



Submission by
Free TV Australia

**IPART review of rents for
communication sites on
certain Crown land**

March 2024

1. Summary

- By framing rent-setting for communications sites as an opportunity to achieve ‘fair, market-based returns,’ IPART’s proposed approach ignores the indispensable nature of reliable broadcasting and telecommunications to NSW households, including in regional and remote areas where some TV transmissions are commercially marginal and at risk of closure.
- For these sites, the proposed approach will not take adequate account of positive externalities of free-to-air TV broadcasting that commercial TV broadcasters, funded solely by advertising revenue, are unable to monetise.
- These externalities include timely access to emergency and disaster information, a robust and reliable alternative communications channel when telecommunications services fail, access to trustworthy news and information, and greater social inclusion through enjoyment of a range of popular entertainment options including major sporting events.
- The benefits of linear broadcast TV transmissions flow disproportionately to viewers who are older, are economically disadvantaged, are living with disabilities or who are resident in regional or remote areas.
- TV broadcasters cannot monetise these positive externalities, which flow for free to each member of the TV audience. As the costs of TV transmission are fixed, or rising, while *per capita* advertising revenue is falling, a sub-set of TV transmission sites will cease to be economically viable in the coming years.
- In its previous (2019) report on rents for communications sites, IPART recommended against the current practice of rebates for certain user categories, in favour of direct government subsidies. However, the direct subsidy approach is not appropriate to all services with high but unrecoverable positive externalities, such as economically marginal TV re-transmission services.
- Instead, Free TV proposes 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, IPART should weigh this consideration in the balance along with the general objective of achieving fair, market-based returns.
- A simple way of doing this would be to take Queensland’s approach to rent-setting, where rents are calculated as a percentage of the unimproved capital value of the land.
- When IPART last reviewed rents for communications sites on the relevant Crown lands, in 2019, its recommendations were favorable to existing site operators. They would also have addressed some unfair or unreasonable practices.
- Disappointingly, the NSW government rejected IPART’S recommendations, on the grounds that the data set used might no longer reflect market conditions. This is hardly a persuasive reason not to reform practices that are unfair or unreasonable.
- Commercial TV broadcasters strongly support the IPART’s own 2019 reasoning in recommending limitations to the levying of additional rent for each co-user of a site.
- Commercial TV broadcasters make significant use of transmission sites that are within the scope of the IPART review. Their experience shows that IPART recommendations can also influence rent pricing decisions by other site owners, such as local governments, and even private sector landlords.

- The 2014 IPART recommendations, currently in force, serve to legitimise the undesirable practice of ‘double-dipping’ by 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.
- Commercial TV broadcasters also support IPART’s recommendation that 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.
- Finally, Free TV suggests that the practice of charging higher rents for communications sites on national parks, if it is to operate truly as a disincentive for locating sites on national parks, should be confined to new sites, and only when there is a practicable alternative to the use of that site.

2. Introduction

In February 2024, IPART published an [Issues Paper](#) to inform its review of rents for communication sites on crown lands managed by three NSW Land Management agencies:

- The Department of Planning, Housing and Infrastructure
- NSW National Parks and Wildlife service (NPWS)
- Forestry Corporation of NSW (forestry corporation)

Free TV Australia represents commercial broadcasting networks in Australia, which include Seven, Nine and Ten, WIN Corporation, Southern Cross Austereo (SCA) and Imparja Television. All of these networks transmit broadcasting services in NSW. To give two examples only, WIN Corporation is a co-user at fifteen TV transmission sites that are within the scope of the present review. Ten of these are in low-density areas, four in medium-density areas and one (Mt Sugarloaf) is in a high-density area. Thirty-one of SCA's forty-three television facilities in NSW are affected by the IPART fee schedule, whether SCA is a primary or a co-user (the company also operates an extensive network of affected radio broadcasting facilities).

As well as maintaining and operating their own TV transmission networks, regional commercial TV broadcasters took on additional requirements at the time of the Australia-wide 'equalisation' of TV services (including the 2010 establishment of the Viewer Access Satellite Television or VAST service). This included the installation and maintenance of a substantial number of digital terrestrial signal gap-fillers, including the conversion of what had previously been community self-help re-transmission sites. The company the regional broadcasters formed to discharge these obligations, Regional Broadcasting Australia Holdings (RBAH), remains responsible today for the maintenance of over 90 infill transmitters in regional TV markets. As well as commercial TV services, ABC and SBS TV are also re-transmitted at these sites. Nearly half of the RBAH sites (45) are located in NSW.

While only four of these sites (Anna Bay, Batlow, Dalmeny/Kianga and Wallaroo) fall within IPART's terms of reference, many other site owners in NSW, including local governments, are known to apply IPART's recommendations to occupancy of crown land that they manage.

Thank you for the opportunity to comment on the issues raised in the February issues paper.

3. About Free TV

Free TV Australia is the peak industry body for Australia's commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial FTA television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Free TV members provide vital local services to all Australians. Commercial television networks spend more than \$1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

4. Free TV comments

4.1 The continuing relevance of IPART's 2019 recommendations

IPART last reviewed rents for communications sites on the relevant crown lands in 2019. Free TV made detailed submissions to these reviews and IPART's [final report](#) made several recommendations that were on balance favorable to existing site operators or which addressed unfair or unreasonable practices. These included:

- Extensive revisions to both location categories and rent levels. The changes took account of comparable private sector rents and, for most locations, would have resulted in lower, and sometimes sharply lower, rents than under the previous IPART recommendations.
- The principle that any additional fees should reflect efficient costs. This change would have meant that an agency would only be able to charge for road maintenance where users had been given the option of maintaining the road to the required standard themselves.
- Sharply limited capacity to charge for 'co-users' (second or subsequent licensees) at sites, including no additional rent where a co-user is wholly within the primary user's site.

IPART estimated the recommendations would reduce by \$3m the current \$12m annual revenue the three agencies obtained.

Disappointingly, the NSW government chose to disregard these recommendations. According to a Department of Planning and the Environment [Fact Sheet](#), the previous (2013) IPART recommendations will continue to apply pending a fresh review in 2023. The Fact Sheet explains:

The NSW Government has not accepted the recommendations in the latest IPART review as the dataset used in the review, which pre-dated COVID-19, does not reflect current market conditions. The next IPART review is due to commence in 2023.

While market conditions may well have changed since the pandemic, the relevance of current market conditions to the other two favorable recommendations is unclear. As they would address serious deficiencies in current charging practices, we encourage IPART to affirm its previous recommendations in relation to co-sited services and for any additional fees to reflect efficient costs. In particular:

- Rents for co-users of existing and new sites should:
 - Be based on their additional land footprint, and be calculated using the same per metre squared basis and rates as rents for primary users of new sites
 - Be capped at the flat rate for primary users on existing sites in the same location category
 - Provide that co-users wholly within the primary user's site pay no annual rent and a one-off application fee equal to 50% of the primary user application fee.
- Any additional fees should reflect efficient costs. In particular:
 - 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.

Free TV affirms IPART's own reasoning in making these recommendations in 2019.

Charging each co-sited service, other than in the limited circumstances IPART recommends, is a straightforward misuse of market power on order to 'double-dip' and mitigates against the desirable practices of radiocommunications site-sharing and the co-siting of transmitters. Nor is it common commercial practice. For sites located on private land, the usual practice is for the infrastructure owner to contract with the landowner and pay a site fee. The infrastructure owner is then free to deal with third parties in relation to access and use of the site, sometimes with the obligation to notify the landlord of such arrangements. This ensures the party investing in and maintaining the infrastructure, for example by modifying the structure to accommodate third party equipment, is compensated for that investment.

Similarly, 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.

4.2 Free-to-air broadcast TV as a public good

The free-to-air broadcast TV platform in Australia has evolved over time, through a succession of broadcaster and Federal government decisions, to today's situation where a broadly comparable selection of five network TV services is made available, free-of-charge, to all homes, anywhere in Australia, for the price of a TV set connected to a single external antenna or satellite dish. Most people live in areas which enjoy adequate terrestrial broadcast TV signals. Around one million people live in areas that depend on the Viewer Access Satellite Television (VAST) service, with most of those households served via terrestrial (VHF or UHF) re-transmissions of the satellite signal. Only around 300,000 households currently receive satellite direct-to-home (DTH) TV from VAST.

Two of the five networked TV services are wholly or substantially Federal government-funded (ABC and SBS). The others are provided by Free TV's members, which are for-profit companies and funded by revenue from the sale of advertising. The per-capita cost of making free-to-air TV available to all Australians generally rises in inverse proportion to the density of settlement. As transmission costs are highest in outer regional and remote areas, where the *per capita* advertising revenue is also lowest, the Federal government has for many years met a substantial part of the cost of the delivery of the five network TV services via VAST.

While recent years have seen the rapid migration of parts of TV's audience to Internet-delivered television viewing, which requires an adequate broadband plan and a 'smart' TV or other Internet-capable device, the audience for broadcast television remains enormous. This reliance is expected to continue into the long-term, though with the potential for an increasing demographic 'skew' towards older Australians, Australians living with disabilities, and Australians living in regional areas.

According to the 2023 ACMA interactive report *How we watch and listen to content*¹, 52% of Australians surveyed, and 60% of Australians in regional areas, were watching free-to-air broadcast TV (excluding catch-up TV) in June 2023. On average, viewers reported watching for 5.6 hours over a seven-day period, with older people more likely to watch more. Those living in regional areas watched more (7.0 hours) than those living in metropolitan areas (4.9 hours). Those aged 75+ watched, on average, 16.9 hours in a week.

Free-to-air broadcasting is recognised as giving rise to significant positive externalities. For example, Ofcom (the communications regulator in the UK) has recognised that the availability and consumption of free-to-air broadcasting generates broader social value including in terms of:

- access and inclusion – for example, value derived from universal access and facilitating access to public services;
- quality of life – for example value derived from providing access to services which promote quality of life, perhaps by helping to support or promote work-life balance or family life;
- belonging to a community – for example value derived from allowing people with similar interests to communicate or from participating in one’s local community;
- cultural understanding – for example value derived from services which reflect and strengthen cultural identities or promote diversity and understanding of other cultures; and
- informed democracy – for example value from the news and current affairs programming provided by our members that facilitates democratic debate.²

To this list, we would add the provision of reliable access to emergency and disaster information, and the availability of a robust alternative to the fixed and mobile telecommunications networks when disasters strike NSW, such as the 2019 bushfires and the 2022 floods. These positive externalities are particularly important to residents in regional areas of the state.

4.3 Emerging risks to free-to-air broadcast TV transmission

By its nature, broadcast TV is not able to monetise the above positive externalities, as it is provided as a free good to the beneficiaries. Commercial TV terrestrial transmissions are entirely funded by sale of advertising. In the free-to-air model, broadcasters can only capture the value of providing the platform to advertisers. They cannot capture the value of the broadcast to viewers (as they, by definition, receive the content free of charge).

This is not merely a hypothetical problem for policy-makers, as the costs of terrestrial re-transmission are fixed or increasing, while the *per capita* revenue earned from sale of advertising has been in gradual decline since the 2013 completion of the roll-out of digital television transmitters across Australia.

In its submission to the 2019 IPART rent review, Free TV provided data showing metro area TV revenue declining by 6% over the period 2014-18, and 17% for regional TV broadcasters. In absolute terms, regional annual revenue fell from \$879 million to \$733.6 million over that period. The pattern

¹ Report available at: <https://www.acma.gov.au/publications/2023-12/report/communications-and-media-australia-how-we-watch-and-listen-content>

² Ofcom (2006), “Digital Dividend Review Annexes,” Annex 7, Capturing consumer and citizen interests, page 12.

of declining TV advertising revenue has resumed since the pandemic, most recently by 8% in the period June 2022 to June 2023, increasing to 10% in the period December 2022 to December 2023.

The ‘canaries in the coal mine,’ that is, the commercial broadcasting transmission facilities at risk of being turned off between now and 2030, are those at the margins of viability today. These transmitters are concentrated in regional and remote areas. They include but are not limited to some of the signal ‘gap-fillers’ operated by RBAH. These sites often do not significantly increase the number of people able to receive a signal and therefore do not materially change the achievable advertising revenue. This means the economics of these services is much more closely aligned to a community-based organisation than a telecommunications operator.

Once terrestrial TV services in an area are switched off, local free-to-air viewers face uncomfortable choices:

- For better-off households, whether to subscribe to a pay TV service or continue to view free-to-air TV exclusively via Internet-delivered BVOD Apps, with consequent loss of access to locally-relevant programming in many cases;
- For other viewers, whether to engage a TV antenna installer to receive TV signals from elsewhere. In some areas this will simply mean a different transmission tower, but in others, it will mean paying the estimated \$850 one-off minimum cost per TV set of obtaining the VAST Direct-to-Home (DTH) TV service, with consequent loss of access to locally-relevant programming;
- Obtaining their news, information and entertainment in other ways, or going without.

4.4 Implications for IPART’s proposed ways forward

IPART is proposing to recommend rents using a schedule that reflects efficient prices in a workably competitive market, as an appropriate and practical way to ensure that government land management agencies receive ‘fair, market-based commercial returns’. The fees would be based upon benchmarking of commercial sites that are similar to those on Crown land as well as any relevant existing leases for other sites on Crown land (i.e. not communication sites).

IPART in its 2019 report also recommended against rebates for certain users, such as community groups, stating:

While many users of communication towers undertake activities that may generate positive externalities, we consider it is more appropriate for the Government to account for these positive externalities in deciding whether and how much to fund the activities of these users (for example, through Government subsidies) rather than in setting the rents they pay the Government for their use of Crown land.

As a rule, the commercial TV industry is comfortable operating in commercial markets for all its inputs. However, consideration of the positive externalities free-to-air broadcasting generates, and the emerging threats to the viability of the most marginal TV transmissions, suggests a modified approach may be appropriate in areas where transmissions of broadcast linear TV are at particular risk from declining per capita advertising revenue. A modified approach would take adequate account of the public interest benefits of continuing community access to free-to-air TV transmissions. Typically, these will be lower-powered TV re-transmissions serving only small numbers of households and operating in areas IPART has previously characterised as ‘low,’ ‘remote’ or ‘very remote’.

IPART's suggested alternative solution of asking Government to directly fund activities generating positive externalities may work for some types of spectrum user, such as a surf lifesaving club, but is a less credible solution for TV broadcasting. Though there is a long history of local government assistance in providing community (self-help) TV re-transmission facilities, as a by-product of TV digitisation, its role has largely been supplanted by either:

- Provision, by TV industry body RBAH, of TV gap-filler services; or
- Direct conversion of households to satellite DTH reception.

This historical shift of responsibility for TV transmissions to broadcasters themselves has been a positive development for viewers. In the relatively few areas where local government still provides re-transmission services, this is often done at a fraction of the cost of broadcaster-grade facilities, resulting in fewer TV services and less reliable signals. Providing TV services is a long game, with residents responding to new re-transmission facilities by investing in long-lasting equipment, such as external TV aerials, to obtain services. The Federal Government is now grappling with the problem of some councils withdrawing altogether from maintenance of self-help TV facilities.

Instead of recommending the NSW government subsidise the cost of marginal TV transmissions directly, we suggest as a general principle that rents of sites on Crown land 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, often combined with an increased susceptibility to natural disasters.

In setting rents for communication sites in low density and remote areas, IPART should weigh this consideration in the balance along with the general objective of achieving fair, market-based returns.

A simple and transparent way to do this would be to adopt an approach similar to that in Queensland, at least in outer regional and remote area sites, where rent is set as a percentage (indicatively 6%) of the unimproved capital value of the Crown land.

4.5 Specific questions asked in the IPART Issues Paper

The IPART paper poses some specific questions for submitters. The following are Free TV's responses to those questions on which it is able to comment:

- *Details of current rental arrangements for communication sites on private land.*

If the intention is to use rents at comparable private sites as a benchmark, a problem for TV is that the most relevant comparator will be private sector rents that have recently been negotiated for new communications sites. As the TV 'roll-out' was completed over a decade ago, the rents the TV industry currently pays will be a poor guide to the actual state of the market.

- *How best to incorporate the social, cultural and environmental value of national park land in recommending rents for communication towers in national parks. Currently National Parks sets the price of their sites one category higher than other land agencies. The National Parks and Wildlife Act 1974 states that national park land cannot be used for communication facilities if there is a feasible alternative site available.*

The current practice of setting prices one category higher in national parks should not be applied 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 in a national park.

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.

If the higher fee is genuinely intended to function as a disincentive in situations where there is a realistic choice, it would make more sense to confine the levying of additional charges to new sites only. In cases where there is no alternative to location on national park 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.

- *The market approach to setting rents and fees for co-users and small cell technology on communication sites on private land.*

In relation to setting rents for co-users, please refer to our submissions at 4.1.