



TELUS COMMUNICATIONS INC.

Reply Comments for

**Consultation on Periodic Adjustments for Radio and
Spectrum Licence Fees and Fees Related to Equipment
Certification Services**

DGSO-001-19

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Spectrum Management and Telecommunications

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Introduction

1. TELUS Communications Inc. (“TELUS”) provides its reply comments in response to the Consultation initiated by Innovation, Science and Economic Development (“ISED”) Canada¹ on the potential application of the annual fee adjustment by the change in the Consumer Price Index (“CPI”) for Canada as purportedly required by section 17 of the *Service Fees Act*² (“SFA”). ISED has also invited proposals for an alternative periodic adjustment for the fees within the scope of this Consultation. ISED has asked that parties provide their views and take into account ISED’s policy objectives and the requirements of the SFA.
2. TELUS has reviewed the comments submitted by other parties, including those from the British Columbia Broadband Association, Bell Canada (“Bell”), the Canadian Network Operators Consortium Inc., the Royal Canadian Mounted Police (“RCMP”), Rogers Communications Canada Inc. (“Rogers”), Saskatchewan Telecommunications (“SaskTel”), Shaw Communications Inc. (“Shaw”), Telesat Canada (“Telesat”) and Xplornet Communications Inc. (“Xplornet”). The reply comments in this document do not respond to all the comments made by these parties. A failure to address an individual comment does not imply TELUS’ agreement with such comment.
3. TELUS focuses its Reply on the following issues:
 - The SFA does not necessitate ISED to automatically apply a CPI adjustment for spectrum licence fees, and therefore a CPI increase should not be automatically applied, even in 2020;
 - spectrum licence fees are already a significant expense and further increases should be kept to a minimum to avoid impacting future investment; and
 - if administration costs are a concern then, consistent with the intent of the SFA, the CPI-based adjustment should be applied to only to those fees associated with cost

¹ *Consultation on Periodic Adjustments for Radio and Spectrum Licence Fees and Fees Related to Equipment Certification Services*, DGSO-001-19, March 2019 (the “Consultation”).

² *Service Fees Act*, SC 2017, c 20, s 451.

recovery, not the full amount of fees that are collected over and above administrative cost recovery.

Section 17 of the SFA Does Not Apply to Spectrum Licence Fees

4. TELUS provided the legal basis as to why the SFA does not necessitate ISED to automatically apply a CPI adjustment for spectrum licence fees. TELUS continues to rely on those comments and will not reproduce them here entirely, but instead reinforces key items.
5. There is no dispute that a spectrum licence fee is included in the definition of the term “fee” in the SFA. Section 17 of the SFA then requires an annual adjustment to fees by the rate of inflation. However, section 16 of the SFA contains a number of exceptions to that mandatory CPI annual fee adjustment. The relevant exception applicable to spectrum fees is section 16(a):
 16. Sections 17 and 18 do not apply in respect of a fee if
 - (a) the fee is fixed by contract
6. Section 16(a) of the SFA makes it clear that the fee increase in section 17 of the Act is superseded by the terms of a contract. Section 16(a) means that any fees fixed by contract are not subject to the mandatory annual CPI adjustment that is stipulated in section 17 of the SFA.
7. The licence fees for spectrum are established at the time of the granting of the licence through a contractual relationship between the Crown and the licensee, which brings them outside the scope of the SFA. Any changes to the licence fees must therefore be made through the *Radiocommunication Act* instead and there is no statutory requirement for automatic annual fee adjustment provisions of the SFA. Importantly, this also means that the already announced CPI adjustment to spectrum licence fees that is set for March 31, 2020 need not apply. As such, ISED does not need to apply the CPI adjustment on March 31, 2020 and TELUS requests that it rescind this planned CPI adjustment.

Spectrum Licence Fees Are Already Substantial and Annual CPI Increases Impose Significant Additional Burden on Licensees

8. The fact that the annual CPI adjustment does not apply to spectrum licence fees because of section 16(a) of the SFA is an important and positive outcome. Spectrum licence fees in Canada are already significant. Annual fee increases, even by CPI, to spectrum licence fees amount to meaningful cost increases imposed on licensees. Monies that could be used for spectrum deployment and network construction would instead be remitted to the Receiver General, when the Federal Government has already set and collected fees based on some measure of licence market value.
9. There is a marked concern about the magnitude of spectrum licence fees payable by licensees in Canada. Notably, WSPs big and small commented that the existing spectrum licence fees paid in Canada are already substantial. Rogers categorized the fees as being “already extremely high...amongst the highest in the world for both annual fees and acquisition costs.”³ Bell noted the significant amounts that have been spent on spectrum auctions and in annual fees: “Canadian facilities-based wireless service providers have spent over \$17.5 billion in spectrum auctions since 1987”;⁴ and “the Canadian wireless industry pays over \$185 million per year in spectrum licence fees.”⁵ [original references removed]
10. These comments are consistent with those made by smaller licensees. Shaw asked that ISED “be mindful of how fee adjustments could impact the ability of smaller, regional providers to compete.”⁶ Telesat commented on the state of spectrum licence fees, stating that “licence fees are out-of-step with other jurisdictions and hinder the competitiveness of Canadian satellite operators.”⁷ Finally, Xplornet found that “spectrum licence fees in

³ Rogers’ Comments, para. 2.
⁴ Bell’s Comments, para. 4.
⁵ Bell’s Comments, para. 5.
⁶ Shaw’s Comments, para. 2.
⁷ Telesat’s Comments, para. 3.

Canada remain very high in comparison to other jurisdictions, even under a new fee model proposed by ISED that is intended to lower the fees imposed on carriers.”⁸

11. Keeping spectrum licence fees stable is especially critical at this time when licensees need to plan their deployment of 5G networks in Canada. Licensees face tremendous capital cost commitments for such deployment, meaning that every dollar is important. Rogers also noted that the roll-out of 5G networks will require significant capital investments, “the vast majority of which will be made by Canada’s facilities-based mobile wireless service providers” and that “spectrum policy, including fees policy, must ensure that spectrum can be effectively deployed.”⁹
12. A decrease in investment due to monies being directed towards fee increases will also detract from the achievement of other important spectrum policy objectives for ISED, such as efficient spectrum use and network deployment to benefit Canadians, which is especially important in rural areas and requires capital expenditures from licensees. This concern is shared by providers whose coverage areas include significant portions of rural customers. Telesat stated that high fees hinder the “ability of Canadians, including those in rural and remote areas, to access affordable satellite services.”¹⁰ Rogers also noted the ultimate impact on consumers, stating: “[w]hile spectrum is undeniably a valuable public resource, it must be recognized that high spectrum prices are bad for the Canadian economy, the wireless industry and for consumers and businesses, who ultimately pay for them.”¹¹ Even the RCMP, while not a large licensee, expressed concern about the “impact to ‘rural regions of Canada’ where funding will have, on a per capita basis, a greater negative impact on growth for the deployment of modern radio and broadband communication systems over time.”¹²

⁸ Xplornet’s Comments, para. 5.

⁹ Rogers’ Comments, para. 4.

¹⁰ Telesat’s Comments, para. 3.

¹¹ Rogers’ Comments, para. 5.

¹² RCMP’s Comments, p. 1.

To Remain Consistent With the Intent of the SFA Annual Increases Should Apply Only to the Fees Collected to Recovery Spectrum Administrative Costs

13. TELUS has shown that the SFA does not necessitate ISED to automatically apply an adjustment for spectrum licence fees because of the exception set out in section 16(a) of the SFA. In the alternative, if ISED imposes a periodic fee adjustment to spectrum licence fees because of operation of the SFA, the adjustment should only be made to that portion of the fees that is needed for administrative cost recovery.
14. The introduction of the SFA (which replaced the previous *User Fees Act*) was part of the Federal Government's 2017 Budget.¹³ Importantly, the Budget made clear that the automatic fee escalator provisions from section 17 of the SFA were aimed at cost recovery for provision of government services.

Businesses should pay their fair share for the services the Government provides. As part of its efforts to modernize services and deliver value to Canadians, the Government is proposing to make changes to the legislative framework governing fee setting for government services.

...the Government proposes to implement an automatic inflation escalator to allow existing business fees to keep pace with costs...

A modern business fee setting regime will support more cost-effective delivery of services. [emphasis added]¹⁴

15. A few points are noteworthy based on the intent of the SFA, as noted by the Budget. First, given the magnitude of fees that are payable by licensees and the fact that fees are set based on a measure of market value, there is no doubt that licensees already “pay their fair share” for spectrum licence services, independent of any automatic fee escalator. Second, given that automatic inflation escalator is supposed to ensure that fees “keep pace with”

¹³ *Building a Strong Middle Class*, Tabled in the House of Commons by the Honourable William Francis Morneau, P.C., M.P., Minister of Finance, March 22, 2017, available at <https://www.budget.gc.ca/2017/docs/plan/budget-2017-en.pdf> (the “Budget”).

¹⁴ Budget 2017, p.203.

government costs, the SFA is envisioned to ensure that administrative costs are recovered by fees. Therefore, if an automatic CPI factor applies to spectrum licence fees, it should only apply to the portion of fees that are for spectrum administration cost recovery. In other words, the concept of CPI automatically applying to spectrum fees only makes sense in the context of the fees that are necessary to recover licensing administration costs associated with managing spectrum.

16. TELUS presumes that, at present, the revenue from the spectrum licence fees exceeds the costs of administering the spectrum. Moreover, the amounts that are necessary for spectrum administration cost recovery will be clear once ISED implements the reporting requirements outlined in the SFA.
17. Section 20(1) of the SFA requires that ISED table a report into the House of Commons and the Senate that shows fee revenues and fee costs. Section 20(1) is reproduced below.

20 (1) In each fiscal year, a responsible authority must, in accordance with Treasury Board policies or directives, if any, cause a report to be tabled before each House of Parliament that sets out

(a) the fees within the jurisdiction of the responsible authority that were payable in the previous fiscal year;

(b) the authorities under which those fees were fixed;

(c) the revenue received from those fees;

(d) any costs incurred in relation to the things for which those fees were paid;

(e) the degree of compliance with any performance standards established in respect of those fees;

(f) any remissions made under section 7 in respect of those fees;

(g) the fees within the jurisdiction of the responsible authority that will be adjusted by operation of section 17 in the fiscal year

after the year in which the report is tabled along with the adjustment date and the adjusted amount or adjusted manner for determining the amount; and

*(h) any other information required by the Treasury Board.
[emphasis added]*

18. TELUS expects that the issuing of the information by ISED in the report required under section 20 of the SFA will demonstrate that current spectrum licence fees already more than recover costs. As a result, no annual adjustment is necessary to meet the intent of the SFA.
19. However, if ISED is looking to address increasing fees using CPI, then the annual adjustment should only be applied to the “costs incurred in relation to the things for which those fees were paid” as the intent of the SFA is to ensure cost recovery, not an escalation of revenues.
20. TELUS provides the following stylized example of how, in practice, a CPI increase should apply to licence fees and administrative costs to meet the intent of the SFA. Information provided as part of the report provided to satisfy section 20(1) of the SFA, would be used to calculate an annual increase.
 - Hypothetical 2019 spectrum licence annual fees payable by licensees = \$200,000,000¹⁵
 - Hypothetical 2019 costs incurred by ISED to administer spectrum licences = \$20,000,000¹⁶
 - Assumed CPI = 2.2%

¹⁵ The actual number used will come from part (c) of section 20(1) of the SFA, “*the revenue received from those fees.*”

¹⁶ The actual number used will come from part (d) of section 20(1) of the SFA, “*any costs incurred in relation to the things for which those fees were paid.*”

21. Using the hypothetical numbers above, the annual increase would be calculated by applying the 2.2% CPI adjustment to the administrative costs only. In this case, the CPI adjustment would be $\$20,000,000 \times 2.2\% = \$440,000$. Thus, the 2020 spectrum licence fees would increase by \$440,000 to \$200,440,000, attributed to each carrier according to their share of administrative costs. Table 1, below, provides the details of the illustrative calculations:

Table 1 - CPI Adjustment Applied to Carriers

	2019 Spectrum Licence Fees	2019 Share of Administrative Costs	2020 Cost Increase (2.2% of share of administrative costs)	2020 Spectrum Licence Fees
Carrier A	\$60,000,000	\$6,000,000	\$132,000	\$60,132,000
Carrier B	\$40,000,000	\$4,000,000	\$88,000	\$40,088,000
Carrier C	\$35,000,000	\$3,500,000	\$77,000	\$35,077,000
Carrier D	\$25,000,000	\$2,500,000	\$55,000	\$25,055,000
Carrier E	\$20,000,000	\$2,000,000	\$44,000	\$20,044,000
Carrier F	\$15,000,000	\$1,500,000	\$33,000	\$15,033,000
Carrier G	\$5,000,000	\$500,000	\$11,000	\$5,011,000
	\$200,000,000	\$20,000,000	\$440,000*	\$200,440,000

*\$440,000 is equivalent to the 2.2% CPI increase on the \$20,000,000 costs.

22. TELUS maintains that ISED is not required to implement this proposal, as spectrum fees are exempt based on section 16(1) of the SFA. However, should a CPI increase be mandated, this proposal provides a mechanism to ensure that the portion of fees associated with administrative cost recovery takes into account CPI, but leaves the remainder of the licence fee amount stable. Therefore, this meets the intent of the SFA in that spectrum fees increase with administrative cost increases, but licensees do not face onerous annual fee increases that have nothing to do with administrative cost recovery.
23. As such, the annual increases will allow for a “predictable fee model suitable for budgeting and business planning”¹⁷ as requested by SaskTel, while at the same time linking the fee increases to the costs, which was suggested by Telesat,¹⁸ Rogers,¹⁹ and Xplornet.²⁰

Conclusion

24. In conclusion, the SFA does not necessitate ISED to automatically apply an adjustment for spectrum licence fees because the presence of the contracts that established when spectrum licences are granted supersede section 17. In the alternative, should it be interpreted that the SFA mandates an automatic fee increase, to take into account administrative cost recovery, those annual increases should be applied based on the costs associated with administering spectrum licences, not on the full amount of licence fees. This will address the intent of the automatic fee escalator provisions of the SFA. It also ensures that needless fee increases do not apply, thereby ensuring that increases in licence fees do not amount to a barrier for network deployment.

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¹⁷ SaskTel’s Comments, p.2.

¹⁸ Telesat’s Comments, para. 3 raises concerns that Canada’s fees are not linked to costs, indirectly suggesting that fees should be linked: “Canadian licence fees bear no apparent relationship to ISED’s costs of administering space and earth station licences.”

¹⁹ Rogers’ Comments, para. 6 states: “We continue to encourage [ISED] to adopt a cost-recovery fee regime for all spectrum fees and only then consider a fee escalator.”

²⁰ Xplornet Comments, para. 6 states: “The quantum of the payment should be set only to recover ISED’s costs of issuing spectrum licences.”