

**Westel Limited (t/a Logic
Communications) Submissions
in
“ICT 2023 – 3 - Consultation Revision
of the Fees for Mobile (Cellular) and
Fixed Wireless Licences Spectrum**

Introduction

Westel Limited (t/a Logic Communications (Cayman) Limited¹) (hereinafter referred to interchangeably as ‘Logic’) takes the opportunity given by the Utility Regulation and Competition Office (hereinafter referred to as the ‘Office’) to respond to “ICT 2023 – 3 - Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum.

Logic will address some issues and reserves the right not to comment at this time on all issues and states categorically that Logic’s decision not to respond to any issue raised by the Utility Regulation and Competition Office wholly or in part does not necessarily represent agreement in whole or in part

with the Office’s position, nor does any position taken by Logic in this document mean a waiver of any sort of Logic’s rights in any way. Logic expressly reserves all its rights.

Any questions or remarks that may arise as a result of Logic’s comments

may be addressed to:

Mrs. Siobhan James-Alexander

Chief Executive Officer

Westel Limited (t/a Logic Communications (Cayman) Limited

43 Eclipse Drive Grand Cayman, KY1-1205, Cayman Islands

1. Summary of Logic’s Position

Westel Limited (t/a Logic Cayman) (hereinafter referred to as ‘Logic’) hereby thanks the Utility Regulation and Competition Office (“the Office”) for providing stakeholders with the opportunity to respond to its consultation “*ICT 2023 – 3 - Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum*”. The Office is nonetheless hereby advised that Logic’s comments on this document do not preclude Logic from making further comments regarding this matter at any future time.

Notwithstanding the preceding, Logic must highlight concerns about the content of the document regarding the lack of details and information provided to stakeholders to properly document its concerns to the Office.

Logic anticipates the lack of details regarding the financial analysis and impact of the fees under consideration and the absence of data and details regarding the benchmark exercise. This will impact licensees’ ability to respond comprehensively to the consultation. Should the Office proceed with this consultation document without remedying its defects, licensees, customers, and the development of the industry will be negatively affected.

Considering the forgoing, Logic urges the Office to re-issue an amended version for a period of six (6) to eight (8) weeks, as required for consultations of this nature, pursuant to its Consultation Procedure Guidelines (Revision 2022). The re-issued document should, at a minimum, include the following:

- i. Details of the Office’s actual costs incurred in relation to the management of the various types of spectrum under consideration;
- ii. The percentage of the Regulatory fee paid by all licensees which is directly allocated for the management of spectrum;
- iii. Specific details on purpose and use of what the additional revenues derived from this fee structure will be used for;

- iv. Provide details on all new electronics systems that will be deployed by the Office to reduce the long-term cost of spectrum management and lead to the reduction of the cost per SU;
- v. Definitions for all the variables used in the calculations of revised fees;
- vi. Full details regarding the derivation of all the inputs/coefficients utilised in the proposed formula, including an explanation with assumptions of how each was derived and the methodology underpinning same;
- vii. The comprehensive Benchmarking Report utilised to develop the proposals made which, at a minimum should include:
 - a. Full details regarding the benchmark methodology;
 - b. Full benchmark selection criteria;
 - c. Details regarding the suitability of the benchmark countries selected as comparators for the Cayman Islands;
 - d. Details regarding the normalization and/or standardization conducted to ensure suitable comparability; and
 - e. The vintage of the inputs considered.
- viii. A schedule of the impact of the proposed fees utilizing hypothetical values.

Alternatively, should the Office proceed with the consultation in its current form, its actions may be interpreted as directly contradicting its mandate under Sections 6(4)(d) and 7(1)(b) of the Utility Regulation and Competition Act (2021 Revision), (“the Act”), the result of which could be prejudicial to licensees.

2. Proposals (Draft Determination)

Logic notes and agrees with the Office’s proposal to amend the framework for spectrum fees for mobile and fixed wireless spectrum to address the regulatory shortfall from the lack of definitions and to better align these fees with the Office’s cost of spectrum management, as is best practice. Regarding the proposed formula, Logic will provide its detailed comments in the section titled “The Proposed Formula”.

3. Rationale

Logic notes and agrees with the Office that given the extensive period that has elapsed and the concomitant changes in the industry since the imposition of the current fee structure, it has become necessary for the fee structure for mobile (cellular) and fixed wireless spectrum, to be reviewed. It is our position, however, that any amendments/updates arising from such a review must be done only where they can be objectively justified in a transparent manner and where they facilitate sector growth and development and promote the functions and powers of the Office, as articulated in the Act, specifically:

- “6. (1) The principal functions of the Office, in the markets and sectors for which it has responsibility, are —*
- (a) ...;*
 - (b) to promote appropriate effective and fair competition;*
 - (c) to protect the short and long term interests of consumers in relation to utility services and in so doing —*
 - (i) ...;*
 - (ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and*
 - (iii) ...; and*
 - (d) to promote innovation and facilitate economic and national development.*
- (2) In performing its functions and exercising its powers under this or any other Law, the Office may —*
- (a) ...*
 - (p) assign resources and implement initiatives designed to enable the introduction of new and innovative technologies and systems in the markets and sectors for which it has responsibility...”. (Emphasis ours)*

Logic notes the Office’s commentary on what it identifies as the basic principles of efficient spectrum pricing, according to a presentation on 5G spectrum pricing at a conference in India. Given the importance of the matter under consideration, we refer to the International Telecommunications Union (“the ITU”), which holds the position that spectrum pricing principles cannot be divorced from spectrum management principles. We have therefore included hereunder

Logic Communications Limited (Cayman Islands)

“ICT 2023 – 3 – Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum” –
November 17, 2023

an expanded list of principles showing the ITU-D’s spectrum management principles for the Office’s consideration.¹

- i. Spectrum should be allocated to the highest value use or uses to ensure maximum benefits to society are realized;
- ii. Mechanisms should be put in place to enable and encourage spectrum to move to its highest value use;
- iii. Greater access to spectrum will be facilitated when the least cost and least restrictive approach is chosen in achieving spectrum management goals and objectives;
- iv. To the extent possible, regulators and spectrum managers need to promote both regulatory certainty and flexibility in how spectrum is used;
- v. Balance should be achieved between the cost of interference and the benefits obtainable from greater spectrum utilization;
- vi. Fairness and objectivity require that fees are based on objective factors and all licence holders in a given frequency band should be treated on an equitable basis. This would preclude, for example, different treatment of different users in a given frequency band;
- vii. Transparency requires that the basis on which fees are calculated should be made clear in a published document resulting from consultation with stakeholders and that all fees should be set based on a published schedule;
- viii. Administrative costs will be lower if the fee schedule is simple to administer. The simplest fee schedule would be one involving a flat fee payment; however, this may not promote efficient spectrum use;

¹ https://www.itu.int/en/ITU-D/Spectrum-Broadcasting/Documents/Publications/Guidelines_SpectrumFees_Final_E.pdf

- ix. Administrative simplicity needs to be balanced against the requirement to encourage efficiency of spectrum use if fees are set taking account of parameters such as bandwidth, frequency band or coverage;
- x. Spectrum fees should be reviewed at suitable intervals in order to cater for changes in economic KPIs (key performance indicators) or advancement in technologies resulting in increased demand of a particular band;
- xi. Mechanisms should be in place to avoid, detect and where necessary prevent spectrum hoarding, which will deter competition; and
- xii. A balance should be established between the financial approach and other key facets - regulatory (competition), social (universal service).

To ensure a robust and comprehensive consideration of all issues touching and concerning this matter, Logic requests that the Office updates its consultation document to include the spectrum management principles identified by the ITU or the specific spectrum management principles with economic effects, which unfortunately have been omitted from this document. Additionally, we request that the Office articulates how the key principles identified at points iii, iv, v, viii, x, and xii above, have been incorporated in the proposed fee structure.

4. Reflecting the amount of spectrum being used

Logic notes the Office’s position here.

5. Absent excess demand or scarcity, prices should be set to recover the cost of managing the spectrum

Logic agrees with the position that there is arguably no excess demand or scarcity as all ICT network operators in the CI have “*reasonable portfolios of spectrum*”, and thus, spectrum prices should be set to recover spectrum management costs.

Logic Communications Limited (Cayman Islands)

“ICT 2023 – 3 – Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum” – November 17, 2023

Logic further notes the Office’s suggestion that scarcity could arise when new wireless operators wish to launch services in the country. Subject to the Office’s proactive and efficient management of the sector, Logic considers the potential for this scenario to be highly improbable. As Logic is aware, new entrants to this regulated market must apply to the Office and obtain the necessary approvals under Section 26 of the Act before a licence is granted. In that regard, it is Logic’s reasonable expectation that the Office will be aware, well in advance, of any potential new market entrants and will have the necessary opportunity to make available any resources under its purview that the new entrant may require. Logic, therefore, reiterates that based on the proposed scenario, there is currently no excess demand or scarcity of spectrum in the CI.

Logic notes the Office’s comment regarding the potential for heavily contested spectrum. This, however, does not represent the existing reality, and as such, we restate the absence of excess demand or scarcity. In these circumstances, Logic supports an administrative spectrum fee structure that addresses all spectrum management activities conducted by the Office. In the absence of scarce spectrum, as is the current state identified by the Office, market-based spectrum fees are irrelevant and would only serve to penalise existing spectrum holders for anticipated scenarios which are not guaranteed to materialise.

Logic, therefore, recommends that the Office apply an administrative fee to fully fund its spectrum management activities, according to the direct and indirect costs associated with the same.

6. Where there is excess demand or scarcity, positive pricing may encourage economic efficiency.

Logic notes the Office’s position here.

7. Prices should be based on objective factors and licence holders in a given frequency band should be treated on an equitable basis

Logic notes the Office’s position here.

8. Prices should be calculated on an open and transparent basis.

Logic notes the Office’s position and agrees that any spectrum fee charging approach should be done transparently. We refer to our introductory comments to this document and reiterate our position that this document lacks the transparency required of a regulatory authority consulting on such a critical matter which potentially can have a significant negative impact on the industry if the standards adopted are not aligned with best in class industry trends and standards.

9. International practices

We again express our deep concern that the benchmark data utilized is not sufficiently supported by the required statistical research and analysis and appears to be based on an imported approach. While Logic has no objections to benchmarking being considered in the appropriate circumstances *per se*, Logic questions whether the document adhered to best practices in the industry and is applicable to the context of the Cayman Islands. We therefore reiterate our request for the comprehensive Benchmarking Report used to guide the proposals made. This should provide, at a minimum:

- i. Full details regarding the benchmark methodology;
- ii. Full benchmark selection criteria;
- iii. Details regarding the suitability of the benchmark countries selected in relation to the Cayman Islands;
- iv. Details regarding normalisation and/or standardization to ensure suitable comparability.
- v. The vintage of the inputs considered.

10. Conclusions and proposals (Draft Determination)

The Office proposes to utilise a formula “*to better ensure fairness, promote efficient spectrum use and to better follow international best practice for calculating fees for cellular and fixed wireless access spectrum*”. Logic has several concerns in this regard, and these are provided hereunder.

The Proposed Formula:

Logic has no objection to the Office utilising a formula-based approach for developing spectrum fees under an appropriate methodology. Nevertheless, we are querying the usage of a formula pertaining to spectrum scarcity using bands. In those cases, we recommend that the spectrum fee be limited to the recovery of spectrum management costs only.

The Spectrum Unit of Pricing (“SU”):

- i. The first input into the formula, the SU, or spectrum unit of pricing, is questionable from the outset. The Office begins the consultation by indicating that under the current charging mechanism, each active transmitter is charged CI\$75.00 per channel (or transmission frequency), terms which remain undefined in law. The Office, however, now seeks to introduce, without explanation, this abstract item called the SU, a new term also undefined both in law and in this consultation, the value of which is the same as the current frequency fee, it is seeking to update. In the circumstances, Logic submits that there must be a definition of this concept of the SU so that it does not remain a concept only understood by the Office.
- ii. In addition to the preceding, the Office proposes that the value of the undefined SU, be index-linked annually based on the Consumer Price Index (“CPI”) to ensure that “*fees collected keep track with the Office’s costs.*”. This approach is, however, fraught with regulatory, cost, and economic concerns.
 - i. In the absence of the Office’s definition and detailed description of what is meant by the SU, utilising the value of CI\$75.00 as the starting point for the fee calculation and index-linking it as it purportedly “*helps ensure that the fees collected keep track with the Office’s costs*”, presupposes that this \$75.00, is an accurate representation of the costs associated with the cost of spectrum management. The Office is hereby advised that in keeping with best practices

as identified by the ITU and the Office’s own referenced document², as it relates to costs, spectrum prices should only be developed to cover the costs associated with the spectrum management activities of the Office, and not, as it appears in this case, all the Office’s costs. We therefore request that the Office amend its statement and approach to reflect this. Further, Logic requests that the Office, in keeping with its requirements under S6 (4) (d-e) of the Act, provide details of the costs associated with its spectrum management activities. Specifically, to facilitate a proper understanding of these costs as they relate to the matter at hand, Logic requests that the Office provide the costs of spectrum management for the past five (5) years and the projected costs of spectrum management that would have been considered in both the Office’s 2023 five-year strategic plan and its most recent projected budget.

- ii. The Office suggests that the undefined “SU” would be index-linked based on the CPI, to keep track of the Office’s costs. While Logic has no objections to the use of the CPI as the official measure of inflation in the Cayman Islands, we do consider its use here to be inappropriate for the proposed purposes, given the Office’s association of this item with the Office’s costs, per footnote 13 of the consultation document³. As Logic is aware, the Office, in developing its annual plan and annual budget as required under Section 41 of the Act, should, as a matter of financial propriety, have identified costs for all aspects of its operations. In that regard, the actual historical and projected costs of managing the spectrum resource should be known to the Office. It is, therefore, Logic’s reasonable expectation that the SU is intended to represent the Office’s costs of spectrum management. In turn, the Office will have

² https://eu-ems.com/event_images/filemanager/5G_Huddle_2020/day_2/2_-_Yi_Shen_Chan_-_Session_5.1.pdf

³ Logic awaits the Office’s explicit definition of the term SU. The Office is advised that Logic’s assumption that the SU is equivalent to the Office’s costs is based purely on the Office’s own implicit directions in the draft regulatory document.

access to the actual costs of the same and will not require index-linked measurements, to estimate what it already knows. Logic, therefore, recommends that the approach of index-linking here be abandoned. Furthermore, in keeping with its requirements under S6 (4) (d-e) of the Act, Logic requests that the Office, via a revised consultation, provide stakeholders with the details of the costs associated with its spectrum management activities. To facilitate a proper understanding of these costs, Logic reiterates its request for the Office to provide the costs of spectrum management for the past five (5) years and the projected costs of spectrum management that would have been considered in both the Office’s 2023 five-year strategic plan and its most recent projected budget.

- iii. Notwithstanding the above, if the spectrum fees are based on erroneous data from the outset, will undoubtedly result in an inaccurate result. Logic urges the Office to immediately address the concerns raised before it can proceed as it will not have any measure of regulatory certainty.
- iv. Required:
 - i. The Office to properly define and explain this nebulous concept of the SU.
 - ii. The Office to articulate in detail how it has arrived at a value of CI\$75.00 for the yet-to-be-defined SU.
 - iii. The Office, in keeping with its requirements under S6 (4) (d-e) of the Act, provides details of the costs associated with its spectrum management activities. To facilitate a proper understanding of these costs, Logic also requests that the Office provide the costs of spectrum management for the past five (5) years and, and the projected costs of spectrum management that would have been considered in both the Office’s 2023 five-year strategic plan and its most recent projected budget.

Logic Communications Limited (Cayman Islands)

“ICT 2023 – 3 – Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum” –
November 17, 2023

The Bandwidth Factor (“BW”):

Logic seeks the Office’s confirmation that the bandwidth factor represents the number of multiples of a 200kHz channel licensed exclusively to a specific licensee.

The Band Factor (“BF”):

Logic notes the table of band factors proposed. However, the details concerning how these were derived have yet to be provided. Therefore, we would be grateful for the details regarding the benchmarking exercise employed to arrive at the values identified. The Office is nonetheless advised that all our concerns regarding the robustness of its benchmarking exercise also apply here. Logic further notes the Office’s re-based band factors in Section 42 of the document. We also seek the Office’s clarification on how these were translated into the values in Section 45 of the consultation document, if not by way of an arithmetic average.

11. Other Considerations

a) Lack of Clarity Regarding the Office’s Actual Costs in Relation to Spectrum Management

Logic notes the Office’s position that the current charging principles require that the total annual amount collected from all licensees shall not exceed the Office’s annual estimated cost of electromagnetic spectrum management and other related activities. While Logic has no objection to this *per se*, Logic holds the Office has not provided guidance to the industry on this particular issue. The Office has not provided an account of the specific budgeted costs for spectrum management and the detailed actual costs incurred for the same. Therefore, licensees, who are called upon to be, among other things, financially efficient, are essentially being asked to endorse this approach without the necessary engagement and information from the Office.

The Office is therefore requested to adhere to its functions under the Act, provide the transparency required of it, and disclose to licensees the proposed spectrum management

costs they are required to cover and to give an account of the actual level of the funds achieved. Specifically, the Office is requested to provide:

- i. Any reports concerning a comprehensive assessment of the costs of spectrum management utilised in developing this consultation document;
- ii. Detailed proposed costs of spectrum management fees by the spectrum bands or by the proposed Band Factor categories for the Office’s current 5-year strategic plan;
- iii. A detailed listing of the proposed spectrum management activities to be conducted for the period of the Office’s current 5-year strategic plan; and
- iv. A detailed statement of actual licence fees incurred, categorized by the proposed Band Factors, for the past three (3) to five (5) years.

In light of forgoing, and in the alternative, Logic recommends a revised model, Spectrum Cost-reflective Assessment (SCA), is proposed. This model balances technical factors with the actual administrative expenses of managing the spectrum.

Spectrum Fee = (SU * Technical Factor) + Administrative Costs - Socio-economic Benefits

1. **Technical Factor (TF):** This is an aggregate of BW and BF, ensuring that spectrum usage's technical aspects continue to play a role in pricing. But only used whenever there is a competitive need for spectrum.
2. **Administrative Costs:** This is a transparent, annually updated figure that reflects the actual expenditure incurred by regulatory authorities for spectrum management. By directly incorporating this into the pricing model, we ensure that spectrum fees remain anchored to actual management costs.
3. **Socio-economic Benefits:** This introduces a discounting mechanism for service providers that can demonstrate significant socio-economic benefits, such as bridging digital divides or facilitating critical services in underserved areas. This ensures that providers with significant public interest mandates are not unduly burdened.

b) Further Concerns in Relation to the Formula Proposed

Logic has no concerns regarding the setting of a minimum fee across spectrum bands to recover the Office’s costs concerning the management of spectrum. We understand and

accept that for each of the Office’s financial years, these costs may be based on projections. We do, however, consider it prudent that the Office incorporates as a part of its fee calculation and invoicing process a true-up/recalculation exercise at the end of each of its financial years to ensure that licensees are only required to finance the actual costs incurred for spectrum management. We further propose that any additional charges or refunds arising out of the true-up/recalculation either be invoiced to licensees or offset against future charges accordingly.

Additionally, if the Office intends to proceed with the use of a formula to determine spectrum fees, Logic recommends that where more than one type of fee is charged, these must be unbundled to ensure transparency and accountability. Thus, given that the spectrum management cost is a specific value, we maintain that this value should only be set administratively and not be altered. Logic also accepts that in the case of scarce spectrum and to promote economic and technical efficiency, it may be necessary to apply a market-based approach to pricing some spectrum bands. Where this is done, we consider it more appropriate that these values, subject to being developed pursuant to a sound and transparent administrative or market-based methodology, be added to the Office’s spectrum management cost, where necessary, and not be applied in the manner currently proposed by the Office.

c) The Provision of a Schedule of the Impact of Proposed New Fees given Different Scenarios

Logic notes that the consultation document did not provide examples of how spectrum fees are expected to change numerically if the Office’s changes were to be implemented. It is our view that a schedule of these proposed changes could also be demonstrated by way of a schedule of revised fees to aid in understanding the impact of the proposed modifications.

d) Availability of Spectrum for Testing and Innovation

Logic notes that the Office’s revised spectrum fee proposal has not considered a low or no-cost spectrum for research and development, particularly pending the introduction of 5G. Logic, therefore, recommends that the Office consider in the revised consultation and any other relevant regulatory instruments a pricing proposal for low cost or zero-rated access to radio spectrum to facilitate innovation and product testing and trials.

e) Phasing In of Proposed Spectrum Fee Adjustments

Logic recommends that the Office give due consideration to licensees’ existing strategic and operational plans and investment commitments and allow for the phasing in of fee increases to allow licensees to be adequately prepared for any possible increases ultimately agreed upon. This will allow for appropriate expenditure and cost recovery planning and implementation to take place and will also enable the Office to monitor the impact of recommended changes and make reasonable adjustments where necessary.

*** END***