

Willie Grieve
Vice President
Telecom Policy & Regulatory Affairs

(780) 493-6590 Telephone
(780) 493-6519 Facsimile
willie.grieve@telus.com

June 26, 2006

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear. Ms. Rhéaume:

Re: Part VII Application to Revise the *Telecommunications Fees Regulations, 1995*

1.0 Introduction

1. TELUS Communications Company (“TELUS” or the “Company”) is in receipt of an application (the “Application”) filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* (the “Rules”) on behalf of Aliant Telecom and Bell Canada (collectively, the “Companies”) requesting that the Commission revise the current *Telecommunications Fees Regulations, 1995* (the “Regulations”), and in particular, the manner in which telecommunications fees are calculated and levied.
2. In the Application, the Companies make three requests: that the Commission (i) reform the Regulations so as to expand the base of fee-paying entities to include all telecommunications service providers based upon a consistently defined base of revenues; (ii) initiate consultations to establish service standards for its activities; and (iii) undertake measures to review its costs.

3. As regards its first request to reform the Regulations, the Companies state that

[a] more equitable approach would be one similar to that used to determine contribution payments. Under such an approach telecommunications fees would be payable by all telecommunications service providers on a consistent base of revenues, i.e., their total Canadian Telecommunications Service Revenues (CTSR). The Commission should also secure funding from sources other than telecommunications fee payers where appropriate, e.g., for costs related to the establishment and administration of a national DNCL [Do Not Call List].¹

4. As regards its second request for consultations to establish service standards for Commission activities, the Companies state that

...the Commission should consult with industry to establish measurable service standards with regards to its activities, and publish the results on a quarterly basis. Further, a mechanism for remedial action should be established in the event service standards are unmet.²

5. As regards to its third request, the Companies ask that the Commission undertake measures to review its costs, including

- undertaking a review of its cost structure and commit to reducing activities which do not contribute to the objectives of the *Telecommunications Act*;
- freezing telecommunications fees at the 2005-2006 level; and
- making the 2006-2007 telecommunications fees interim pending review of the current Regulations.³

6. TELUS' response to the Application is provided below. The focus of the Company's comments will be on the first request in the Application concerning the reform of the Regulations. In brief, TELUS is of the view that the relief requested in the Application is justified and that reform of the Regulations can be implemented immediately and easily, without the need for legislative amendments, given the discretion provided to the Commission under the

¹ Application, paragraph 44.

² Application, paragraph 45.

³ Application, paragraph 46.

Telecommunications Act. The relief requested may be obtained by the voluntary adoption and implementation by the Commission of a number of recommendations contained in the recently released Telecommunications Policy Review Panel Final Report 2006 (the “Final Report”). TELUS requests that the Commission undertake the necessary amendments and consultations required in order to ensure that revised Regulations are in place, along the lines recommended by the Telecommunications Policy Review Panel, for the beginning of the Commission’s 2007-2008 fiscal year.

2.0 The *Telecommunications Fees Regulations, 1995*

7. Section 68 of the *Telecommunications Act* authorizes the Commission to collect fees for the purposes of carrying out its responsibilities thereunder. Section 68(1) reads as follows:

The Commission may, with the approval of the Treasury Board, make regulations prescribing fees, and respecting their calculation and payment, for the purpose of recovering all or a portion of the costs that the Commission determines to be attributable to its responsibilities under this Act or any Special Act.

8. Under the authority of section 68 of the *Telecommunications Act*, the Commission has established the existing *Telecommunications Fees Regulations, 1995*. The Regulations stipulate that Canadian carriers under the *Telecommunications Act* that file tariffs must pay fees.⁴ In the Application, the Companies are proposing to expand the base of fee-paying entities to include all telecommunications service providers and that the calculation of the fees payable should be based upon a consistently defined base of revenues.

3.0 Telecommunications Fees Are Substantial and Are Growing

9. In Telecom Public Notice CRTC 2006-7, *Telecommunications Fees*, the Commission announced that the total amount of telecommunications fees to be recovered by the Commission for the 2006-2007 fiscal year are \$26.631 million.⁵

⁴ The Regulations, section 3.

⁵ Telecom Public Notice CRTC 2006-7, paragraph 4. This amount includes the an amount of \$25.435 million of telecommunications regulatory costs of the commission for the 2006-2007 fiscal year, as

This represents an increase of 10.5% from the telecommunications fees levied for the fiscal year 2005-2006.⁶ This further increase in telecommunications fees, beyond the rate of inflation, continues the past trend of constantly escalating fees.⁷

4.0 Concerns with the Existing Regulations

10. Aside from the fact that telecommunications fees are substantial and are growing, the Application outlines several other concerns with the existing Regulations, including the following.

- The method for allocating the fees payable is inequitable.⁸
- The fee-setting process is inconsistent with the Treasury Board Secretariat of Canada policies relating to external fees, user fees and cost recovery procedures, specifically raising issues of equity, efficiency, accountability and service standards, partnership, cumulative impact, transparency, and mediation.⁹
- The Regulations are inconsistent with other industries in Canada and other countries.¹⁰

11. TELUS concurs with these concerns about the Regulations and agrees that immediate reform of the Regulations is required. The inequitable nature of the existing method for calculating the fees payable is of particular concern to TELUS. As noted above, the Regulations stipulate that Canadian carriers under the *Telecommunications Act* that file tariffs must pay fees. In formulating the Regulations, the Commission decided that regulatory costs were primarily attributable to carriers that filed tariffs, since a preponderance of its regulatory activities arose in relation to such carriers and the terms and conditions contained

contemplated by subsection 4(3) of the Regulations, and an annual adjustment amount of \$1.196 million for the fiscal year 2005-2006, in accordance with section 4(5) of the Regulations.

⁶ The total amount to be recovered for fiscal year 2005-6 was \$24.1 million (Telecom Public Notice CRTC 2005-6, paragraph 5).

⁷ Application, paragraphs 9 and 10 and Figures 1 and 2.

⁸ Application, paragraph 12ff.

⁹ Application, paragraph 24ff.

¹⁰ Application, paragraph 40ff.

in the tariffs filed by them.¹¹ However, there are now a variety of other Canadian carriers that do not file tariffs but whose activities also generate regulatory costs in the form of complaints.¹² There are also other telecommunications service providers that are not Canadian carriers (*e.g.*, resellers and Internet Service Providers) who do not file tariffs but who also generate regulatory costs.¹³ The Regulations are also inequitable because a Canadian carrier is liable to pay fees based on all of its telecommunications activities if even only one of its services becomes subject to tariff regulation.¹⁴ TELUS also notes that the narrowly-defined base of fee-paying entities has given rise to disputes over eligibility to pay that have proven to be costly and time-consuming for the parties involved to resolve.¹⁵

5.0 Immediate Reform of the Existing Regulations Is Required

12. The existing Regulations were established over a decade ago and much has changed since that time. It is no longer the case that regulatory costs are primarily attributable to carriers that file tariffs. Furthermore, tariff-related activities have recently been streamlined¹⁶ and accordingly occasion less costs for the Commission. Today, as noted above, regulatory costs are driven by a broader range of regulatory activities besides the tariff-related activities of Canadian carriers and this broader range of activity is generated by a broader range of activities and a broader range of telecommunications service providers than the tariff-related activities of Canadian carriers. As a result, immediate reform of the existing Regulations is required based on a flexible approach that recognizes that cost recovery should be based on new cost-drivers generated by all telecommunications service providers, and the recognition that the remaining tariff-related activities take fewer resources.

¹¹ *Telecommunications Fees Regulations, 1995*, Telecom Public Notice CRTC 95-20, 25 April 1995, page 5.

¹² Application, paragraph 19, and the Telecommunications Policy Review Panel Final Report 2006, page 9-57.

¹³ Application, paragraph 19.

¹⁴ Telecommunications Policy Review Panel Final Report 2006, page 9-57.

¹⁵ For example, the issue of the dispute over the assessment of user fees by the Commission ultimately resolved in *TELUS Communications Inc. v. Attorney General of Canada*, [2005] FCA 409.

¹⁶ Introduction of a streamlined process for retail tariff filings, Telecom Circular CRTC 2005-6,.

5.1 The Changing Nature and Scope of Regulatory Activity Was Recognized in PN 98-34

13. The Commission itself recognized the changing nature of regulation and the cost-drivers associated with the recovery of its operating costs in the consultation process initiated by Telecom Public Notice CRTC 98-34, *Proposed Amendments to Regulations Respecting Telecommunications Fees* (“PN 98-34”). In that public notice, the Commission proposed, in effect, to expand the base of fee-paying entities by requiring all Canadian carriers to pay fees, except those which fall below an operating revenue threshold, regardless of whether or not they file tariffs.¹⁷ In this regard, the Commission noted that

[i]t is not solely the Canadian carriers that file tariffs that cause the Commission’s costs. Increasingly, Commission resources are spent, not only on processing tariff applications, but also on such activities as establishing and monitoring a regulatory framework designed to ensure that there is sustainable competition.¹⁸

14. The Commission also recognized that other telecommunications service providers, besides tariff-filing Canadian carriers, also caused regulatory costs and thus so should also be assessed telecommunications fees.

The *1995 Regulations* require Canadian carriers that file tariffs to pay fees, even with regard to services which do not require tariffs. At the same time, other Canadian carriers pay no fees although the Commission has retained some regulation of these carriers. Consequently, even though all Canadian carriers must cut costs, some must pay fees, while their competitors do not. It is also to be noted that regulation by the Commission benefits not only those that file tariffs, but all Canadian carriers, by providing a body which seeks, among other objectives, to ensure that there is sustainable competition.¹⁹

15. At the time, while TELUS agreed with the Commission’s stated intention to expand the base of fee-paying entities, the Company also pointed out that the Commission’s expansion did not go far enough since even though it would have included non-dominant Canadian carriers and wireless providers that had been

¹⁷ PN 98-34, paragraph 4.

¹⁸ PN 98-34, paragraph 3.

¹⁹ PN 98-34, paragraph 5.

forborne from filing tariffs, it did not include resellers and Internet Service Providers that generate costs to the Commission and benefit from Commission regulation.²⁰ These entities have generated a significant portion of regulatory activity but have not had to bear the consequences of paying for regulatory costs in the form of telecommunications fees. After considering public comments, the Commission decided in Public Notice CRTC 2000-75, *Telecommunications Fees*, that the Regulations should remain unchanged.

5.2 The Changing Nature and Scope of Regulatory Activity Is Recognized in the Latest CRTC 3-Year Work Plan

16. More recently, the changing nature and scope of regulation is also recognized in the Commission's latest 3-Year Work Plan document that lists a number of activities for the 2006-9 timeframe, many of which will not involve tariff-related activities, including consideration of local forbearance issues, equal access for wireless carriers, mediation of rights-of-way issues, implementation of a national do not call list, and the tracking of broadband expansion.²¹

5.3 The Nature and Scope of Regulatory Activity Will Continue to Change

17. Further evidence of the changing nature and scope of regulation is provided in the recently-released *Telecommunications Policy Review Panel Final Report 2006* (the "Final Report"). Many of the 127 recommendations in the Final Report relate directly to the issue at hand. On a general level, the Final Report recommends a de-emphasis of tariff-related activities and economic regulation, with a greater emphasis on technical and social regulation. In this regard, many of the recommendations pertaining to technical regulation pertain to the resolution of disputes for access to support structures, rights-of-way, antenna towers and multi-unit buildings that are not tariff-related activities. The Final Report recommends a streamlining of regulatory activities related to tariffs where economic regulation is still required. In this regard, TELUS notes that

²⁰ Telecom Public Notice CRTC 98-34, *Proposed Amendments to Regulations Respecting Telecommunications Fees*, Comments of BC TEL and TELUS Communications Inc., January 28, 1999.

²¹ CRTC 3-year Work Plan, 2006-9, 28 April 2006, page 11ff.

Recommendation 3-17 proposes that tariffs for regulated services should be subject to a negative disallowance process and Recommendation 9-22 proposes a certified compliance approach for tariffed services, which, similar to Recommendation 3-17, would require less regulatory oversight for approving tariffs filed. These recommendations point to a diminished importance of tariff-related activities in the Commission's overall workload.

18. TELUS also notes that Recommendation 3-30 proposes that resellers of local services who choose to undertake CLEC obligations should have all the regulatory rights and obligations applicable to CLECs. In TELUS view, resellers should share the obligation to pay telecommunications fees.
19. The recent announcement of the proposed order under section 8 of the *Telecommunications Act* to the Commission, made by The Honourable Maxime Bernier, Minister of Industry, underscores the point that the nature and scope of regulatory activity will change dramatically in the future.²² The proposed order states, among other things, that the Commission, in order to promote efficient, informed and timely operations when relying on regulation, should provide for maximum efficiency in regulation by using only tariff approval measures that are as minimally intrusive and as minimally onerous as possible, which points to a lessened role of tariff-related activities as cost-drivers.²³ It is indicated that the proposed order will come into effect later this year after the required consultations and other steps are carried pursuant to section 10 of the *Telecommunications Act*.

²² See Speaking Points for the Honourable Maxime Bernier, Minister of Industry, delivered at the 2006 Canadian Telecom Summit, Toronto, Ontario, June 13, 2006, available at: <http://www.ic.gc.ca/cmb/welcomeic.nsf/503cec39324f7372852564820068b211/85256a5d006b97208525718c005d50ca!OpenDocument>. See also the associated Industry Canada News Release "Canada's New Government Tables Proposed First-of-its-Kind Policy Direction on Telecommunications to CRTC Calling for Greater Reliance on Market Forces", June 13, 2006. The News Release also contains a Backgrounder with the text of the proposed order.

²³ Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission, Canada Gazette, Part I, Vol. 140, No. 24, June 17, 2006, section c) (i).

6.0 Telecommunications Fees Must Be Considered in a Broader Context

20. In addition to the concerns raised in the Application regarding telecommunications fees, TELUS wishes to bring to the attention of the Commission that there are numerous other payments that Canadian carriers must make in order to operate. In addition to various federal and provincial taxes and municipal property taxes that other businesses must pay, telecommunications carriers, depending upon the precise nature of their operations, must also pay other assessments including radio licence fees under the *Radiocommunication Act*, research and development expenditures as a condition of certain radio licenses under that Act, levies for the use of rights-of-way, and international submarine cable license fees.
21. In light of the necessity for all companies to achieve efficiency gains in a competitive environment, TELUS wishes to underscore the importance of limiting regulatory costs to the extent possible, consistent with the Government of Canada's Smart Regulation strategy. The Smart Regulation of cost-efficiency principle states, in part, that "*regulators must understand the cumulative impact of regulation and seek to avoid overlap, duplication, inconsistency and unintended consequences*" (emphasis added).²⁴ In short, the Commission should be cognizant of the cumulative effect of the telecommunications fees it charges when considered in context with all of the other taxes and fees paid to all levels of government by telecommunications service providers.

7.0 Recommended New Approach to Amending the Regulations

22. In recognition of the need for change, TELUS submits that the Commission should immediately adopt and implement a number of the recommendations from the *Telecommunications Policy Review Panel Final Report 2006* pertaining to the recovery of the costs of regulation, consultations and performance standards. The

²⁴ *Smart Regulation: A Regulatory Strategy for Canada*, Report to the Government of Canada, External Advisory Committee on Smart Regulation, September 2004, page 14.

Panel's comments in the Final Report relating to recovering the costs of regulation through telecommunications fees are provided in Attachment A.

7.1 Contribution-Subsidy Approach Should Be Adopted for Calculating Telecommunications Fees

23. Recommendation 9-31 in the Final Report proposes amending the existing Regulations to reflect the manner in which subsidies for the provision of telephone service in high cost serving areas are currently levied as outlined in Decision CRTC 2000-745, *Changes to the contribution regime*. Recommendation 9-31 reads as follows.

Recommendation 9-31

The *Telecommunications Fees Regulations, 1995* should be amended so all telecommunications service providers are required to pay a *pro rata* share of the annual costs of CRTC and TCT [Telecommunications Competition Tribunal] telecommunications activities. Shares should be calculated using the same approach and exemptions as are used under the existing subsidy regime for local residential service in high-cost areas.²⁵

24. Adoption and implementation of this recommendation will serve to eliminate the inequities of the existing Regulations by providing for an expanded base of fee-paying entities that would include all telecommunications service providers. Furthermore, adoption and implementation of Recommendation 9-31 would ensure that a consistently-defined base of revenues will be used that will also provide for greater equity in the levying of telecommunications fees. TELUS urges the Commission to adopt and implement Recommendation 9-31 on telecommunications fees, or adopt and implement similar reforms, as soon as possible, so that the amended Regulations are in place for the assessment of fees for the Commission's 2007-2008 fiscal year.

²⁵ TELUS also concurs with Recommendation 4-13 which states that:

The Telecommunications Fees Regulations should be amended to provide for the recovery of the proposed Telecommunications Competition Tribunal's annual operating expenses from the telecommunications industry.

This amendment should be made concurrently with the amendments to the method of calculating fees advocated in Recommendation 9-31.

7.2 Consultations Required

25. Recommendation 9-12 in the Final Report addresses the Companies' second request for consultations. Recommendation 9-12 states

Recommendation 9-12

When the CRTC proposes to introduce or to change a regulatory approach or rule, it should routinely publish a notice seeking comments on specific proposals or options being considered. The notice should set out the background and the supporting rationale for the proposed approach or options.

26. To this end, the Commission should publish draft revised Regulations for public comment in accordance with Recommendation 9-12 of the Final Report for public comment before issuing final amended Regulations.

7.3 Performance Standards Should Be Put In Place

27. In addition to consultations to amend the Regulations, TELUS also submits that consultations should be held establish performance service standards for the Commission's regulatory activities. In this regard, Recommendation 9-11 of the Final Report states

Recommendation 9-11

The CRTC should establish and adhere to published performance service standards for the various forms of regulatory proceedings it runs. These standards should be developed in consultation with the telecommunications industry and the public.

28. TELUS notes that establishing performance service standards is also part of the proposed direction to the Commission recently announced by the Minister of Industry which states, in part, that the Commission should

(iii) maintain and publish service performance standards for the various forms of regulatory proceedings it undertakes to ensure that regulatory measures, when required, are efficient; and

(iv) continue to explore and implement new approaches for streamlining its regulatory process to enhance the efficiency and effectiveness of regulatory measures.²⁶

29. Additionally, a mechanism for remedial action should be established in the event that service standards are unmet, as requested in the Application.²⁷

7.4 Requested Amendments Easily Implemented

30. The Commission can voluntarily adopt and implement the reforms from the Final Report immediately as there is no need for legislative amendments to revise the Regulations to do so. The Commission can rely upon its existing authority to amend the existing Regulations as provided for under section 68(1) of the *Telecommunications Act*. Additionally, pursuant to the *User Fees Act*, the Commission is obligated to implement measures pertaining to consultations which parallel those set out in the Final Report. Notably, the *User Fees Act* also contains measures for the reduction of user fees in the case of unachieved performance.²⁸

7.5 Requested Amendments Are Consistent with Parliament's Original Intention for the Regulations

31. Before concluding these Comments, it is instructive to re-visit the Parliamentary debates that occurred both in the House of Commons and especially in the Legislative Committee in 1986 that led to the amendment to the *Railway Act* that authorized the Commission to impose telecommunications fees. A review of the legislative debate underscores the central principle of flexible discretion that underlined the Government of Canada's new measure at the time. On behalf of the Minister of Communications, the Parliamentary Secretary before the Legislative Committee justified the discretion that was being given to the

²⁶ Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission, Canada Gazette, Part I, Vol. 140, No. 24, June 17, 2006, section 1(c) (iii) and (iv).

²⁷ Application, paragraph 45.

²⁸ *User Fees Act*, 2004, c. 6, sections 4 (Consultations). Section 5.1 stipulates that where a regulating authority's performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than ten per cent, the user fee shall be

Commission in the proposed amendment to the *Railway Act*, subject to Treasury Board approval, on the following grounds.

The bill does not establish a precise formula for allocating the fees among federally-regulated carriers. Given the varied corporate rules and sizes of these carriers, setting forth a specified method of allocating the fees in legislation would be extremely difficult and cumbersome. Moreover it would not have sufficiently flexibility to account for changes in industry structure (an increase or reduction in the number of carriers, for example) or in the regulatory environment (for example, the possible reduction or regulation of certain carriers or certain services).²⁹

32. During the same proceedings, the Committee rejected a proposal from CNCP, a competitive carrier, that the legislation stipulate that the fees would only be levied on the monopoly services of the telephone companies,³⁰ as this would violate the principle of flexible discretion.
33. In its original decision on telecommunications fees, *Regulations Respecting Telecommunications Fees*, Telecom Public Notice CRTC 1987-30 (“PN 1987-30”), the Commission exercised its discretion in a principled manner when it decided that fees would be “payable by all companies which either file tariffs or tolls with the Commission or have received from Commission approval not to file them.”³¹ The Commission stated that it considered

...this method to be fair, and to be relatively straightforward and inexpensive to apply. In this regard, the Commission notes that all services, including competitive services [i.e., services offered by competitors to the incumbents] contribute to regulatory activity and costs and it considers, therefore, that all services should contribute to the recovery of costs.³²

reduced by a percentage equivalent to the unachieved performance, to a maximum of fifty per cent of the user fee.

²⁹ Mme Claudy Mailly, Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-4, 18-11-1986, p. 1:15.

³⁰ *Ibid.*, p. 1:60.

³¹ It was subsequently determined that it was beyond the jurisdiction of the Commission to forbear from regulation at that time under the Railway Act (TWU v. CRTC, [1989] 2 F.C. 280 N.R. 93 reversing CNCP Telecommunications – Application for Exemption from Certain Regulatory Requirements, Decision 87-12, leave to appeal to S.C.C. refused [1989], 102 N.R. 79 (note) (S.C.C.)). The Commission obtained the power of forbearance in the 1993 *Telecommunications Act* (section 34).

³² PN 1987-30, last paragraph.

34. In TELUS' submission, if this equitable approach was valid in 1987, at the inception of the telecommunications fees regulations, it remains just as valid today and should form the cornerstone of the telecommunications fees regulations. As noted above, the Commission has the discretion to quickly implement the recommendations of the Final Report to provide for equitable telecommunications fees regulations today, just as it did in 1987. Additionally, pursuant to the *User Fees Act*, the Commission is obligated to implement measures pertaining to consultations which parallel those set out in the Final Report.

8.0 Conclusion

35. TELUS submits that the Regulations be amended by adopting and amending Recommendation 9-31 from the Telecommunications Policy Review Panel Final Report 2006. The adoption and implementation of Recommendation 9-31 will provide for an expanded base of fee-paying entities that would include all telecommunications service providers and would provide for the calculation of telecommunications fees on a consistently defined base of revenues. Adoption and implementation of Recommendation 9-31 will ensure that the recovery of the Commission's regulatory costs is equitable. The principle of equity was articulated by the Commission itself at the time of the implementation of the original telecommunications fees regulations, again in its 1998 public notice proposing reform of the Regulations,³³ and again implicitly in its latest 3-Year Work Plan.

36. The adoption and implementation of Recommendation 9-31 will be further enhanced by the adoption and implementation of Recommendations 9-11 and 9-12 that provide for meaningful consultations with interested stakeholders, and adherence to published performance standards, as required by the Telecommunications Policy Review Panel Final Report 2006, Treasury Board Secretariat of Canada policies and the requirements of the *User Fees Act*.

³³ PN 98-34, at paragraph 4.

37. The requested reforms can be implemented immediately and easily without the need for legislative amendments given the discretion provided to the Commission under the *Telecommunications Act*. In light of the above, TELUS requests that the Commission undertake the necessary amendments and consultations required in order to ensure that amended Regulations are in place for the Commission's 2007-2008 fiscal year.

Yours truly,

{original signed by Willie Grieve}

Willie Grieve
Vice President
Telecom Policy & Regulatory Affairs

AH/sa

Attachment A – Comments on Telecommunications Fees from the
Telecommunications Policy Review Panel Final Report 2006

cc.: Telecommunications Service Providers

Comments on Telecommunications Fees from the Telecommunications Policy Review Panel Final Report 2006

The following paragraphs on telecommunications fees are excerpted from pages 9-57 and 9-58 of the Telecommunications Policy Review Panel Final 2006 (footnote omitted).

Recovering the Costs of Regulation

The *Telecommunications Act*, s. 68, gives the CRTC authority, with the approval of the Treasury Board, to make regulations prescribing fees payable for the recovery of all or a portion of the costs that it determines are attributable to its telecommunications responsibilities. The CRTC has enacted the *Telecommunications Fees Regulations*, 1995, under which it recovers these costs through fees that it levies on an annual basis. These fees are payable by Canadian carriers who are required to file tariffs with the CRTC during that year. The payment is based on the Canadian carrier's telecommunications operating revenues as a percentage of the telecommunications operating revenues of all Canadian carriers that are required to make such payments.

The Panel supports the concept of recovery of costs of regulation from industry participants. Although these costs in turn may be passed on to the users of telecommunications services, it is appropriate that they, rather than the general body of taxpayers, should ultimately bear this financial burden, since it is those users who benefit from the variety of protections offered to them by the regulatory regime.⁸³

The structure of the regulations may have been appropriate at the time they were enacted, since most services were provided on a monopoly basis by tariff-regulated Canadian carriers, and the CRTC exercised jurisdiction over Canadian carriers only. However, since that time, a number of developments have called into question the appropriateness of continuing the current approach:

- Numerous non-facilities-based telecommunications service providers — some of which are quite large — have emerged that are not subject to direct jurisdiction of the CRTC, but whose activities necessitate the involvement of the regulator⁸⁴ and will come under direct jurisdiction of the CRTC if the Panel's recommendations in this regard are accepted by the government.
- A variety of facilities-based Canadian carriers are competitors to the tariff-regulated incumbents, but are not required to file tariffs because of their non-dominant competitive position. However, their activities can generate CRTC involvement, based on complaints from incumbents, complaints filed about the activities of incumbents, and complaints regarding various intercarrier matters.
- A Canadian carrier is liable to pay fees based on all of its telecommunications activities if even one of its services becomes subject to tariff regulation.

Increasing Competitive Neutrality

It is evident to the Panel that it is not simply tariff filings that generate the need for — or the costs associated with — regulation. In the regime contemplated by the recommendations in this report, the tariff-filing process will require reduced regulatory resources of the CRTC, as greater resources are dedicated to issues regarding settlement of competitive disputes and detariffing of related matters. Similarly, the activities of the newly created TCT will focus on issues regarding the existence or absence of significant market power, alleged anti-competitive conduct and the identification of essential facilities, rather than tariff-filing matters.

With increasing competition in telecommunications markets, the Panel believes it is no longer good regulatory policy for only one group of market participants to be required to pay for the costs associated with regulation. The Panel notes that the CRTC itself reached a similar type of conclusion in 2000, when it broadened the base for payment of contribution subsidies to local residential service in high-cost areas to require a *pro rata* payment from all telecommunications service providers, based on all Canadian telecommunications services revenues, rather than limiting it to a contribution based solely on long distance revenues.⁸⁵

The Panel recommends amending the *Telecommunications Fees Regulations*, 1995 to make all telecommunications service providers liable for a share of the cost of the CRTC's telecommunications activity. To minimize any additional regulatory workload, the Panel recommends that the share of each telecommunications service provider should be calculated in the same manner as is used for the

determination of liability-to-pay contribution. This approach would exempt all telecommunications service providers with Canadian telecommunications service revenues below \$10 million from the obligation to pay toward this cost recovery.

For all of the reasons noted above, the Panel also believes the costs of the TCT should be paid for by the telecommunications industry in the same *pro rata* manner. Given the transitional status of the TCT mechanism, the TCT's costs could be assessed based on an estimate of annual expenses presented to Parliament on behalf of the TCT by the CRTC. The TCT should make recommendations regarding the amounts required to perform its functions and obligations. Payments of a TCT levy could be made simultaneously with payments made in respect of the CRTC's telecommunications activity.

Recommendation 9-31

The *Telecommunications Fees Regulations, 1995* should be amended so all telecommunications service providers are required to pay a *pro rata* share of the annual costs of CRTC and TCT telecommunications activities. Shares should be calculated using the same approach and exemptions as are used under the existing subsidy regime for local residential service in high-cost areas.