



Submission by
Free TV Australia

**Response to Draft Report:
IPART review of rents for
communication sites on
certain Crown land**

August 2024

1. Overview

Thank you for the opportunity to respond to the IPART's July 2024 Draft Report and for the insights gleaned at the 30 July public meeting with IPART members and staff.

The public meeting, and the reception of the Draft Report from telecommunications and broadcasting representatives present, painted an unfortunate picture of an ongoing, nationwide endeavour to ensure adequate and reliable broadcasting and telecommunications connectivity for all Australians, which has obtained buy-in from most governments as well as industry, but from which the NSW government alone is 'missing in action,' instead seeking to maximise the revenue it extracts from its Crown lands.

Overall, Free TV's members are concerned at IPART's failure to consider and take account of observations, made by both broadcasting and telecommunications representative organisations, about the adverse implications for connectivity in remote and outer regional areas of NSW Government costing approaches that fail to take account of the positive externalities of the availability of good telecommunications and broadcasting services.

The narrow terms of reference of the current review imply that some other part of the NSW Government will concern itself with the issue of 'rebates,' or special assistance to recognise positive externalities of services, which the industries delivering those services cannot monetise. However, in the case of TV broadcasting, Free TV is unaware of where that consideration might be taking place, or what programs of special assistance, if any, might be in contemplation.

With the commercial viability of TV transmission sites in many remote and smaller regional communities at risk from rising fixed costs and falling advertising revenue, it is undesirable for an independent advisory body such as IPART to ignore the issue.

We note with particular concern IPART's suggestion that the unfair and undesirable practice of setting rentals for existing sites one category higher might be extended to other Crown land of particular conservation value. The issue of 'incentives' to locate elsewhere from these sites can have no application to existing TV sites. In addition to the broadcasters' own sunk costs, TV is a 'fixed' form of communication requiring viewers to install, and point, an external antenna. No amount of 'incentives' will persuade broadcasters to relocate existing transmitters away from where hundreds, or thousands, of domestic TV antennas are already pointing! The only 'incentive' created by raising the cost of TV transmission sites, would be the incentive to turn off the site if it is already at the margins of viability.

Finally, we encourage IPART to take the opportunity to revisit and affirm two of its 2019 recommendations, which we believe the previous NSW government was unreasonable to reject. These are:

- Putting an end to the undesirable current practice of charging an additional 50% in rent for each additional, co-sited radiocommunications licensee, even though there may be no change to the 'footprint' of the facility.
- Ensuring any additional fees, such as for road maintenance, should reflect efficient costs. This has several dimensions, including that the promised services should be performed and that the prices levied should be subject to market discipline.

Free TV's submission addresses four substantive issues with the draft Report:

- Proposed retention of the 50% ongoing additional rent for co-sited licensees
- Any additional fees should reflect additional costs

- The NPWS's approach of setting rental fees one category higher
- The limited terms of reference of the IPART Review and the treatment of positive externalities of broadcasting and telecommunications.

2. Discussion

2.1 Proposed retention of the 50% ongoing additional rent for co-sited services

Free TV's members share the strong concern of telecommunications industry submitters at the proposal to retain the 50% ongoing additional rent for second and additional co-sited licensees at a communications site in circumstances where the additional services are wholly within the primary user's site. Charging for each co-sited service, where there is no change to the footprint of the site, is a straightforward misuse of market power and mitigates against the desirable practices of radiocommunications site-sharing and the co-siting of transmitters. Co-siting minimises the overall adverse impact of communications facilities on the environment and amenity of areas. It can encourage competition, as evidenced by the co-siting requirements in the Telecommunications Code of Practice 2021. It can also maximise radiofrequency spectrum productivity, for example, by permitting closer channel spacing than otherwise of broadcasting services, or by minimising the overall spectrum denial 'footprint' of a group of spectrum users. Charging additional rent for co-sited services also has little or no basis in private sector lease arrangements - although the NSW's Government's persistence with the practice creates the risk of its wider adoption, e.g. by local governments.

Given that a recommendation to end the practice has come from IPART itself, as an 'independent' advisor IPART should at minimum address the agency's own previous arguments against the practice in its final report.

2.2 Any additional fees should reflect efficient costs

In its March 2024 submission, Free TV invited IPART to revisit and endorse its 2019 recommendation that any additional fees should reflect efficient costs. In 2019, IPART recommended:

- Land management agencies should only charge additional fees for road maintenance where users have been provided with the option of maintaining the road to the required standard at their own cost.
- For roads with more than one user, where additional fees are charged, the land management agencies should develop a cost reflective approach to estimating and allocating costs in consultation with users.

From information provided at the 30 July public event, it appears the current IPART membership may not have addressed this issue because of the narrower terms of reference of the present review, compared to the 2019 review.

We invite IPART to further consider this aspect of our March 2024 submission, in which we said:

... the levying of additional fees for access to crown land should only ever reflect the value of actual work performed and should be subject to the discipline of contestability where practicable. In our members' experience, the IPART schedule has become the 'baseline' charge. Government agencies frequently seek to charge additional amounts for road access or maintenance. For example, NSW Forestry Corporation typically charges a 10% maintenance fee in addition to the IPART schedule fee. There is no obvious correlation between the maintenance fee charged and the incremental maintenance costs, if any, incurred by the agency as a result of the infrastructure provider's or co-user's occupation of the land or the communication tower.

If the widespread practice of levying additional fees without transparency or contestability is indeed outside of the Terms of Reference, we would ask IPART never-the-less to acknowledge the issue in its final report. If it is outside the scope of IPART's consideration, when, and by whom, might the issue be considered?

The IPART's 2019 recommendation was hardly controversial. It is no more than good public administration and should not be allowed to fall between the 'two stools' of IPART's review and the NSW Department of Lands and Property.

2.3 The National Parks and Wildlife Service's approach of setting rental fees one category higher

At 3.4, the IPART's Draft Report asks whether the NPWS's approach should be extended to other Crown land, in particular:

- DPHI-administered Crown land that is reserved for environmental conservation purposes, and
- State forest land that is set aside for conservation and classified under the Forest Management Zoning system with a zone that is similar, in usage, to national parks.

The commercial TV industry opposes this measure for the same reasons as it opposes the current practice in relation to NPWS sites. Imposing opportunistic increases in site rental at smaller broadcasting sites that are already commercially marginal – this includes dozens of sites servicing smaller communities in NSW – is likely to have real-world consequences for NSW residents as commercial TV services may simply be turned off.

If the NSW government is determined to extend the current practice, however, it should not apply it to existing broadcasting communication sites, as the sunk cost represented by the facility will typically make it impractical to move even if there are alternative sites available.

In many cases, there is no alternative but to locate on the Crown land in question, given the local geography and the community to be served. Government agencies in many regional areas are effectively monopoly suppliers of land suitable for transmission sites. There is often no other suitable nearby site nor a 'market' that would justify another landowner seeking to establish an alternative transmission site or for a transmission infrastructure provider relocating its communication tower and equipment to another site. As a result, there is no practical scope for commercial negotiation of occupancy terms for primary or co-users on sites managed by government agencies.

Even if viable alternative sites were on offer, the nature of TV as a 'fixed' service makes it highly unlikely broadcasters would leave an existing site. Large numbers of householder rooftop antennas in the coverage area will be pointed at the existing transmission tower. If that site were to be moved, many or most of those household antennas would need to be repointed to regain adequate reception of TV. The practical reality is that broadcasters are unlikely to move from existing sites even in response to unreasonable site rents. This 'fixed' characteristic of TV reception arguably distinguishes it from radio or telecommunications sites.

If the higher fee is genuinely intended to function as a disincentive in situations where there is a realistic choice, it would make sense to confine the levying of additional charges to new sites only. In cases where there is no alternative to location on Crown land, noting that digital connectivity for the

surrounding community also has social and cultural value, we question the appropriateness of any disincentive pricing at all.

2.4 The limited terms of reference of the IPART Review and the treatment of positive externalities of broadcasting and telecommunications

It is in the public interest that all tiers of Australian government work together to help ensure basic connectivity for all Australians.

Telecommunications and free-to-air (FTA) broadcasting access play complementary roles in ensuring digital connectivity. Broadcast TV is free, reliable and easy to use, and provides accountable news and information programs that audiences can trust and that are essential to informed civic participation.

While access to streamed television services is a key use of the Internet, FTA TV services remain critical to remedy or mitigate intractable shortcomings of the Internet as a means for universal digital inclusion. These shortcomings relate to availability, affordability, reliability, and the digital skills of users. When the alternative of FTA TV is no longer available, the groups most likely to be adversely affected include:

- Older people
- People who are economically disadvantaged
- People living with disabilities

These cohorts are found disproportionately in regional and remote areas and include many First Nations Australians. It is unrealistic to assume communities in regional and remote Australia can do without FTA TV, now or for the foreseeable future.

While most Australians continue to enjoy free access to TV wherever they live, coverage deficiencies have emerged or are emerging which fall disproportionately on remote or smaller regional centres. Sources of risk include:

- The unsustainability of advertiser-supported transmission of commercial TV services in regional centres at the margins of commercial viability. The decision, in June this year, by Mildura TV broadcasters to cease transmission of Network Ten services should be seen as a 'canary in the coalmine' in this regard.
- The closure of local council or other self-help terrestrial re-transmission sites in small regional communities

In its March submission to IPART, Free TV proposed that rents for sites in remoter areas should take account of the positive externalities of access to broadcasting and telecommunications services, including free-to-air TV, for NSW residents in regional and remote parts of the state. These residents already face serious disadvantages in terms of access to services, commonly combined with an increased susceptibility to natural disasters. In setting rents for communication sites in low density and remote areas, it encouraged IPART to weigh this consideration in the balance along with the general objective of achieving fair, market-based returns.

The IPART's draft Report ignores this submission, on the apparent basis that it falls outside of the narrower terms of reference of the current review of rents. Relevantly, IPART was directed as follows:

Reviewing rebates provided in respect of communications sites is outside the scope of the review referred to the Tribunal (the NSW government will consider appropriate concessions balancing the benefits that the revenues collected via rents support and the need for digital connectivity in rural and regional areas).

While acknowledging the limited terms of reference IPART was given for the work, the TV industry would be interested to understand when and how, if not as part of this process, the NSW Government proposes to consider the issue of offsetting concessions for commercial TV transmitters in remote sites and 'black spot areas,' also for self-help community re-transmission facilities. To date, the NSW Government has simply not been involved in the discussion of the risks to smaller regional and remote TV re-transmission sites.