



**IPART REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION
TOWERS ON CROWN LAND OTHER INDUSTRIES –
DRAFT REPORT (APRIL 2013)
SUBMISSION BY 2KY BROADCASTERS PTY LTD TRADING AS SKY
SPORTS RADIO – DATED 11 JUNE 2013**

Introduction

1. 2KY Broadcasters Pty Ltd trading as Sky Sports Radio (SSR) welcomes the opportunity to respond to IPART's Draft Report on the Review of rental arrangements for communication towers on Crown land dated April 2013 (**Draft Report**).
2. SSR is disappointed that most of its original submissions appear not to have been adopted by IPART in its Draft Report.
3. From SSR's review of the Draft Report, it appears that IPART is adopting the submissions made by the Land Management Agencies to the exclusion of most other submissions including not adopting some of the submissions made by its duly appointed independent property consultants, BEM Property Consultants Pty Limited (**BEM**).
4. If the IPART report is adopted by the government in its current form, SSR's ability to provide local community racing services to regional NSW audiences will be adversely affected.
5. SSR will be reaffirming those submissions which it believes should be incorporated into the Final Report as well as responding to new issues raised by the Draft Report.

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Reaffirmation of the history of Sky Sport Radio's narrowcast radio service

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6. SSR reaffirms its submission that as a result of section 18 of the *Broadcasting Services Act 1992 (NSW)* and section 12 of the *Broadcasting Services Clarification Notice 2001 (NSW)* it can only operate a narrowcast racing radio service which can only appeal to horse racing enthusiasts pursuant to LPON and HPON licences which have limited tenure.

Under section 18 of the *Broadcasting Services Act 1992 (NSW)* narrowcast radio services are those whose reception is limited:

- “(i) by being targeted to special interest groups; or*
- (ii) by being intended only for limited locations, for example, arenas or business premises; or*
- (iii) by being provided during a limited period or to cover a special event; or*
- (iv) because they provide programs of limited appeal;...”*

7. As a narrowcast racing radio service, SSR must also comply with section 12 of the *Broadcasting Services Clarification Notice 2001 (NSW)* which states:

“12. Racing service

- (2) At least 80% of the content of the broadcasting service on a day (except Christmas Day or Good Friday) is:*
 - (a) descriptions of any combination of horse races, harness races and greyhound races; and*
 - (b) the provision of information directly related to horse racing, harness racing or greyhound racing (including selections, scratchings, betting information and track conditions);...”*

8. In 1998/9 the House of Representatives Standing Committee on Communications, Transport and the Arts conducted an inquiry into the Australian Broadcasting Commission's (ABC) decision to discontinue its radio racing service. The enquiry found that the regional racing service was extremely important to regional Australia.
9. In the government's response to the inquiry, the Minister for Communications, Information Technology and the Arts supported the principle that the tenure for HPONs should be extended including those providing a radio racing service and that the LPON service should be assessed for the potential to extend the power

of LPON services for racing broadcasts¹. SSR filled the void left by the cessation of the ABC radio racing service in NSW and therefore SSR is providing a service to regional and remote NSW which was formerly provided by the ABC and which provides an important service to racing enthusiasts in those areas.

Standard sites

10. User Categories

SSR does not agree that there should be only one user category. This approach seems to be consistent with the recommendation of BEM which states:

*“Our recommendation would be to leave the number of categories in the Schedule as is, however there should be some flexibility [to] ‘handcraft’ some areas”.*²

The preferred submission by SSR is the number of categories of current users of occupiers should not be reduced but should be extended to include a separate category for high power open narrowcast users only which is below government radio broadcasters. Alternatively in accordance with the recommendation of BEM above, the categories should be flexible to allow high power narrowcast users to fall within a category which reflects the limited usability of the site such as government radio broadcasters or local service providers. This is because SSR believes that the fee imposed should reflect the limited usability of the site by narrowcast services. As specified above the limited usability by SSR is a result of the legislative effects of section 18 of the *Broadcasting Services Act 1992 (NSW)* and section 12 of the *Broadcasting Services Clarification Notice 2001 (NSW)*. This means SSR can only operate a narrowcast racing radio service which can only appeal to horse racing enthusiasts pursuant to HPON licences which have limited tenure.

¹ Government response to the report, regional radio racing services, by the House of Representatives Standing Committee on Communications, Transport and the Arts September 2001 Recommendations 4 and 7

² BEM Property Consultants & Valuers Consultancy Advice A Review of the Current Schedule of Rentals for Telecommunication Sites Located in NSW Date: 25 March, 2013

11. Local service providers

If SSR is unsuccessful in its submission and IPART adopts its own submission on user categories in its Draft Report, then SSR submits that the definition for local service provider should be amended from the current proposal to allow SSR and other narrowcasters to fall within that category and to claim the rebate proposed by IPART for that category.

12. On page 37 of the Draft Report the proposed definition is:

*“Local service providers [should] be defined as users that **exclusively** operate or provide a service to communities in the **low location** as defined by the review.”*

SSR submits that the definition unfairly discriminates against those operators such as SSR who provide a community service to remote and regional NSW (ie low density areas) as well as providing a service in other areas. The limitations placed on the definition fail to take into account the importance of a radio racing service which has been previously understood and endorsed by the government in its Response to the Report on Regional Radio Racing Services, by the House of Representatives Standing Committee on Communications, Transport and the Arts September 2001.¹³ Today more than 55,000 people are employed, directly or indirectly, by the NSW horse and greyhound racing industries. The majority of these reside in regional locations and rely on the services of SSR.

13. As well as providing regional and remote racing enthusiasts with access to national and international racing radio broadcasts, SSR also gives regional listeners an ability to hear regional racing as it broadcasts regional thoroughbred, harness and greyhound racing each day and night of the week.

14. Accordingly SSR submits that the definition should not be limited to users that “exclusively” operate a service in a low density area. The definition should be extended to include those users, such as SSR, who provide a service “partially” or “in part” to both low density and other areas. So the definition should be amended to:

“Local service providers means those users that wholly or in part operate a service to communities in low density locations”.

15. SSR is concerned about the lack of certainty in relation to the Ministerial discretion when determining a community service provider. The report simply states:

³ Government response to the report, regional radio racing services, by the House of Representatives Standing Committee on Communications, Transport and the Arts September 2001 Recommendations 4 and 7

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* *"We recommend certain user groups be eligible for rebates to be granted at the relevant Minister's discretion, based on the individual circumstances of the particular users."*

SSR seeks some certainty in how this process is to occur, outline the potential user groups captured/impacted and the timeframes involved as this process is vague and uncertain.

High value sites

16. SSR submits that there should be no high value sites but all rental should be based on density as per the standard site criteria. In the Draft Report IPART has already proposed an increase in the number of categories from 3 categories to 4 categories. Currently the density classification is only high, medium and low. IPART has now proposed an additional category of "Sydney". The addition of this new category should be sufficient to represent the differences in market value of Crown land sites across NSW.

17. The viability of a business is based on economic certainty of its overheads and costs. The introduction of high value sites introduces uncertainty and affects the economic viability of a business. This is because the rental payable is unknown and the user may incur significant negotiation costs. This uncertainty is further increased as the Draft Report indicates that the floor amount payable on high value sites is the standard site rate for that density. The standard sites provide certainty of the amount.

18. The obvious effect of the criteria proposed to be used for high value sites is that they are mostly located in low density areas. This is because in these areas there are few or limited alternative sites available. This means that the sites where the rental is lowest because of density become the sites where potentially the rental is highest. The uncertainty factor increases as the Land Management Agencies are able to increase the number of high value sites over time.

19. SSR was encouraged by the Federal Government following the inquiry into ABC's cessation of the racing radio service to extend its coverage of racing across regional and remote NSW. It did so by obtaining a series of HPON licences throughout NSW. As the broadcast range of HPON licences is limited, SSR was directed by the Australian Communications and Media Authority (ACMA) to install its transmitters on certain sites to align with the frequencies and coverage attached to the particular HPON licence. These are now the SSR sites which are being potentially classified as high value sites by the Land Management Agencies. Therefore SSR has been directed on to certain sites by one government agency which will ultimately be to its financial detriment due to the classification as a high value site by another government agency. SSR submits that this is unfair and unconscionable.

20. If SSR's submission that there should be no high value sites is unsuccessful and the Final Report recommends the introduction of high value sites then SSR agrees with IPART's recommendation on page 8 of the Draft Report that:

"Users eligible for a rebate from a standard site fee schedule should also be eligible for a rebate on high value sites, to be granted at the relevant Minister's discretion, based on the individual circumstances of a particular user. The effect of the rebate should be that eligible users would pay the same rent as for a standard site".

Double dipping

21. SSR does not agree with the finding by IPART that payment by a co-user to both the primary user and the Land Management Agency is not double dipping. SSR has negotiated rentals on long term arrangements with the primary user of sites on the basis that it is the only rental paid by it. Those rentals were agreed on the basis that they represent market rental for those sites. Where an additional rental is payable to the Land Management Agency, SSR believes that this additional payment represents rental in excess of the market rental payable for the site.

22. If SSR is unsuccessful on all of its submissions and IPART recommends the introduction of high value sites, SSR submits that the proposed Option 4 as specified on page 27 of the Draft Report should be the adopted method of determination of high value sites as this avoids double dipping.

Review of Sites as a result of increased costs

23. If IPART Final Report results in a significant increase in the cost of transmitting a broadcast to regional and remote NSW, then SSR would have to review its coverage of its radio broadcasts in remote and regional NSW. This is because a potential significant increase in the costs would affect the economic viability of such coverage. This seems an unfortunate outcome especially as the government has previously acknowledged the importance of racing radio to regional and remote NSW and encouraged SSR to extend its coverage in the first place.

Summary of outcomes sought by SSR

SSR seeks the following outcomes from the IPART inquiry:

1. The preferred position of SSR is that the categories of current users of occupiers should not be reduced but should be extended to include a separate category for HPON users and the IPART fee payable should fall between the Budget-funded sector category and the Government radio broadcaster category as this reflects the limited usability of the site by SSR.

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* 2. **IF IPART refuses to increase the number of categories, then as an alternative SSR submits that the categories of current users of occupiers should remain the same but the category for government radio broadcasters or local service providers should be extended to include HPONs.**

* 3. **If IPART introduces a one user category approach then SSR seeks certainty that it falls within the local service provider category and is eligible for the rebate on the basis that:**

(a) **the definition of local service be amended to read as follows:**

* *“Local service providers means those users that wholly or in part operate a service to communities in low density locations”*; and

(b) **the Minister acknowledges that SSR is providing a real community service in broadcasting a racing service to regional and remote NSW to fill the void left after the ABC ceased operation of its radio racing service.**

* 4. **There should be no high value sites due to the economic uncertainty provided by such sites. The increase of the number of density categories from 3 to 4 is sufficient to reflect the differing market rates of Crown land across NSW.**

* If you would like to discuss any aspect of this submission, please contact Brendan Parnell, Chief Operating Officer, Sky Sports Radio on (02) 9452 8403.

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