

Court File No. _____

FEDERAL COURT

Between:

NOVUS ENTERTAINMENT INC.

Applicant

– AND –

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
(under Section 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Vancouver.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED: September 25, 2023

Issued by:

(Registry Officer)

Address of local office:

Registry of the Federal Courts
Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO:

Department of Justice
900 - 840 Howe Street
Vancouver, BC V6Z 2S9

APPLICATION

This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act* in respect of the September 20, 2023 decision of Innovation, Science and Economic Development Canada ("**ISED**") to return the pre-auction deposit of Novus Entertainment Inc. ("**Novus**") provided by way of two letters of credit and limit Novus' ability to participate in the auction for Spectrum Licenses in the 3800 MHz Band (the "**Decision**").

The Applicant Makes Application for:

- (a) A writ of *certiorari* quashing and setting aside the Decision;
- (b) An order compelling the ISED to again review the application of Novus in accordance with such directions as this Honourable Court considers appropriate;
- (c) The costs of this application; and
- (d) Such further and other relief as this Honourable Court deems just.

The Grounds for the Application are:

1. Novus is a Canadian telecommunications company duly incorporated under the *British Columbia Company Act* and continued under the *Canada Business Corporations Act*, engaged in the business of providing television, digital phone, and high-speed internet services.
2. Spectrum consists of electromagnetic waves of various frequencies that enable the use of wireless communication technologies.
3. As part of the Government of Canada's policy objective of providing reliable, affordable and high quality telecommunications services accessible to Canadians in all

regions of Canada and enhancing efficiency and competitiveness, the ISED was tasked with holding an auction to license 3800 MHz Band to support 5G technologies.

4. The auction is to proceed in accordance with the *Policy and Licensing Framework for Spectrum in the 3800 MHz Band (canada.ca)* (the "**Policy**"). The Policy required applicants to provide:

- a) completed application forms;
- b) a financial deposit (in the form of a certified cheque, bank draft, money order, wire transfer, or an irrevocable standby letter of credit);
- c) details of the applicants beneficial ownership;
- d) information on any affiliations and associations; and
- e) other corporate documentation as required.

5. The afformentioned application materials were to be delivered to the Manager, Auction Operations ("**Manager**") by the date specified in the Table of Key dates. The Policy provided that under exceptional circumstances, the ISED could accept additional documentation after the deadline but prior to the publication of the list of applicants.

6. The application forms provided further guidance that the financial deposit was to be couriered, hand delivered or wire transferred and the Manager advised that original documentation was to be provided by the deadline of 12:00 noon EDT on July

25, 2023. To enable submission of the materials, ISED required the use of Microsoft Teams.

7. On July 25, 2023, in advance of the deadline, Novus provided its completed application and financial deposit in the form of two letters of credit and a wire transfer. The application, proof of wire transfer and letters of credit were submitted electronically with a copy of the courier slip for the physical copies.

8. The physical letters of credit were received the following day and prior to the publication of the list of applicants.

9. On July 27, 2023, ISED advised Novus that an "appropriate deposit" was not received by the application deadline in respect of the letters of credit and would be rejected. This decision limited the amount of spectrum that Novus could purchase in the auction. Novus sought clarification as to the basis of this finding as the letters of credit were issued and provided prior to the deadline.

10. As a result of discussions with ISED, it became apparent, that ISED viewed the letters of credit as being late as it was not recognizing the electronic copies.

11. On September 20, 2023, The Director General of the Spectrum Policy Branch of ISED advised that after consideration of further arguments, it still considered the financial deposit to be late and that no exceptional circumstances existed to permit the physical letters of credit to be received after the deadline. On that basis ISED directed the return of the letters of credit to Novus.

12. ISED refused to permit Novus to remedy the matter, despite the Policy providing that applicants would be given an opportunity to correct any errors, inconsistencies, discrepancies or omissions.

13. In returning the letters of credit and limiting Novus' participation in the auction the ISED has:

- a) erred in fact and law in not recognizing the electronically submitted letters of credit as a valid financial deposit and as having been provided by the application deadline;
- b) the Decision is unreasonable and contrary to the purpose of the auction as it reduces competition despite the application requirements being substantively complied with;
- c) The Decision was made in a perverse and capricious manner based on the material before ISED;
- d) ISED failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; and
- e) Such further and other grounds as counsel may advise and this Honourable Court may permit.

This application will be supported by the following material:

14. Section 18.1 of the *Federal Courts Act*, Part 5 of the *Federal Court Rules*; *Telecommunications Act*, SC 1993, c 38, *Radiocommunication Act*; affidavits in support of the application as counsel may advise.

Request for Materials:

15. Pursuant to subsection 317(1) of the *Federal Courts Rules*, the Applicant requests that the Respondent send to counsel for the Applicant and to the Registry, a certified copy of all material relevant to this application that is in the possession of the Respondent, and not in the possession of Novus, specifically all documents, correspondence and e-mail communications related to the Decision.

DATED the 25th day of September, 2023.



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