

**ISED Consultation  
Canada Gazette, Part I, DGSO-001-23**

**Consultation on the Spectrum Licence Renewal Process  
(2305-2320 MHz and 2345-2360 MHz frequency bands) for  
Wireless Communication Services (WCS) Licences**

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**Submission from the First Mile Connectivity Consortium**

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## **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>

## **Summary**

2. FMCC is contributing to this consultation to bring attention to rights to spectrum in Indigenous communities and territories. We reiterate the points we made in our submission to ISED’s recent Spectrum Outlook (2022-2026) consultation.
3. As noted in our prior submission to the Spectrum Outlook (2022-2026) consultation, we express our concerns with contributing to these consultations.
4. The notice of consultation for this policy proceeding did not consider Indigenous connectivity or the barriers that Indigenous service providers, businesses and communities face when attempting to secure spectrum licenses.
5. In these and related matters, we refer to a draft resolution passed at the AFN Special Chiefs Assembly, April 3-6, 2023, Ottawa. This resolution, titled *Government Support for First Nations Digital Connectivity and Spectrum Sovereignty (DR-09)*<sup>1</sup>, raises critical concerns with respect to this consultation. These include calls for the Government of Canada to:
  - Cease all sales and renewals of spectrum licenses and permits on First Nation territories until consultations have been completed with First Nations governments and mandated organizations;
  - Along with other government departments and agencies, initiate a forum to review the broad issue of Indigenous spectrum sovereignty and related matters;
  - Contribute capital and operational investment to support First Nation management of spectrum resources;
  - Eliminate fees to for First Nations entities to access spectrum licenses in their territories and communities; and
  - Support First Nations in ventures and partnerships to deliver services to their own communities, including the use of fixed wireless connectivity in 2300 MHz and 3500 MHz bands.

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<sup>1</sup>See Resolution #09: [https://www.afn.ca/wp-content/uploads/2023/03/23-03-27-April-2023-SCA-Draft-Resolutions\\_eng.pdf](https://www.afn.ca/wp-content/uploads/2023/03/23-03-27-April-2023-SCA-Draft-Resolutions_eng.pdf)

6. The recent Auditor General of Canada's report on *Connectivity in Rural and Remote Areas* also recommended that ISED develop better mechanisms for spectrum sharing, including improved data collection. We fully support this recommendation.

### **Spectrum Sovereignty and Development**

7. FMCC has been actively participating in ISED policy consultations since 2014, and in CRTC proceedings since 2012. We have continually stressed that the omission of Indigenous or First Nations in policy discussions and decisions regarding the governance and ownership of a natural resource such as spectrum must be addressed.<sup>2</sup>
8. Any allocation of spectrum, as well as setting eligibility criteria for spectrum license renewal, should be considered in the context of Indigenous rights and lands, as well as legal precedents, agreements and treaties. 2300 MHz and 3500 MHz bands are important tools to bring reliable and affordable connectivity to rural, remote and First Nations communities.
9. Licence renewal criteria for spectrum in Indigenous territories must take into consideration the requirements, jurisdictions, and rights of Indigenous peoples, including their interests in building and operating infrastructure and services.
10. We question the authority of ISED to administer spectrum on behalf of Indigenous Nations. As Indigenous legal scholars have noted, spectrum is a natural resource that existed prior to the establishment of the states such as Canada, and thus there is a lack of clear jurisdiction over spectrum covering Indigenous regions.<sup>3</sup>
11. Such a claim may suggest that First Nations and other Indigenous Peoples in Canada are entitled to ownership of this natural resource, and/or to receive a share in the proceeds of the Federal Government's spectrum auctions. Indigenous communities across Canada should have access to all spectrum, *including the 2300 MHz and 3500 MHz bands*.
12. Spectrum policy must position First Nations as rights holders, and not stakeholders. We believe that this proceeding is in contravention to the principles of UNDRIP and the United Nations Declaration on the Rights of Indigenous Peoples Act; 4 the Crown's legal duty to consult and collaborate with Indigenous Peoples; and with free, prior and informed consent as articulated under Principles Respecting the Government of Canada's Relationship with Indigenous Peoples — which builds on and goes beyond the legal duty to consult.
13. On matters of appropriate consultation with Indigenous entities, we fully endorse the 2021 and 2022 Indigenous Connectivity Summit (ICS) Policy Recommendations. FMCC member organizations are involved in the annual ICS and contribute to the formation of these recommendations.

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<sup>2</sup> Please refer to our submissions to ISED SLPB-004-21 and SPB-005-22, as well as our submissions to CRTC 2019- 406, for examples of our position on these matters.

<sup>3</sup> Blackwater, Darrah and Murtazashvili, Ilia and Weiss, Martin B. H., *Spectrum Sovereignty on Tribal Lands: Assessing the DIGITAL Reservations Act* (August 1, 2022). Available at SSRN: <https://ssrn.com/abstract=4178671>

14. We acknowledge that the broad issues of spectrum sovereignty and resource extraction extend beyond the narrow scope of this consultation, and that spectrum sovereignty should involve other government departments and agencies, and areas of jurisdiction. It also encompasses questions around the sale of a natural resource (spectrum) and the administration/control of the proceeds of that sale. For example, the proceeds of spectrum are currently considered general government revenues; should a similar process not be in place for the proceeds of spectrum sales to accrue to Indigenous governments?

### **FMCC Recommendations**

15. FMCC calls upon the Government of Canada to *immediately stop all sales and renewals of spectrum licenses and permits* on First Nations territories until consultations on the issue of spectrum have been completed with First Nations governments and mandated organizations in both official languages;
16. FMCC asks the Government of Canada to revisit, review and redefine decision-making processes related to spectrum licensing in a way that upholds First Nations' rights, title and treaty rights and Canada's obligation to bring federal ways, policies and other collaborative initiatives and action into alignment with UNDRIP, the Crown's legal duty to consult and collaborate with Indigenous Peoples, and free, prior and informed consent;<sup>4</sup>
17. FMCC calls upon the Government of Canada to initiate a forum to review the broad issue of Indigenous spectrum sovereignty and related matters involving government departments and agencies as well as First Nations governments and mandated organizations;
18. FMCC urges the Federal Government to contribute capital and operational investments to support First Nation management of spectrum resources and eliminate fees to access currently unused spectrum in Indigenous territories and communities. This may reduce costs of providing connectivity to and in remote and rural areas;
19. FMCC calls upon the Federal, Provincial, and Territorial governments to support First Nations in undertaking business ventures and partnerships in the area of mobile and fixed wireless connectivity, enabling First Nations to be able to deliver services on their own, or with a provider of their choice.

**\*\*\* End of Document \*\*\***

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<sup>4</sup> We are not aware of any formal definition of "duty to consent" in the context of telecommunications services affecting First Nations.