



Information

On contributions for spectrum assignments

Holders of spectrum assignments usually receive notices of:

- **fees** (for one-off services provided by the Bundesnetzagentur that relate to a specific user); and
- annual **contributions** (for recurring services provided by the Bundesnetzagentur that benefit all users).

The legal difference between a contribution and a fee is that:

- a contribution can be charged if it is simply possible for certain services to be used; and
- the services relevant to a contribution and the associated benefit need not specifically relate to one individual user.

The annual contributions are used to finance certain tasks and services performed and provided by the Bundesnetzagentur on the basis of statutory regulations. The tasks and services under the Telecommunications Act (TKG) include spectrum planning, spectrum coordination, harmonisation and standardisation; those under the Electromagnetic Compatibility of Equipment Act (EMVG) and the Radio Equipment Act (FuAG) include ensuring electromagnetic compatibility and measures relating to equipment checks.

Detailed information about who is required to pay contributions, how much the contributions are, how they are calculated, and how they are charged and paid is set out in the Spectrum Protection Contributions Ordinance (FSBeitrV).

The Federal Administrative Court has clearly confirmed in several decisions that these recurring contributions can be charged provided that the public interest in the tasks being performed is taken into due account and the level of the contributions is reduced accordingly. An appropriate reduction (representing the federation's share of the costs) is taken into account when the contributions are set.

When does the requirement to pay contributions apply and for how long?

The requirement to pay contributions is linked to a spectrum assignment within the meaning of section 91 of the Telecommunications Act; the spectrum assignment can be an individual or a general assignment. The requirement applies for the whole duration of the spectrum assignment, regardless of whether or how long the spectrum is actually used. If a spectrum assignment is valid for less than a year, the contributions are payable for each month the assignment is valid. Contributions are payable for the months in which a spectrum assignment was valid in the relevant contributions year and are still payable for past months or years even if a spectrum assignment is no longer valid.

How are the contributions calculated?

The Bundesnetzagentur records the relevant costs in a cost accounting system. Put simply, the contributions are calculated as follows:

- The costs for each user group in each contributions year are calculated.
- The federation's share of the costs is deducted from the costs calculated.
- The remaining costs are shared between the individual assignment holders in each user group, based on the number of „reference units“ (such as network, frequency, transmitting equipment).

Why do the contributions sometimes vary from year to year?

The costs for a user group depend on various factors such as the number of cases of interference in a contributions year. These variable factors mean that the costs are not always the same but may be higher or lower than in a previous year. This in turn means that the contributions, which are calculated from the costs incurred, may also vary.

Why are contributions charged retrospectively?

The contributions are calculated from the costs incurred in providing the relevant services in a calendar year. This automatically means that they can only be calculated retrospectively. Once the contributions for a past calendar year have been calculated, they need to be incorporated into the Spectrum Protection Contributions Ordinance and published.

This means that in future, too, it will only be possible to charge contributions retrospectively. The Bundesnetzagentur aims to keep the time between the end of a contributions year and issuing the notices for the year as short as possible. It generally has until the end of the fourth year following a contributions year to set the contributions and, in certain cases, even longer.

How are my individual contributions calculated?

Your individual contributions are set based on the contributions calculated from the costs and listed in the Spectrum Protection Contributions Ordinance. The contributions are set taking into account:

- how long a spectrum assignment was valid in the relevant contributions year; and
- the number of relevant reference units.

Whether or how long you actually used the spectrum is not taken into account.

I haven't owned/used the radio equipment/spectrum for a long time.

You are required to pay contributions for the whole duration of the spectrum assignment, regardless of whether or how long you have actually used the spectrum. If you no longer need your spectrum assignment, you can surrender it, but you cannot surrender it retrospectively.

I need an invoice complying with tax regulations.

The Bundesnetzagentur charges fees and contributions for performing public-law tasks assigned to it by statutory provisions. Its tasks are therefore not business activities within the meaning of section 2(1) of the VAT Act (UStG). The notices of fees and contributions are not invoices within the meaning of the tax regulations and so VAT deductions are not possible.

What are my rights if I do not agree with a contributions notice?

Each notice includes information on legal remedies stating where and how you can appeal against the notice. Even if you do appeal, you will still need to pay the contributions on time because an appeal has no suspensive effect.

Is it really worth issuing notices for small amounts?

Most of the notices are issued and sent out non-manually. This means that in individual cases the postage may be more than the contribution to be paid. Filtering out these cases would cost several times as much as the postage.

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Tulpenfeld 4, 53113 Bonn
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