

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by BCE Inc. of Manitoba Telecom Services Inc.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 92 and 105 of the *Competition Act*.

B E T W E E N :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT Date: February 15, 2017 CT-2017-007 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 1

THE COMMISSIONER OF COMPETITION

Applicant

– and –

BCE INC. and XPLORNET COMMUNICATIONS INC.

Respondents

CONSENT AGREEMENT

RECITALS:

- A. BCE Inc. (“Bell”) proposes to acquire all issued and outstanding common shares of Manitoba Telecom Services Inc. (“MTS”) (the “Transaction”) and enter into certain related transactions with TELUS Corporation (the “TELUS Transactions”).
- B. As a result of the implementation of this Agreement, Xplornet Communications Inc. (“Xplornet”) plans to enter the mobile wireless services business in Manitoba in accordance with Confidential Schedule B.
- C. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of postpaid mobile wireless telecommunications services to consumers in Manitoba, and that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

D. Bell does not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of postpaid mobile wireless telecommunications services to consumers in Manitoba; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

E. Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 92 of the Act in respect of the Transaction.

THEREFORE the Respondents and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **“Affiliate”** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and **“control”** means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
- (c) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **“Bell”** means BCE Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (e) **“Business Day”** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (f) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (g) **“Closing Date”** means the date on which Closing occurs;
- (h) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;

- (i) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;
- (j) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets by Bell to Xplornet pursuant to this Agreement, such that Bell will have no direct or indirect interest in the Divestiture Assets;
- (k) **“Divestiture Agreement”** means the binding and definitive agreement between Bell and Xplornet dated February 14, 2017 to effect the Divestiture and the Divestiture Services pursuant to this Agreement;
- (l) **“Divestiture Assets”** means the Divestiture Spectrum, the Divestiture Stores and the Divestiture Subscribers;
- (m) **“Divestiture Services”** means the following services provided by Bell on the rates and terms set out in the Divestiture Agreement:
 - (i) expedited access to Bell’s towers in Manitoba pursuant to an enhanced tower access process for a period of 5 years after Closing;
 - (ii) support for wireless handset procurement for Xplornet for a period of 5 years after Closing;
 - (iii) transitional remedy access to a mobile wireless network in the specified territory in Manitoba for a period of 3 years after Closing;
 - (iv) mobile wireless roaming services pursuant to a mobile wireless service roaming agreement effective for a period of 5 years after Closing; and
 - (v) discounted access to advertising inventory for mobile wireless services on Bell Media’s Manitoba advertising platforms for a period of 3 years after Closing;
- (n) **“Divestiture Spectrum”** means Bell’s rights and interests in 40 MHz of spectrum, in the frequency bands and in the areas listed in Schedule A to this Agreement;
- (o) **“Divestiture Stores”** means the leases and leasehold improvements relating to 5 retail stores in Winnipeg and 1 retail store in Brandon as

identified in the Divestiture Agreement or otherwise determined in accordance with the Divestiture Agreement and approved by the Commissioner;

- (p) **“Divestiture Subscribers”** means 24,700 postpaid mobile wireless subscribers based in Manitoba;
- (q) **“Monitor”** means the Person appointed pursuant to Part VI of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed, other than in Part VI of this Agreement Monitor means the Commissioner;
- (r) **“Monitor Agreement”** means the agreement described in Section 14 of this Agreement;
- (s) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (t) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (u) **“TELUS Transactions”** means the transactions contemplated by the Term Sheet for BCE-TELUS Transaction dated April 26, 2016 (the **“Notified TELUS Transaction”**), the NGNRA – Manitoba Network Acquisition letter agreement dated April 23, 2016, and the Supplementary Term Sheet Manitoba Network Sharing dated July 12, 2016 (the **“TELUS Term Sheets”**);
- (v) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (w) **“Transaction Agreement”** means the Arrangement Agreement between Bell and MTS dated May 1, 2016;
- (x) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.);
- (y) **“Xplornet”** means Xplornet Communications Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns; and
- (z) **“Xplornet’s Entry Date”** means the date on which Xplornet commences supply of mobile wireless services in Manitoba.

II. OBLIGATION TO COMPLETE DIVESTITURE

- [2] On Closing, Bell shall complete the Divestiture of the Divestiture Spectrum to Xplornet pursuant to the Divestiture Agreement in accordance with this Agreement. Following Closing, Bell shall complete the TELUS Transactions.
- [3] From and after Closing, Bell shall provide the Divestiture Services to Xplornet pursuant to the Divestiture Agreement and in accordance with this Agreement.
- [4] Pursuant to the Divestiture Agreement and in accordance with this Agreement, Bell shall complete the Divestiture of the Divestiture Stores to Xplornet no later than 9 months after Closing, or, upon Xplornet providing no less than 100 days' notice to Bell of the date upon which it wishes to acquire the Divestiture Stores, on such earlier date at least 6 months after Closing.
- [5] Between October 16, 2017 and 1 year after Closing, Bell shall complete the Divestiture of the Divestiture Subscribers to Xplornet pursuant to the Divestiture Agreement and in accordance with this Agreement.

III. SUBSCRIBER COMPETITION

- [6] Persons who are postpaid Bell Mobility customers in Manitoba as of the date of this Agreement shall be permitted by Bell to switch to Xplornet without penalty (i.e., without being required to repay any early cancellation fee), at any time after Closing during the term of their contract in force as of the date of this Agreement. Bell shall inform all such customers of this option no later than 9 months after Closing, or such earlier date as Xplornet may request upon Xplornet providing Bell no less than 60 days' notice.

IV. PRESERVATION OF DIVESTITURE STORES

- [7] In order to preserve the Divestiture Stores pending completion of the Divestiture of the Divestiture Stores, Bell shall maintain, or shall make reasonable efforts to ensure that the owners of the Divestiture Stores maintain the economic viability, marketability and competitiveness of the Divestiture Stores, and shall comply with any decision of or direction given by the Monitor that relates to preservation of the Divestiture Stores. Without limiting the generality of the foregoing, Bell shall, or shall make reasonable efforts to ensure that the owners of the Divestiture Stores:
 - (a) maintain and hold the Divestiture Stores in good condition and repair, normal wear and tear excepted, and to standards that are, in the view of the Monitor, at least equal to those that existed at Closing;
 - (b) ensure that the operation of the Divestiture Stores continues in the ordinary course of business and in a manner that is, in the view of the Monitor, reasonably consistent in nature, scope and magnitude with past practices and generally accepted industry practices, and in compliance with all applicable laws;

- (c) not knowingly take or allow to be taken any action that, in the view of the Monitor, adversely affects the competitiveness, operations, financial status or value, viability and saleability of the Divestiture Stores;
 - (d) ensure that the Divestiture Stores are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor and the Commissioner;
 - (e) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations that are, in the Monitor's view subject to consultation with Bell, advisable for the operation of the Divestiture Stores;
 - (f) not curtail marketing, sales, promotional or other activities of the Divestiture Stores, except with the prior approval of the Monitor;
 - (g) ensure that the Divestiture Stores are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees provided that the Monitor has approved both the qualifications and the need for such replacement employees; and
 - (h) maintain in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Divestiture Stores.
- [8]** Pending completion of the Divestiture of the Divestiture Stores, Bell shall not, without the Commissioner's prior written approval:
- (a) create any new encumbrances on the Divestiture Stores that will survive the Divestiture, other than ordinary course obligations that are not due or delinquent;
 - (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the Divestiture Stores that will survive the Divestiture, except as necessary to comply with this Agreement; or
 - (c) make any material changes to the Divestiture Stores, except as required to comply with this Agreement.
- [9]** Bell shall provide, or shall make reasonable efforts to ensure that the owners of the Divestiture Stores provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to maintain the Divestiture Stores in accordance with this Part. If the Monitor believes that Bell has not provided, is not providing or will not provide sufficient financial and other resources under this Part, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final

determination respecting the financial and other resources that Bell must provide. Bell shall comply with any determination made by the Commissioner on this issue.

V. EMPLOYEES

[10] Bell shall provide, or shall make reasonable efforts to ensure that the owners of the Divestiture Stores provide to Xplornet, the Commissioner and the Monitor information relating to the employees of the Divestiture Stores, to enable Xplornet to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable Xplornet to make such decisions.

[11] Bell shall:

- (a) not interfere, directly or indirectly, with any negotiations by Xplornet to employ any such employees;
- (b) not offer any incentive to such employees to decline employment with Xplornet or to accept other employment with Bell;
- (c) remove any impediment that may deter such employees from accepting employment with Xplornet;
- (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by Xplornet; and
- (e) pay or transfer to or maintain for the employees subsequently employed by Xplornet all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Bell.

[12] For a period of one year following completion of the Divestiture of the Divestiture Stores, Bell shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons known by Bell to have been employed in connection with the Divestiture Stores at Closing and to have accepted an offer of employment with Xplornet unless such Person's employment has been terminated by Xplornet.

VI. MONITOR

[13] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Bell with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no

way detract from the Monitor's general right, power and duty to monitor all aspects of Bell's compliance with this Agreement.

- [14] Within 5 Business Days after the appointment of the Monitor, Bell shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that confers on the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Bell with this Agreement.
- [15] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 14, the Commissioner shall advise Bell whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Bell shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.
- [16] Bell consents to the following terms and conditions regarding the Monitor's rights, powers and duties, and shall include such terms in the Monitor Agreement:
- (a) The Monitor shall have the power and authority to monitor Bell's compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
 - (b) The Monitor shall have the authority to employ, at the expense of Bell, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
 - (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
 - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
 - (e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Bell.
 - (f) The Monitor shall provide to the Commissioner, monthly for the first 6 months after the Monitor's appointment and thereafter annually on or before the six month anniversary of the Monitor's appointment, a written report concerning performance by Bell of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Bell's compliance.

- [17] Subject to any legally recognized privilege, Bell shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Bell's compliance with this Agreement and the terms of any agreement with Xplornet related to this Agreement.
- [18] Bell shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Bell's compliance with this Agreement.
- [19] Bell shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Bell shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Bell.
- [20] Bell may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.
- [21] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [22] Bell shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Bell shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt and, without limiting this obligation, Bell shall comply with any agreement it reaches with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Bell shall promptly pay any invoice approved by the Commissioner.
- [23] Bell shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [24] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute

Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.

- [25] The Monitor shall serve for such time as is necessary to monitor Bell's compliance with this Agreement.

VII. COMPLIANCE

- [26] Within 5 Business Days after the Closing Date, Bell shall provide written confirmation to the Commissioner of the date on which the Transaction and the Divestiture of the Divestiture Spectrum were completed.

- [27] Within 5 Business Days after Xplornet's Entry Date, Xplornet shall provide written confirmation to the Commissioner and Bell of the date on which it commenced supply of mobile wireless services in Manitoba.

- [28] Bell shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Bell shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Bell's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

- [29] Bell shall not, for a period of 7 years after the date when the Divestiture of the Divestiture Spectrum and the Divestiture Stores is completed, directly or indirectly acquire any interest in the Divestiture Spectrum or the Divestiture Stores, without the prior written approval of the Commissioner.

- [30] Xplornet shall not, for a period of 5 years after the date when the divestiture of the Divestiture Spectrum is completed, dispose of any of the Divestiture Spectrum or all or substantially all of the Divestiture Assets, to Bell, Rogers or TELUS, without informing the Commissioner in writing 30 days in advance. If, in accordance with this Section, Xplornet disposes of all of the Divestiture Spectrum and all of its mobile wireless subscribers in Manitoba, or enters into a joint venture in respect of them, Xplornet may assign all (but not less than all) its rights and obligations under the Divestiture Agreement respecting the operations of a mobile wireless business in Manitoba to the acquirer or joint venture and Bell shall continue to provide the Divestiture Services in accordance with the Divestiture Agreement and this Agreement.

- [31] For a period of 2 years after the date when the Divestiture is completed, Bell shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:

- (a) acquire any assets or shares of, or any other interest in, any mobile wireless services business in Manitoba other than a business in which Bell already holds an ownership interest or pursuant to an existing network sharing agreement; or
- (b) consummate any merger or other combination relating to the mobile wireless services business in Manitoba, other than in respect of a business in which Bell already holds an ownership interest.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Bell shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Bell shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Bell instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Bell supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Bell shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Bell has supplied all such requested information in the form specified by the Commissioner.

[32] 6 months after the date of registration of this Agreement and annually on the six month anniversary of the date of registration, and at such other times as the Commissioner may require, Bell shall file an affidavit or certificate, substantially in the form of Schedule C to this Agreement, certifying its compliance with Parts II, III, IV, V and VII of this Agreement and setting out the following information in detail:

- (a) the steps taken to ensure compliance;
- (b) the controls in place to verify compliance; and
- (c) the names and titles of employees who have oversight of compliance.

[33] If any of Bell, or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Bell shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 32 of this Agreement.

- [34] Bell shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of Bell; or
 - (b) any other change in Bell if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Bell's incorporating statute.
- [35] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Bell shall, upon written request given at least 5 Business Days in advance to Bell, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Bell on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Bell related to compliance with this Agreement, which copying services shall be provided by Bell at its expense; and
 - (b) to interview such officers, directors or employees of Bell as the Commissioner requests regarding such matters.

VIII. DURATION

- [36] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 7 years following the Divestiture.

IX. NOTICES

- [37] A notice or other communication required or permitted to be given under this Agreement is valid if it is:
- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and
 - (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: ic.avisdefusionmergernotification.ic@canada.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: ic.cb_lsu_senior_general_counsel-
 avocat_general_principal_usj_bc.ic@canada.ca

if to Bell:

BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 7th floor
Montreal, Quebec H3E 3B3

Attention: Chief Legal Officer
Fax: (514) 786-3801

if to Xplornet:

Xplornet Communications Inc.
625 Cochrane Drive, Suite 1000
Markham, Ontario
L3R 9R9

Attention: Allison Lenehan, President and Chief Executive Officer
Fax: 1-866-376-6940

[38] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or

- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [39] Notwithstanding Sections 37 and 38, a notice or other communication that is not communicated in accordance with Sections 37 and 38 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

X. GENERAL

- [40] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

- [41] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. The Respondents hereby consent to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue letters to Bell indicating that, subject to the implementation of this Agreement, the Commissioner does not intend to make an application under section 92 of the Act in respect of the Transaction or the Notified TELUS Transaction.

- [42] Information in Confidential Schedule B shall be made public after Xplornet’s Entry Date.

- [43] The Commissioner may, after informing Bell, extend any of the time periods contemplated by this Agreement other than in the definition of Divestiture Services or in Sections 29, 30, 31 and 36. If any time period is extended, the Commissioner shall promptly notify Bell of the revised time period.

- [44] Nothing in this Agreement precludes Bell, Xplornet or the Commissioner from bringing an application under section 106 of the Act. Bell will not, for the purposes of this Agreement, including execution, registration, enforcement,

variation or rescission, contest the Commissioner's conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of postpaid mobile wireless telecommunications services to consumers in Manitoba; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

- [45] The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [46] This Agreement constitutes the entire agreement between the Commissioner and the Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [47] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [48] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner, Bell or Xplornet may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail.
- [49] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 14th day of February, 2017

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

BCE Inc.

[Original signed by Mirko Bibic]

I/We have authority to bind the corporation

Name: Mirko Bibic

Title: Chief Legal & Regulatory Officer

Xplornet Communications Inc.

[Original signed by Allison Lenehan]

I/We have authority to bind the corporation

Name: Allison Lenehan

Title: President and Chief Executive Officer

SCHEDULE A
DIVESTITURE ASSETS

Spectrum

Area	Band	Area Name	Total MHz	Pairing
2-10	700 MHz	Manitoba	10	746-751 MHz / 777-782 MHz
3-39	AWS-1	Winnipeg	10	1740-1745 MHz/2140-2145 MHz
3-40	AWS-1	Brandon	10	1740-1745 MHz/2140-2145 MHz
3-39	2500 MHz	Winnipeg	20	2500-2510 MHz/2620-2630 MHz
3-40	2500 MHz	Brandon	20	2500-2510 MHz/2620-2630 MHz

CONFIDENTIAL SCHEDULE B

XPLORNET ENTRY DATE

[CONFIDENTIAL]

SCHEDULE C

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, [name], of [place], hereby certify¹ in accordance with the terms of the Registered Consent Agreement dated • between BCE Inc. (“Bell”), Xplornet Communications Inc. (“Xplornet”) and the Commissioner of Competition, that:

1. I am the [title] of [Bell], and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On [date], [Bell] entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with acquisition by BCE Inc. of Manitoba Telecom Services Inc. (the “Transaction”).
3. The Transaction closed on [date] (the “Closing Date”).²
4. The Divestiture (as defined in the Consent Agreement) to Xplornet was completed on [date].
5. Pursuant to Section 32 of the Consent Agreement, Bell is required to file [annual reports/reports when requested by the Commissioner] certifying its compliance with Parts II, III, IV, V and VII of the Consent Agreement.

Oversight of Compliance

6. [Names/titles] have primary responsibility for overseeing compliance with this Agreement.

Closing Date

7. Pursuant to Section 26 of the Consent Agreement, Bell is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on [date].

Circulation of Consent Agreement

8. Pursuant to Section 29 of the Consent Agreement, Bell is required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 3 Business Days after the date

¹ If this is drafted as an affidavit, the words “hereby certify” should be removed and should be replaced with “make oath and say”. An affidavit should be sworn under oath. A certification should be certified by a Commissioner for taking affidavits.

² Paragraphs 3, 4, 7 and 8 need only be included in the first certification/affidavit.

of registration of the Consent Agreement. The Consent Agreement was circulated by **[whom]** to **[provide list]** on **[dates]**.

9. Pursuant to Section 29 of the Consent Agreement, Bell is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Bell's responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Divestiture Services

10. Pursuant to Section 3 of the Consent Agreement, Bell is required to provide certain Divestiture Services to Xplornet. **[Note: Describe steps taken in respect of each Divestiture Service (tower access, handset procurement, network access, roaming, advertising).]**

Employees

11. Sections 10 and 11 of the Consent Agreement require Bell to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Bell has fully complied with the terms of those Sections and, more particularly: **[Note: Describe steps taken to facilitate employee transfer to Xplornet, having regard to the terms of Sections 10 and 11.]**

Notification of Breach

12. Based on my personal knowledge and my inquiries of **[provide names]**, I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 33 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer