1. **Introduction**

Xplornet Communications Inc. (Xplornet) is pleased to submit the following comments in response to the Department’s Consultation on the *Licensing Framework for Fixed-Satellite Service (FSS) and Broadband-Satellite Service (BSS) in Canada*, announced in Canada Gazette Notice No. SMSE-003-12 (the Consultation Paper). As Canada’s largest rural broadband service provider using terrestrial wireless and satellite broadband facilities across all regions of Canada, Xplornet welcomes this opportunity to comment on the proposed satellite network licensing framework for FSS and BSS and in particular on the proposals for a new fee structure for the C, Ku and Ka bands.

As the Department is aware, Xplornet has secured long term leases for broadband satellite capacity on both Canadian and US Ka-band satellites in pursuit of its business plan to serve sparsely populated areas and remote communities in Canada. These multi-beam Ka-band satellites have increased the capacity of earlier models by several fold, providing the best possible solution to extend broadband Internet services to Canadian consumers and businesses operating in high-cost low-density areas. For the first time, these new satellites offer the prospect of all Canadians having access to high-speed broadband services, regardless of their location. Xplornet will continue to require additional satellite capacity as it pursues its business plan of providing high quality broadband access to all Canadians in rural and remote areas of Canada.

Notwithstanding the improved capacity of these new satellites and their ability to deliver higher speed services, Xplornet still faces enormous challenges in delivering an economically attractive service to rural and remote communities. All of the costs of distribution, installation and maintenance are higher in these regions. Nonetheless, consumers who live in these regions are still interested in receiving broadband services at a reasonable rate and higher up-front costs for service initiation can act as a barrier to consumers. Having the increased satellite capacity to provide high-speed broadband services in these regions is therefore only half of the equation. In order for Canadians to achieve the social and economic benefits that access to the digital economy offers,
they must have access to an affordable service. The licence fees payable for satellite spectrum and related earth station equipment therefore have an important impact on the affordability of these services to consumers and businesses that require them. It is important to note in this regard that the current consultation deals only with the licensing of satellites operating in Canadian orbital slots. It does not address the licensing and related fees for earth stations used in connection with satellites operating in foreign orbital slots. For a company like Xplornet, that leases capacity on both foreign and domestic satellites, there is a particular need to address this issue as the licence fees for earth stations associated with foreign satellites also affect the prices that consumers and businesses pay for access to broadband services in rural and remote parts of Canada. Xplornet therefore urges the Department to initiate a new consultation on this aspect of its licensing function as soon as possible to remove this uncertainty.

While Xplornet’s comments focus on the appropriate licence fees for FSS and BSS services in Canada, it has also commented briefly on some of the other licensing issues raised by the Department in its Consultation Paper.

2. **Licensing Process**

2.1 Xplornet supports Industry Canada’s proposal to extend the use of a first-come, first-served (FCFS) process to assign FSS and BSS spectrum licences. Xplornet believes that this is the simplest and most administratively efficient means of assigning licences and it responds best to industry demand.

2.2 Industry Canada and the Canadian satellite industry should continue to be active in making filings with the ITU on existing and new orbital positions in a number of frequency bands. If Canada is to continue to have access to advanced satellite network technology that can offer coverage to all regions of the country, and if Industry Canada is to continue to pursue Canadian licensing policies through the imposition of conditions of licence, it must have satellite orbit-spectrum resources to authorize. Hence, the Department is encouraged to protect existing orbital resources and seek new opportunities in developing satellites in existing and new bands.
2.3 Xplornet supports the proposed rules for an FCFS satellite licensing process. Xplornet would note however that in the unlikely event that two licence applications are received at the same time, the applicants should be given the opportunity to negotiate an outcome prior to the Department imposing the default position of spectrum splitting on them. This is because splitting the spectrum may result in neither of the applicants having a viable business plan.

2.4 Xplornet generally supports the five assessment criteria proposed by the Department in its Consultation Paper. However, care must be exercised by the Department in ensuring that criteria 3 (viable Implementation Plan) and 5 (benefits to Canadians) are not applied in a manner that turns the FCFS licensing process back into a competitive licensing process or a “beauty contest”. Furthermore, Industry Canada must continue to ensure that adequate satellite capacity continues to be available to serve Canadians. While this does not mean that every satellite needs to cover the entire country, it does mean that Canadian satellite service users and resellers should continue to have access to timely and adequate capacity to serve Canadian needs.

2.5 While Xplornet agrees that some measures may be appropriate to safeguard an FCFS licensing process from speculation and abuse, it does not favour measures that would involve full annual fees being payable during the design and construction period for the space station of the satellite, administrative fines or performance bonds. With the significant lead times that are required between the time an application is filed and the time the service is operational, the payment of full fees during the design and construction stage could act as a significant financial impediment to the successful financing of new satellite services. In addition, the legislative changes that would be required for an administrative fine to be implemented would significantly slow down this licensing reform process. On the other hand, the payment of an application fee that is non-refundable for unsuccessful applicants and is applied to the licence fees payable by successful applicants, as well as the imposition of milestones could serve as effective alternatives. In any event, there should be an opportunity
provided to correct errors or omissions in applications within a reasonable “cure period” rather than an outright rejection of an application for minor defeats.

2.6 Xplornet would support a 45 business day service standard for the Minister to issue (or reject) a satellite spectrum licence from the date of application.

3. **Fee Structure**

3.1 Xplornet strongly supports the Department’s proposal to implement spectrum licences for satellite space stations as the means for authorizing the commercial use of FSS and BSS spectrum. This approach will encourage the efficient use of spectrum and will not penalize those operators who make the most efficient use of spectrum licensed to them. However, Xplornet strongly disagrees with the proposal to apply spectrum fees upon issuance of the licence, during the design and construction stage. Since licence fees are supposed to be payable for use of a public resource, it is unfair to start charging fees in advance of such use. Events beyond the control of the licensee, such as the failure of a launch or the failure of a satellite to function properly could exacerbate this unfairness. Given the long lead times between the issuance of a licence and the initiation of service, the imposition of licence fees at such an early stage also adds to the cost of launching new satellites given the fact that the licensee will be without an associated revenue stream for several years after the new licence is issued. This ultimately adds to the cost of service payable by consumers and business users. If the Department is concerned about licensees sitting on licences without taking steps to launch service, the use of milestones and the forfeiture of application fees provides a fairer means of achieving the same result.

3.2 For the same reasons that it supports spectrum licences, Xplornet agrees with the proposal to set annual fees on a per-MHz basis for licensed spectrum. This will encourage the most efficient use of the spectrum. As an interim measure, until the pending consultation on the earth station licensing framework and fee schedule is completed, Industry Canada should consider including the customer terminals (earth stations) as part of the licence and the fee schedule for Ka-band
satellite spectrum licences. In Xplornet’s respectful submission, this interim measure should be addressed in this consultation as it will take several years to implement a new terminal licensing framework.

3.3 Xplornet agrees with the Department that spectrum fees should be simple to administer, that they should be predictable and technology neutral. For these reasons, Xplornet does not agree with the Department’s proposal for tiered fees based on the type of satellite technology employed. The Department’s proposed tiers are complicated, difficult to understand and not technology neutral.

As regards the level of fees payable, while market value is a relevant factor in setting spectrum fees, care should be taken to ensure that it does not become an overriding principle at the expense of maximizing the social benefits to Canadians.

The primary benefit of satellite spectrum to Canadians is the communications capability that is derived from its use – not the taxes that are levied on service providers. Licence fees that are too high will serve to discourage satellite providers from seeking orbital slots in Canada, raise the price of satellite services in Canada, and undermine Industry Canada’s ability to implement its own licensing policies, such as the expansion of broadband services to rural and remote parts of Canada.

For these reasons, Xplornet does not agree with the Department’s proposal to tie spectrum fees to the so-called "market value" of the spectrum or the capital costs associated with the particular type of satellite technology.

Canada does not operate in a vacuum. The study performed by Nordicity indicates that the licence fees proposed by the Department are significantly higher than those imposed in the UK or, most importantly, the United States. This makes no sense given that many U.S. orbital slots can equally serve Canada.

Xplornet notes that the UK has a single licence fee of $74 (Can)/MHz, while the U.S. has fees of $121 and $151. In Xplornet’s view a rate somewhere between
these two is appropriate for Canada – around $100/MHz. In no case should the fee payable in Canada be higher than the fee payable in the U.S. given the fact that orbital slots in either country can be used to serve the other.

The Government of Canada expressly recognized the need to deliver high quality telecommunications services at reasonable prices to all regions of Canada when it enshrined this principle in section 7 of the *Telecommunications Act*:

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

Notwithstanding the clarity of this principle, it has always proven to be a difficult principle for both regulators and the industry to implement, given the challenges of Canada's geography and demographics.

In recent years the Department has taken a number of important steps to encourage the extension of high-speed broadband services to rural and remote areas of Canada through such measures as its Broadband Canada initiative, its rural cellular licensing regime and, most recently, new measures announced in its Auction Policy for 700MHz and 2.5 GHz. The Department has also taken initiatives to adjust its radio and spectrum licence fee structures to encourage rural deployment.

These initiatives provide a useful basis for consideration of licence fees on satellites used to provide high-speed broadband services to rural and remote parts of Canada.

Given these attempts by the Government of Canada to reduce the barriers to access to broadband services in rural and remote areas, it makes no sense to
build these barriers back up in the form of higher licence fees for satellites and related earth stations that are required to receive broadband services.

The margins on the provision of service to customers in rural and remote areas are already low and cannot withstand high licence fees (a combination of the satellite space and earth stations). The higher the fees, the less attractive the price point for consumers and businesses, since these costs must be passed on through the price of the service to end users.

By focusing on the “market value” of satellite spectrum (presumably basing it on the most economically efficient use which caters to the best revenue-producing services) and seeking maximum economic rent, the Department would undercut its own social policy of extending broadband service to rural and remote areas of the country.

While the Department has expressly stated that earth station fees are beyond the scope of this particular consultation, the Department should also keep in mind that charging additional fees for earth stations may also act as an economic deterrent to the adoption of satellite broadband services in rural or remote parts of Canada. There is a clear need for interim measures to align the licence fees with the policy objectives of the Canadian Government as discussed in 3.2 above.

3.5 Xplornet agrees with the Department’s proposal to make the new fees for existing licences for in-use spectrum effective immediately upon approval of the fee order.

3.7 As indicated above Xplornet does not agree that the new fees should apply to new licensees who have not yet launched service as long as they have complied with the milestones originally proposed and agreed to by the Department.

3.8 Xplornet agrees with a 20 year licence term. However, given the fact that some satellites may outlive this term, there should be a five-year automatic renewal for operators that wish to continue to use an existing satellite to provide service.
Xplornet thanks Industry Canada for the opportunity to provide these comments on its proposed framework.