead to an increase in price in the set-aside.

***Q11 – ISED is seeking comments on the proposed rules prohibiting collusion and other communication rules, which would apply to bidders in the upcoming 3500 MHz auction.***

38. Eastlink supports ISED's proposed rules prohibiting collusion and other communication rules.

***Q12 – ISED is seeking comments on its proposal to issue new flexible use spectrum licences in the 3500 MHz band with a 20-year licence term and the proposed wording of the condition of licence above. Licence terms for all flexible use licences, regardless of when they are converted from fixed to flexible use, will terminate on the same date as licences issue through the auction process.***

39. Eastlink supports ISED's proposed 20-year licence term and the proposed wording of the related condition of licence.

***Q14—ISED is seeking comments on the proposed deployment condition of licence stated above as well as the proposed levels of deployment.***

40. Eastlink does not support the proposed deployment requirements proposed by ISED. Eastlink submits that existing licence holders, who have made significant investments in deploying

LTE to their network footprint, should not be subject to different deployment requirements than other licence holders. Some LTE operators may face challenges in deploying to the aggressive levels proposed and for those operators to be at risk of a finding of non-compliance with licence conditions when other non-LTE operators have significantly lower deployment thresholds is unfair and unduly prejudicial to LTE operators. Moreover, we submit that separate deployment requirements are unnecessary to meet ISED's stated objectives. Given the high cost to acquire spectrum and the competitive retail market, licence holders will have every incentive to deploy this spectrum as quickly as possible. As such it is unnecessary for ISED to impose additional deployment requirements to ensure timely 5G coverage. The factors that would lead to a wireless provider not deploying 5G quickly will typically be outside of that provider's control – for example, equipment not being 5G ready and inability to access infrastructure. Under ISED's proposed deployment requirements these factors could lead to a licence holder losing access to this spectrum.

41. Eastlink submits that the deployment requirements for all licences should be as outlined in annex F.

***Q15—ISED is seeking comments on the proposed conditions of licence outlined in annex H that would apply to flexible use licences.***

42. As noted in Q14 above, Eastlink opposes ISED's approach to establishing two separate categories of deployment requirements whereby operators who are offering mobile broadband LTE service have a much higher deployment requirement over the term of the licence. As stated previously, operators who have taken on the significant investment of deploying their LTE networks should not be faced with a more onerous deployment licence condition than all other licensees who are subject to the general deployment requirements. Treating LTE service providers differently is neither fair, nor appropriate, and there is no reasonable basis on which to justify such disparity in licence requirements between the two groups of licensees. All licensees should have the same deployment requirements. Eastlink, a regional service provider, has taken on the significant investment of building the first 100% LTE network when we built our network, and it would be unfair to force us have substantially higher deployment requirements than other competitors who may not have taken on the investment into their LTE networks to the extent Eastlink has. Eastlink submits that all licensees should have the same deployment requirements.

***Q17 – ISED is seeking comments on the proposed opening bids as presented in annex D.***

43. Eastlink is generally supportive of the opening bids as presented in annex D, as long as a set-aside is used in the auction and that two distinct product categories are used for the open market and the set-aside. If there is only one product in the auction regional providers will be quickly outbid by the NMSP.

***Q18 – ISED is seeking comments on the proposed eligibility points for spectrum licences in the 3500 MHz as outlined in annex D, and pre-auction deposits as outlined above.***

44. Eastlink generally supports the proposed eligibility points.

***Q19 – ISED is seeking comments on the proposed renewal process for spectrum licences in the 3500 MHz band.***

45. Eastlink generally supports the proposed renewal process.

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