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## **TELSTRA GROUP LIMITED**

# **Telstra submission IPART Review of rents for communication sites on certain Crown Land**

## **Public Version**

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## Executive Summary

Telstra welcomes the opportunity to comment on the IPART review of rents for communication sites on certain Crown land issues paper.

Telecommunications companies require access to public and private land to provide the critical infrastructure necessary to deliver telecommunications services to the people of NSW. Telecommunications infrastructure provides many benefits to communities throughout NSW. These benefits include:

- providing essential infrastructure for the provision of telecommunications services
- Enabling digitisation of the economy; and
- Communications to support communities in emergencies and disasters.

Telstra is of the view that IPART should apply a land valuation approach that is consistent with industry best practice, and results in a fair and equitable approach that can be applied consistently to all NSW Crown land users.

In terms of the approach which should be taken, Telstra considers that:

- The assessment of rent for communication sites on Crown land should be based on the unimproved value of the freehold land, plus a percentage rate of return of 6%, as this will result in fair market-based commercial returns for the Crown<sup>1</sup>.
- To achieve fair market-based returns on Crown land, IPART should consider rents paid by other Crown tenancies. The Crown rents and charging approaches applying to other public services utilities and organisations will act as an informative comparator.
- The rental arrangements carriers make with private land should not be relevant to Crown Land rental rates.
- Rooftop rents are an additional rent on top of the base rent for the building itself. A building rooftop typically has no alternative highest or best use<sup>2</sup> and as such Telstra would like IPART to consider specifying minimal charges for these communication sites.
- Co-user fees for existing and new sites should be removed.
- Rental arrangements for NSW national parks sites should be aligned with this approach, as fair market rent is critical for enabling telecommunications carriers to viably provide and improve mobile coverage in these areas.
- The overall approach to rental for communications and non-communications sites should be based on the same principles, so that it is aligned with the non-discrimination requirements set out under clause 44 of Schedule 3 to the *Telecommunications Act 1997*.

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<sup>2</sup> The highest and best use considers the use of the asset that is physically possible, legally permissible and financially feasible. IFRS 13 para 27, 2024, available at <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards/english/2022/issued/part-a/ifrs-13-fair-value-measurement.pdf?bypass=on>



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## 1 Introduction

Delivering telecommunications services to the people of NSW relies on access to land to deploy critical telecommunications infrastructure. Given that 53% of land in NSW is classified as Crown land<sup>3</sup> supplying communications services to the State will often require access to publicly owned land. The ability to deliver cost-effective telecommunications services relies on reasonable and fair input costs, including rents for Crown and.

Since the last review in 2019, a key change in the telecommunications landscape has been the increased role of passive infrastructure owners, with for example, mobile network operators divesting most of their passive tower assets to new non-carrier entities. Telstra (as with most major carriers) will generally be an access seeker (or user) on telecommunications towers located on NSW Crown land, as well as a tenant in its own right or co-user for other telecommunications infrastructure. However, irrespective of the capacity in which Telstra uses Crown land, it will be no less reliant on Crown rent as a key input cost for delivery of telecommunications services in NSW.

## 2 The positive and crucial role of telecommunications for NSW

### 2.1 The vital role of telecommunications and critical infrastructure

The telecommunications infrastructure located on Crown land is used to provide services which directly and indirectly affect the development of all other sectors in the NSW economy, and which have become central to business and personal life.

The telecommunications sector is characterised by large, fixed costs and very low, close to zero marginal costs, large capital investments, supply side innovation, and a short service life cycle. Australian consumers benefit from the high investment levels and competition in telecommunications. Telecommunications has the second highest rate of investment of any industry in the Australian economy<sup>4</sup> for delivering the development and deployment of innovative technology. Over recent years, residents have benefitted from price falls in real terms, whilst at the same time experiencing improvements in connectivity, data, speed, and the diversity of products and services<sup>5</sup>.

Telstra is a public company with obligations to its shareholders, operating in a competitive market; it is also subject to the expectation that it will build out and maintain telecommunications infrastructure and services for the public good, while providing those services at reasonable prices. Achieving the objective of meeting the community's expectations of connectivity in this environment requires industry and government collaboration.

Governments can assist with delivering reasonably priced telecommunications services across their constituent base by:

- Enabling access to public property for communications infrastructure, and
- Setting rental fees for communications sites so they do not act as a barrier to the efficient provision of telecommunications services in NSW, regardless of whether the infrastructure is being provided by a carrier, or by an independent tower or passive infrastructure company (which will ultimately make more efficient, lower cost forms of infrastructure supply possible)<sup>6</sup>.

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<sup>3</sup> NSW Land Registry Services, 2020, *What is Crown land?* available at <https://www.nswlrs.com.au/Crown-Land>

<sup>4</sup> Deloitte, 2020, *Connected Nation, Communications Alliance*, available at [https://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0020/68420/Connected-Nation-Jan-2020-Web.pdf](https://www.commsalliance.com.au/_data/assets/pdf_file/0020/68420/Connected-Nation-Jan-2020-Web.pdf)

<sup>5</sup> PWC, 2022, *2022 Australian Telecommunications Outlook Report*, available at <https://www.pwc.com.au/industry/telecommunications/assets/2022-australian-tmt-outlook.pdf>

<sup>6</sup> GSMA, 2024, *Resetting policy and regulation to drive the digital economy*, available at <https://www.gsma.com/publicpolicy/mobilepolicyhandbook/business-environment#public-private-partnerships-ppps>



## 2.2 Telecommunications infrastructure is an enabler of digitisation.

The communications sector is facing continuous increased demand from users that necessitates increased investment to provide additional coverage and data capacity. The COVID pandemic spike in usage of the internet driven by education and working from home has not subsided but is evolving as part of broader structural changes - driven from both consumers and businesses as part of the evolution of what has become known as the digital economy<sup>7</sup>.

The global digital economy is worth an estimated US\$11.5 trillion in 2022, or 16% of global GDP, growing 2.5 times faster than global GDP in the 15 years prior to the pandemic. In Australia, modelling from PwC suggests that the full digitisation of the Australian economy would add AUD\$90 billion and 250,000 jobs before the end of the decade<sup>8</sup>. As an example, 5G technology is expected to underpin new services and generate productivity improvements across a range of industries, from improving the detection of defects in manufacturing processes, to reducing waste in agricultural production and optimising energy consumption.

Delivering 5G and ultimately 6G technology relies on access to both public and private land holdings to host the necessary towers and other infrastructure<sup>9</sup>.

## 2.3 Telecommunications infrastructure helps build disaster resilience.

In recent years, the importance of mobile and internet networks during disasters has been increasingly obvious. Telecommunications services play a crucial role in natural disaster preparedness, response, recovery, and resilience.

- Digital capabilities contribute to the essential disaster resilience factors of social capital, community competence, economic development, information dissemination and communication.
- Communications capability is essential, especially for rural and regional communities, when responding to natural disasters like bushfires, cyclones and floods.

For example:

- State disaster agencies use apps, text messages, and social media platforms to communicate warnings to the community<sup>10</sup>
- Mobile phones are used by community members to call for help and coordinate rescues and fixed line broadband services are used in emergency control rooms.
- In regional and remote Australia, ultra-high frequency (UHF) radio and satellite phones, in conjunction with mobile and broadband services, play a vital role in natural disaster response and recovery<sup>11</sup>.

The provision of these services relies on access to infrastructure. Telstra's view is that government and industry have a shared obligation to ensure this infrastructure can be provided and maintained, and critical services provided in a disaster context. This in turn relies on ensuring that telecommunications providers can efficiently and cost-effectively access public and private land for their networks.

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<sup>7</sup> McKinsey, 2021, *A blueprint for telecom's critical reinvention*, available at <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/a-blueprint-for-telecoms-critical-reinvention>

<sup>8</sup> PwC, 2022, *The Year of Optimism*, available at [https://www.pwc.com.au/industry/telecommunications/assets/2022-australian-tmt-outlook.pdf?trk=public\\_post\\_comment-text](https://www.pwc.com.au/industry/telecommunications/assets/2022-australian-tmt-outlook.pdf?trk=public_post_comment-text)

<sup>9</sup> Telefonica, 2023, *Economic analysis gives evidence for market failure: Contributions from Big Tech needed to unlock consumer welfare*, available at <https://www.telefonica.com/en/communication-room/blog/economic-analysis-gives-evidence-for-market-failure-contributions-from-big-tech-needed-to-unlock-consumer-welfare/>

<sup>10</sup> An example is the targeted weather and flood warnings from the Bureau of Meteorology which are often delivered via text messages and apps.

<sup>11</sup> Marshall Amber, Wilson Carrie-Ann, Dale Allan, Volume 100, May 2023, *Journal of Rural Studies*, Telecommunications and natural disasters in rural Australia: The role of digital capability in building disaster resilience.



### 3 A fair approach to rent for communications sites

In addition to meeting its terms of reference, Telstra considers that IPART should apply a land valuation approach for communications sites that is consistent with industry best practices, ensures that all commercial and other users of Crown land are charged on an equivalent basis, meets non-discrimination obligations under the *Telecommunications Act 1997*<sup>12</sup>, and delivers fair, market-based returns to the Crown.

The adoption of a fair, market-based returns rental regime for communications towers on Crown lands in NSW would comply with the Terms of Reference and property valuation principles as it would:

- Have regard to market rentals agreed for similar purposes and sites with a substantially identical landowner (i.e. aligned with how Crown rent is charged to other users of Crown land).
- Have regard to relevant land valuations by tying rents directly to the value of the underlying land, disregarding improvements made by the tenant.
- Achieve a fair market based commercial return on the land and provide a return to the government over and above its Weighted Average Cost of Capital (WACC).
- Be simple, transparent, and cost effective and reflective of the location of the land, without a need for different location categories; and
- Reflect a non-discriminatory approach as envisaged by the *Telecommunications Act 1997*.

To meet these objectives Telstra would like to see IPART adopt a new approach to rent for communications sites. Telstra considers that this approach should be based on the unimproved value of the freehold land, plus a percentage rate of return (e.g. of 6%).

### 4 Answers to specific issues paper questions

This section of our submission contains answers to the eight discussion points raised in the IPART Issues paper<sup>13</sup>.

#### 4.1 Whether there are any additional sources of data on rental prices for private land. For example, we previously relied upon data from the NSW Land Registry Services

Telstra only has access to its own data and not data for the entire market. The market data used in the 2006 and 2013 IPART Reports was also either limited in scope or redacted. Telstra did apply to obtain a copy of the unredacted market data, but it was not provided due to confidentiality concerns. Telstra asks, that in undertaking the current review, IPART specifically prepare the market data it obtains in a form that can be published in an open and transparent way, while also protecting the confidentiality of the providers of that data.

Telstra submits that the unimproved land value as assessed by the Valuer-General should be, broadly, an important factor in IPART's review. For example, in Queensland, rent for most Crown leases is determined by taking the unimproved value and multiplying it by a percentage factor (i.e. 6%). As the unimproved value for Crown land is already undertaken, IPART could consider recommending a multiplier that reflects commercial returns for unimproved land<sup>14</sup>.

<sup>12</sup> *Telecommunications Act 1997, clause 44 of Schedule 3*, available at <https://www.legislation.gov.au/C2004A05145/2021-09-01/text>

<sup>13</sup> IPART, 2024 Issues paper - Review of rents for communication sites on certain Crown land - 26 February 2024, available at <https://www.ipart.nsw.gov.au/documents/issues-paper/issues-paper-review-rents-communication-sites-certain-crown-land-26-february-2024>

<sup>14</sup> Telstra, 2019, *IPART Review of rental arrangements for communications Towers on Crown Land 2019 – Submission in response to Issues Paper*, available at <https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-telstra-corporation-limited-m.-packett-12-apr-2019-100100000.pdf>



#### 4.2 Details of current rental arrangements for communication sites on private land.

Telstra considers that private land rental arrangements are not relevant to Crown land rental rates. Telstra is concerned that this question represents a view that government authorities and utilities are or should be in a different category as tenants of Crown land to Telstra (or carriers). Carriers provide a public utility, and in delivering telecommunications Telstra provides a service to the NSW community. Recommendations on rent by IPART should consider a fair and reasonable rate of return for the NSW government, should reflect the benefits of telecommunications to NSW (including those outlined earlier in our submission, in relation to enabling the digital economy, building digital capability and disaster resilience and providing critical infrastructure, alongside Australia's Constitutional arrangements and history), and should be consistent with the rent charged to other utilities so as not to discriminate against carriers.

Telstra does, however, note that when it negotiates rent with private landholders, this does not typically involve discussion of Telstra's infrastructure costs and its impact on the possible rent.<sup>15</sup> In relation to Crown land, as Telstra is providing the capital to build the telecommunications infrastructure and operational expenditure to maintain it, we do not believe it should enable the Crown to increase rental rates.

#### 4.3 Whether rooftop communication sites should be treated differently to other Crown land sites.

There are very few rooftop communication sites in Telstra's portfolio of sites on Crown land. Telstra considers that, for rooftop communication sites, market valuation would best be conducted on a site-by-site basis. Rooftop rents are an additional rent on top of the base rent for the building itself. A building rooftop has no alternative highest or best use<sup>16</sup> and as such Telstra would like IPART to consider minimal charges for these communication sites to cover property management costs.

#### 4.4 Whether recent changes in ownership arrangements for mobile network towers has influenced rents

The changes in ownership have seen the approach to rental charges normalise as the infrastructure companies move to business-as-usual approach to rental rates on their mobile network towers. As such the changes in ownership to Amplitel are not influencing our rental costs.

#### 4.5 What effect the phasing out of the 3G network may have on rental arrangements

Telstra does not expect to see any material effect on rental arrangements as a result of phasing out our 3G network. The reason for this is that all 3G enabled sites are being upgraded to 4G and 5G mobile technology, which involves installing new antennas and ancillary equipment, to satisfy our coverage equivalence requirements for our customers<sup>17</sup>. So, the requirement for access to land and facilities is generally unchanged.

#### 4.6 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

<sup>15</sup> Ibid

<sup>16</sup> The highest and best use considers the use of the asset that is physically possible, legally permissible and financially feasible. IFRS 13 para 27, 2024, available at <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards/english/2022/issued/part-a/ifrs-13-fair-value-measurement.pdf?bypass=on>

<sup>17</sup> Telstra, 2024, 3G closure - what do I need to know?, available at <https://www.telstra.com.au/support/mobiles-devices/3g-closure#:~:text=We're%20switching%20off%203G%20on%2030%20June%202024&text=We%20also%20have%20dedicate%203G,and%20support%20for%20wholesale%20customers.&text=If%20we%20contacted%20you%20about,network%20after%2030%20June%202024.>




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**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.**

Mobile phone base stations in National Parks play an important role in ensuring that the community can call and text family, friends and emergency services in the event of a natural disasters or other emergency situations. Ordinarily, Telstra's mobile network infrastructure sited in National Parks do not generate a considerable amount of mobile traffic and thus generate little commercial return. These sites are generally built to provide communities with a crucial service.

In NSW, communications tenants pay higher rent in National Parks than that paid by other users. Telstra considers this to be discrimination against carriers under clause 44 of Schedule 3 to the *Telecommunications Act 1997*. Telstra considers that carriers should pay the same rental as would be charged to other utilities occupying sites in National Parks.

Rental charged at equitable market rates would also enable carriers to reinvest saved capital in improving mobile coverage in National Parks and other black spots which in turn benefits the community.

It should also be noted that mechanisms already exist in planning legislation/codes to reflect and retain the 'social, cultural and environmental value' of National parks with respect to telecommunications facilities, including:

- Areas of Environmental Significance (AOES) provisions in the *Telecommunications (Low-Impact Facilities) Determination 2018* preclude the use of exemptions if land is specifically earmarked for conservation purposes<sup>18</sup>.
- It is anticipated that any development application process on National Park land would reasonably identify social, cultural and environmental significance and strategies to mitigate impacts.

Ultimately, continuing to charge higher rentals for communications sites in National Parks will diminish the investment in telecommunications services for park users and adjacent communities of National Parks.

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

Telstra considers that private rental arrangements for small cell deployments are not appropriate benchmarks for rental prices on Crown land. While Telstra is amenable to having a single one-off application fee for small cells in all settings, it considers that IPART should instead seek to facilitate the deployment of telecommunications infrastructure by removing cost barriers, such as co-user fees, entirely.

Telstra's retains its position that all co-user fees for existing and new sites should be removed to ensure that NSW Crown land is aligned with the non-discrimination requirements set out under clause 44 of Schedule 3 to the *Telecommunications Act 1997*<sup>19</sup>. The co-user fee construct has the effect of making co-locating on existing telecommunications facilities on Crown land less viable for mobile carriers and other operators (wireless internet service providers, or radiocommunications operators). This may ultimately lead to reduced coverage and services.

Carriers also have a legislative obligation under the Telecommunications Code of Practice 2018 (Cth)<sup>20</sup> to take reasonable action to use existing facilities for a telecommunications deployment activity. Co-user fees create an additional layer of regulatory burden on carriers that was not envisioned when the legislative

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<sup>18</sup> Federal Register of Legislation, *Telecommunications Low-Impact Facilities Determination 2018*, available at <https://www.legislation.gov.au/F2018L00170/latest/text>

<sup>19</sup> *Telecommunications Act 1997*, clause 44 Schedule 3, available at [https://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol\\_act/ta1997214/sch3.html](https://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ta1997214/sch3.html)

<sup>20</sup> Telecommunications Code of practice 2018 (Cth), available at <https://www.legislation.gov.au/F2021L01524/latest/text>





framework was drafted, resulting in a barrier to deployment and meeting regulatory requirements under code.

In addition, Telstra notes that Recommendation 13 in the House of Representatives Standing Committee on Communications and the Arts's Inquiry into co-investment in multi-carrier regional mobile infrastructure concluded that *'The Committee recommends the Australian Government prohibit its agencies from charging additional co-user rental fees above the rent a principal tenant pays to lease Commonwealth crown land for the purpose of providing telecommunications services'*<sup>21</sup> Telstra strongly recommends that IPART adopt the Australian Government first principles approach in co-user fees.

#### **4.8 The practical implications of using the remoteness categories in the ABS' Australian Statistical Geography Standard to set location categories for fees for communication sites on Crown land.**

As outlined throughout this submission, Telstra's position is that IPART should adopt a land valuation approach, whereby the unimproved value of the freehold land is used as the basis for assessment of rent for communications sites on Crown land. This is at odds with IPART's proposed use of the ABS remoteness categories to set fees for communication sites on Crown land, which would not align with recognised land valuation methods by the NSW Valuer General for example that consider a range of factors in the valuation of land<sup>22</sup>.

If a categorisation approach was to be taken by IPART, consideration needs to be given to the fact that the ABS defines the Remoteness Areas as 'dynamic' and notes that 'changes may occur over time.' A dynamic system of categorisation may impact a carrier's ability to forecast, plan for rental costs and accurately consider the viability of Crown land sites<sup>23</sup>.

Telstra is of the view that there should be a single category with a single mechanism for determining rentals for all users based on recognised land valuation methods<sup>24</sup>.

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<sup>21</sup> House of Representatives Standing Committee on Communications and the Arts, 2023 Recommendation 13 at Paragraph 4.135 'Connecting the country: Mission critical - Inquiry into co-investment in multi-carrier regional mobile infrastructure, available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Communications/Mobileco-investment/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/Mobileco-investment/Report)

<sup>22</sup> NSW Valuer General, 2023, *Valuation method*, available at [https://www.valuergeneral.nsw.gov.au/land\\_values/how\\_do\\_we\\_value\\_land/valuation\\_method](https://www.valuergeneral.nsw.gov.au/land_values/how_do_we_value_land/valuation_method)

<sup>23</sup> Australian Bureau of Statistics, 2021, Remoteness Areas Australian Statistical Geography Standard (ASGS) Edition 3, available at <https://www.abs.gov.au/statistics/standards/australian-statistical-geography-standard-asgs-edition-3/jul2021-jun2026/remoteness-structure/remoteness-areas>

<sup>24</sup> <sup>24</sup> NSW Valuer General, 2023, *Valuation method*, available at [https://www.valuergeneral.nsw.gov.au/land\\_values/how\\_do\\_we\\_value\\_land/valuation\\_method](https://www.valuergeneral.nsw.gov.au/land_values/how_do_we_value_land/valuation_method)