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12 April 2019

Rental Arrangements for Communication Towers on Crown land  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240

Submitted online:

[www.ipart.nsw.gov.au/Home/Consumer Information/Lodge a submission](http://www.ipart.nsw.gov.au/Home/Consumer%20Information/Lodge%20a%20submission)

Dear Sir/Madam

**Re: IPART Review of rental arrangements for communications towers on Crown land**

Please find enclosed submission from Digital Distribution Australia in response to the IPART Issues Paper February 2019 into the review of rental arrangements for communications towers on Crown land.

Thank you for the opportunity to provide our comments on this Issues Paper. Please do not hesitate to contact us should you have any questions relating to our submission.

Your sincerely

A solid black rectangular box redacting the signature of Stevan Djokic.

**Stevan Djokic**

**DDA General Manager**



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## **Digital Distribution Australia's Submission to IPART**

### **Review of rental arrangements for communications towers on Crown land**

#### **Introduction**

Digital Distribution Australia (DDA) appreciates the opportunity to comment on the Independent Pricing and Regulatory Tribunal (IPART) Issues Paper February 2019 into the review of rental arrangements for communications towers on Crown land in NSW (Issues Paper).

DDA is a regional backhaul telecommunications service provider with a network delivering services to underserved rural and regional towns in NSW. As a regional service provider, we are facing significant challenges in having to compete with larger well-resourced Tier 1 telecommunications providers (e.g. Telstra, NBN, Optus, Vodafone) in our limited target market. Unfortunately, IPART's recommendations on rental arrangements on Crown land, especially in relation to co-user fees, has negatively impacted the industry in general and our continued investment in rural and regional NSW.

#### **Co-user fees**

The land management agencies (LMAs) have required DDA to pay extraordinarily high co-user fees based on the IPART recommendations, before they will allow us to access telecommunication sites situated on Crown land. These fees are equivalent to 50% of what the tower owners are already paying the LMAs. DDA is having to pay these co-user fees imposed by the LMAs in addition to the site rental fees imposed by the tower owners. This artificial construct borne from the IPART recommendations is commercially unfair and financially unsustainable for Tier 3 carriers like DDA in an already contracting and depressed telecommunications market.

Furthermore, the imposition of co-user fees is counter-productive with respect to communications services provided to rural and regional NSW. DDA is of the view that these high co-user fees are in direct contradiction to IPART's stated goal of "*protecting and promoting the ongoing interests of the consumers, taxpayers and citizens of NSW*". As IPART would be aware, the NSW Government has for many years championed for more telecommunication services and infrastructure support in the mostly neglected and underserved areas of rural and regional towns in NSW. It defeats the NSW Government's objectives for rural and regional NSW, if IPART continues to recommend an excessive fee schedule to be imposed on regional carriers whose primary objective is to deploy telecommunications services to these neglected and underserved rural and regional communities that can't otherwise receive it.

## **List of Issues for comment by stakeholders**

With respect to the list of issues contained in the Issues Paper, DDA will respond to those parts of the IPART review which it considers relevant to the operation of its regional carrier service.

### **Proposed approach**

Q1. Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?

A1. DDA submits that IPART's review should firstly consider the difficult business and economic conditions currently facing the telecommunications industry, especially the smaller Tier 3 carriers like DDA.

IPART should also take into consideration the unique make-up of the communications industry, as a multi-faceted and multi-layered operational and economic ecosystem, where organisations from within the same industry operate from a very diverse set of business models and revenue streams. Tier 1 carrier business models and revenue streams are drastically different to those of Tier 3 carriers, yet IPART has categorized both Tier 1 and Tier 3 carriers as falling under the same "telecommunications carrier" umbrella with the same level of rental fee imposed on both. IPART should take this distinguishing factor into consideration in its review of the existing recommendations and rental fee schedule.

"Willingness to pay" was a stated criterion for consideration in this review process. The overwhelming majority of smaller stakeholders in the communications industry who provide services to their customers have limited financial capacity to pay the Crown land fees without passing on these fees to end users. IPART's "one size fits all" approach to the fee schedule is substantively flawed since it is unfair to universally apply one level of rental fees across the entire spectrum of companies in the "telecommunications carrier" industry. Doing so will seriously disadvantage the Tier 3 businesses. DDA's primary business is to provide telecommunications services to underserved rural and regional customers for which it is not possible to extract a premium in order to pass on or recover the very substantial Crown land fees.

We ask that IPART reconsiders the existing IPART recommendations in light of the detrimental effect it has had on Tier 3 carriers. Without Tier 3 carriers in the market, there will inevitably be less opportunity for innovation and growth for their target markets in rural and regional areas of NSW and make the telecommunications market less competitive.

### **Estimate the range for efficient rents**

Q2. Do you agree with our proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?

A2. DDA does not agree with IPART's continuing recommendation of co-user fees on Crown land. DDA is of the view that co-user fees are an artificial construct of the

IPART recommendations since it does not exist elsewhere in private land arrangements.

There is insufficient reliable market evidence to support the excessive rental fees currently recommended by IPART. The current IPART rental fee schedule for communications sites in NSW needs to be reset in order to more accurately reflect the underlying value of the land and the price that would otherwise be negotiated between a willing lessee and a willing lessor on comparable private land.

The commercial value of a site is predominantly in the actual infrastructure installed at the primary user's full expense. The LMAs have not invested significant resources in such infrastructure, since it has only provided access to land for the primary users to install the infrastructure.

In many instances, DDA notes that the current IPART rental fee applied by the LMAs far exceed the actual land value by multiple times which is inequitable and unfair to the primary user and co-user. DDA submits that the most equitable mechanism for IPART to determine "fair market rent" is to set rent based on the unimproved land value of the telecommunications site.

DDA also notes that in many instances, the only potential sites for DDA to co-locate its equipment in regional and rural areas are sites located on land managed by the LMAs, with no other options available on private land. This puts the LMAs in a near monopolistic position and restricts the options available for DDA to locate services and infrastructure on land for which a more commercially realistic rent is applied.

- Q3. What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?
- A3. See comments under A1 and A2.
- Q4. Do market based rents typically cover all services related to access, use and operation of the land or are there additional fees charged to users (such as fees for maintenance of access roads)?
- A4. It does for the majority of cases.
- Q5. What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?
- A5. There should be no variance due to the characteristics of a site. The useful characteristics of a site are dependent on the different requirements of each variable user, and also for each specific business case of that variable user.
- Q6. How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?
- A6. The LMAs are in the best position to answer this question for each Crown land site.
- Q7. What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site?
- A7. DDA is of the view that the only fair mechanism for IPART to determine "fair" market rent is to set rent based on the unimproved land value of telecommunications sites

for primary users and infrastructure providers, with fee discounting to encourage the provision of telecommunications infrastructure to regional and rural NSW. DDA is of the view that co-users fees should be abolished from the rental fee schedule.

### **Decide on and apply a rent setting methodology**

- Q8. Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?
- A8. No. DDA is of the view that co-user fees should be abolished, and primary users should be charged on the basis of the unimproved value of the land, based on the Valuer General's assessment.
- Q9. Are the current location categories reflective of recent data on population density?
- A9. IPART should investigate this question and provide data to stakeholders for comment.
- Q10. What is the appropriate rent discount for co-users?
- A10. DDA is of the view that there should be no co-user fees. DDA concurs with the majority of stakeholders in the industry in that co-user fees are inappropriate considering the LMAs are already charging the tower owners a Crown lands fee. Co-user fees stifle competition and are financially detrimental to the industry in general and especially to Tier 3 carriers like DDA.
- Q11. Should infrastructure providers receive a discount relative to primary users?
- A11. The infrastructure providers are in the best position to answer this question.
- Q12. Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?
- A12. The rebate system needs to be fair and equitable across the spectrum. For example, the "local service providers" rebate category should be extended to "regional carriers". Like the "local service providers" as defined under the "rebate categories", DDA predominantly services the low and/or medium density locations. However, DDA is excluded from obtaining a rebate under the current fee regime because, by definition, we are servicing more than "a limited number" of sites. This is unfair since the objectives of DDA and the "local service providers" are one and the same in that we are servicing rural and regional NSW.
- Q13. Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued?
- A13. No, site-by-site negotiations are a cumbersome process for all parties concerned. All parties should have an up-front methodology in valuing sites.
- Q14. Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

A14. The valuation formula should be based on the unimproved land value of a site for primary users and infrastructure providers. No co-user fees should exist. Refer to A5 for our comments on site characteristics.

### **Transitioning impacts on users and adjusting rents over time**

Q15. Do you agree with our proposed approach for assessing the impact of our recommendations on users?

A15. Please see our comments under A1 and A2.

Q16. Is the current approach of adjusting rents annually by the CPI appropriate?

A16. There should be no annual increase unless the LMAs can show real value added to a site year to year.

Q17. Should the fee schedule continue to be independently reviewed every five years?

A17. The independent review should be based on the Valuer General's assessment every five years on the unimproved land valuation of each communications site.

### **Conclusion**

We urge the Tribunal to abolish co-user fees under the current review of rental arrangement for communication towers on Crown land, especially for regional carriers, as it has proven to be a financially significant impediment to remain co-located on Crown land sites, the majority of which we note are situated in rural and regional areas which caters the disadvantaged communities of rural and regional NSW.

DDA suggests that the IPART fee regime for primary users and infrastructure providers should be reset to a more feasible level using an unimproved land valuation methodology.

DDA is of the view that if an equitable rebate system is to continue, then the categories should be extended to "regional carriers" who provide essential services to many underserved parts of rural and regional Australia that would otherwise not receive such services.

The telecommunications industry is currently experiencing significant challenges in maintaining sufficient returns on investment due to the massive capital and operational costs in operating and maintaining their services and networks in Australia. If the current Crown lands fee regime continues unabated, DDA will be forced to strategically review its continued investment into rural and regional NSW. The ultimate losers will unfortunately be the people and communities in rural and regional NSW.