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6th August 2019

Rental Arrangements for Communications Towers on Crown Lands
Independent Pricing and Review Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Tribunal members,

On behalf of our members and the Land Mobile Radio (LMR) industry, we commend the IPART tribunal members on the contents of the review as presented recently and we are especially pleased that the rental rates for co-users have been adjusted to a more realistic amount. Our industry has had very serious concerns with regard to the rental rates in place for the past five years and in particular the rates charged for co-users when the actual use or inconvenience to the Crown agencies is considered. There have been instances during the past five years where we have seen members withdraw from the provision of facilities for their clients directly because of the unrealistic rentals being charged for access to facilities on Crown Lands.

As indicated in our comments at the public consultation meeting held in Sydney on 22nd July 2019, we have serious concerns with regard to the proposal to increase rental rates in remote areas of New South Wales. In the draft review in Section 4.1 the tribunal recognises that in remote areas there may well be a situation where monopoly provision could be deemed to occur, yet the rental rates have still been increased where others have been reduced. In our submission to the tribunal on the review, Windsor Place Consulting outlined that the concept of using Ricardian rents should not be applied as a rationale for justifying the high rentals charged for use of Crown land. Ricardian rents is a concept used to describe the extra profits earned by low cost producers in competitive markets. The existence of Ricardian rents does not justify a particular seller charging higher prices than are typical in a particular market. A producer earning Ricardian rents earns higher profits because they produce at lower cost than their competitors. In fact, it is only possible for a seller to charge prices higher than typical in a particular market if that seller has some degree on market power – close to monopoly power in this case.

Our argument is that, Crown lands sites suitable for towers, particularly in low population density areas, have few alternatives and therefore Crown land agencies have significant market or even monopoly power. Our argument is that these agencies could be seen to be using this monopoly power to capture monopoly rents, not Ricardian rents. We argue that this is an inappropriate pricing policy for any government agency. As was outlined in our comments at the public consultation meeting that generally LMR services are NOT networked services but each location will be operating as a 'stand-alone' facility where the costs for service must be recovered from the actual users of that service. In this format the application of quasi-monopoly rents is a significant issue where each location must be considered in the context of being individual geographic locations with each potentially being under a monopoly supply situation.



We have further concerns when we look at the uptake of technology in the LMR industry in these rural areas of the state. The implementation of digital LMR technology has introduced new capabilities to radio devices that offer real-world benefits to users. In metropolitan areas there has been ready acceptance of these benefits and the technology has quickly been adopted by users for the economic benefits provided. When we look at the rural areas the users have not upgraded to the new technology and there is no doubt that the ongoing cost of radio site facilities has been the major determinant in their decisions. When the factor of poor coverage from the major public carriers in these areas is taken into consideration, and the very high degree of dependence on LMR as the most resilient and reliable network is taken into account, the fact that new LMR technologies are not being used can only be attributed to the high costs of ongoing network service – users are being forced to attempt to maintain existing equipment to survive.

With the rejection of valuations being based on any land valuation format, the tribunal asserts that comparison with rentals paid for services on private land are a reasonable comparison, a philosophy that we acknowledge. Our concern arises when the methodology of arriving at these results has been to base the comparisons with contracts lodged for rental of communications towers during the past five years. It has been submitted within the tribunal responses and recognised by the tribunal members that the rental rates determined by the IPART review several years ago may indeed be used as a reference point by many of the private suppliers of facilities. With this recognition it must become apparent that the reference base is tainted by the previous actions of the tribunal. It is not reasonable to use as a primary reference a factor that is being influenced by its own outcome, this is a circular reference and is questionable at best. We also note that the tribunal in section 4.5 comments that other users of Crown Lands may not be relevant comparators, yet industries such as apiarists would arguably create more damage to open areas than communications infrastructure users once facilities are in place.

During the public consultation discussions and also within the draft recommendations there is a reference that the present position of the National Parks and Wildlife Service (NPWS) increasing rental rates to one level higher than tribunal determinations should be permitted to continue. We fail to see any factors that provide justification for either the initial decision by NPWS to do this, or for the tribunal to give tacit approval for this to continue. There is no reason for there to be any difference in rental charges for NPWS locations than any other Crown Lands, the justification is simply based on a determination without evidence or method of appeal. There are no factors involved that would bring concerns to the utilisation of the area by the public, nor that would diminish the recreational enjoyment of the areas involved, in fact the opposite is the case as utilisation of the lands for communications facilities will add to the control and management of the lands and to the safety of users. The provision under the relevant NPWS legislation that any alternate site outside of NPWS land must be used if available by default indicates that any sites on NPWS Land are the only sites available. This then leads to rentals being set in a quasi-monopoly situation, this is not the intent of the relevant legislation.

In past enquiries the tribunal has ignored the different needs of the various users of facilities on Crown Lands, instead taking a 'one size fits all' approach and treating every user as being a 'telecommunications' provider, a situation that our industry has not been comfortable with but the tribunal has not been prepared to consider any other approach. Within the draft recommendations this time there is a recognition that perhaps the needs of the telecommunications providers with the development of 5G might be different, so a change has been instituted in the rental proposals. As was outlined in the public consultation meeting by the representative from Telstra, some radio communications services are RT or fixed link services and the request was that perhaps they should be evaluated against different characteristics when they are not carrier-style services.



Our industry would like to rise the point that LMR services are also not carrier-style services, the facilities we provide are almost always unique to that particular location and are NOT networked services. Within the co-users on our facilities there will be individual organisations that might have a large quantity of mobile radio units, but just as likely they will have less than a dozen radio units. As outlined earlier, the costs associated with the fixed equipment at the transmission site must be recouped against the units and services on that particular site. This is virtually common across all of the LMR services, however, as highlighted above the equipment and service suppliers in the more rural areas of the state are hardest hit. We would like to see some recognition of the LMR industry and our typical usage and cost recovery options as part of the IPART tribunal considerations.

In line with our indication that our industry operates at lower cost levels than the telecommunications carriers, the following table gives an indication of the range of facility rentals applying on private land from one of our industry suppliers, these are typical of rental rates across Eastern Australia.

Location	Facilities	Inclusions	Period	Rental	Review
High	Land only	Nil	25 years	\$10,000 pa	3% pa
Medium	Land only	Equipment shelter	10 years	\$4,000 pa	3% pa
High	Land only	Nil	5 years	\$6,000 pa	3% pa
Medium	Land only	Electricity	10 years	\$4,000 pa	3% pa
Metro	Site only	Electricity	10 years	\$20,000 + co-user	3% pa
High	Land only	Nil	3 years	\$10,000 pa	3% pa
Medium	Land only	Nil	3 years	\$6,000 pa	3% pa

Notes –

1. In each of the above scenarios the lessee supplied the tower and equipment shelter unless noted. These are typical of the rental facilities operated by the LMR industry around most of Australia. Sites in remote areas may be at lower rates, but they are typical of the rental and review guidelines.
2. Only on odd occasions will there be a co-user fee and these are usually associated with high density sites in metropolitan areas where facilities might be on a building roof or where space is limited.

Within the Tribunals review there is mention of transmission site comparisons being made with other ACMA listed transmission sites that are ‘within 5-10 km radius of Crown land sites’ and also sites that are up to 90 metres lower in elevation as being used for comparison. For the LMR industry these factors do not relate to the characteristics of our clients needs. As LMR sites are generally not networked, the geographic location becomes very specific in order to address the radio coverage footprint needed by the users to meet their operational needs. When this is taken into account the land management agencies are actually in a monopoly supply situation and accordingly there should be consideration given to ensure there is no abuse of the market power contained within these situations, again this is a higher degree of concern in the Low category locations. We would point out that the calculations utilised in the 90-metre guyed mast example are based purely on mast installation calculations, from a technical capability situation a 90-metre mast is generally not a suitable format for LMR services due to cable losses.



One of the factors that is recognised by the ACMA in its dealings with ARCIA is that we are often supporting other organisations and spectrum users in discussions with the regulator. In this instance we feel that we should be highlighting the anomaly contained within the IPART recommendations that any 'downstream' activities that might generate positive externalities should be compensated by other means and not by reduction in costs at the site rental stages. We feel very strongly that this is not a suitable approach as it then means that any off-set for those benefits will have to be argued through other bureaucracies and history shows that any such arrangements will eventually be diminished. Most often this will be due to a lack of understanding of the factors involved and through budget pressures from competing interests, the benefit of reduced costs should be applied at the point of generation, not at any other level if the benefit is to be maintained over a period of time. In this context we believe that the 'Local Service Provider' rebates should be maintained within the rental portfolio of the various agencies who will be invoicing the rentals.

In closing, we again thank the tribunal for the work done so far and the more realistic guidelines outlined in the draft recommendations, we believe that the tribunal has recognised the concerns of users as outlined in the multiple responses to the review guidelines. Although we understand that there won't be a second public consultation meeting, we would be welcome the opportunity to meet with the tribunal for any clarification or discussions on the points we have raised in this submission. As always we are vitally interested in ensuring that users of wireless communication spectrum are being given the best possible options for access to this important platform for delivery of both the latest technology as well as providing efficiencies for both business operations and public safety.

Yours sincerely

Australian Radio Communications Industry Association (ARCIA) Inc.

Ian Miller – Executive Officer