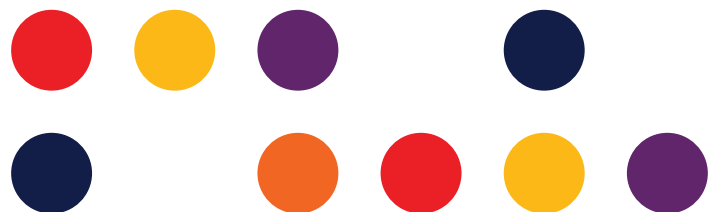


Review of rental arrangements for communication sites on NSW Crown land

TPG Telecom response to IPART

April 2024

Public version



Submission

TPG Telecom welcomes IPART's review of rental arrangements for communications towers on NSW Crown land.

TPG Telecom endorses the Australian Mobile and Telecommunications Association (**AMTA**) submission to IPART's issues paper and wishes to emphasise its support for the removal of co-user fees.

While TPG Telecom appreciates IPART is undertaking a fresh inquiry, we believe there is merit in reaffirming some of the findings of IPART's 2019 review. In particular, we support the 2019 review's recommendation that co-users wholly within a primary user's site should pay:

- no additional rent;
- a one-off application fee equal to 50% of the primary user application fee; and
- where additional footprint is required, this be calculated on the same dollar per square metre rate as rents for the primary user.

IPART previously made these findings on the basis it was consistent with private market practices. TPG Telecom believes these findings remain true and relevant.

The removal of co-user charges would support greater co-location of mobile infrastructure. Co-location is an important tool in reducing deployment costs. This will have flow on benefits for consumers, by supporting greater coverage and more affordable connectivity to essential services during the peak of a cost-of-living crisis.

TPG Telecom believes there are several issues related to charging co-user fees for secondary site users, which support the need for them to be removed. Specifically:

1. **Current arrangements do not “reflect fair, market-based commercial returns”, a stated aim of the current IPART review.** Co-user charges are not commonplace for leases on private land, where the co-user is contained within the existing site footprint (as the IPART's 2019 review concluded). **[c-i-c]**. The 2019 review found 53.5% of NSW is controlled by the three Crown land agencies (page 35) and telecommunications providers have no choice but to deploy infrastructure on Crown land in many areas.
2. **Charging a co-user fee amounts to ‘double dipping’ on the part of the NSW Crown.** Inherent in a primary leaseholder's decision to enter into a lease for a particular site is the expected return from the site, including any returns from sub-leasing. As such, the rent paid to the Crown for the leasehold of a site accounts for that potential return. By imposing additional levies on providers who access the tower infrastructure on the site (despite not taking up any extra land), the Crown is seeking fees for no service, as there is no effective impact on the Crown beyond minor administrative requirements and site access. It also reflects the Crown profiteering from

the investment of the initial leaseholder in constructing the tower, as the site would not have value to the secondary leaseholder without passive infrastructure. Any minor costs incurred by the Crown can be offset by a one-off co-user application fee, as reflected in the 2019 review's recommendation.

3. **Removal of the infrastructure provider discount following the 2013 review exacerbates cost issues.** In 2013, IPART recommended the removal of a 30% discount that applied to infrastructure providers and this was adopted by the NSW Government. This was on the basis a single user fee schedule would provide for competitive neutrality and take into account the different business operating models of site users. Changes in the ownership of tower infrastructure, combined with the removal of the infrastructure provider discount, means if an infrastructure provider constructs a tower today and an MNO installs services on that tower, then:

- (a) the infrastructure provider pays the full primary user annual charge; and
- (b) the MNO pays a 50% co-user annual charge.

Although the tower is physically identical to one owned and operated by an MNO, the total rent is 50% higher due to the ownership structure of the tower. Charging two physically identical towers different rents based upon the ownership structure of the tower would not support competitive neutrality and would not reflect fair, market-based commercial returns. Given the removal of the infrastructure discount, a fairer model should also include the removal of co-user charges.

Further, continuing to charge co-user fees would not align with views at the Commonwealth level. The requirement to co-locate is embedded in Federal legislation through Schedule 1 of the *Telecommunications Act 1997*.

The Parliamentary Inquiry '*Connecting the country: Mission critical*' report recommended prohibiting Commonwealth agencies from charging additional co-user fees on Commonwealth Crown land leased for providing telecommunications services.¹

In its Regional Mobile Infrastructure Inquiry report, the ACCC states "[i]n terms of co-locating, a regulatory regime that removes obstacles for access to towers and relevant facilities and that reduces the costs for mobile network operators to do so is required. This will enable mobile network operators and other providers of radiocommunications services to co-locate on others' towers more easily."²

The ACCC's *Facilities Access Code* separately states that its purpose 'is to ensure that, as far

¹ Inquiry into co-investment in multi-carrier regional mobile infrastructure, House of Representatives Standing Committee on Communications and the Arts, *Connecting the country: Mission critical* (November 2023), page xvii.

² ACCC, *Regional mobile infrastructure Inquiry: Final Report* (July 2023), page 1.

as possible, facilities are shared and/or co-located' and as such requires carriers to provide access to 'eligible facilities' on a non-discriminatory basis.³ The ACCC states that co-location is intended to improve environmental amenity by limiting the number of mobile towers, and promote competition and efficiency by allowing telecommunication providers to utilise existing infrastructure without constructing their own towers. Levying co-user charges does not support co-location and contributes to the inefficient duplication of mobile infrastructure.

In relation to the specific questions in IPART's issues paper, TPG Telecom makes the following comments in addition to AMTA's responses:

- 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.**

[c-i-c]

IPART may find it useful to request rental information from mobile network infrastructure providers. The ACCC has also collected information as part of its Regional Mobile Infrastructure Inquiry.

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

See response to question 1.

- 3. Whether rooftop communication sites should be treated differently to other Crown land sites.**

TPG Telecom believes a simple approach to charging rentals based on location is preferred, rather than treating rooftop communication sites differently.

- 4. Whether recent changes in ownership arrangements for mobile network towers has influenced rents.**

See body of submission.

- 5. What effect the phasing out of the 3G network may have on rental arrangements.**

[c-i-c]

- 6. How best to incorporate the social, cultural and environmental value of**

³ ACCC, *Facilities Access Code Review: Final Report* (June 2020), pages 5, 8.

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.

See AMTA submission.

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

See body of submission.

- 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.**

TPG Telecom supports the use of the remoteness categories in the ABS' Australian Statistical Geography Standard, as this metric is commonly understood within the telecommunications industry.