



**IPART REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION  
TOWERS ON CROWN LAND  
OTHER INDUSTRIES – ISSUES PAPER (DECEMBER 2012)  
SUBMISSION BY 2KY BROADCASTERS PTY LTD TRADING AS SKY  
SPORTS RADIO**

**Introduction**

1. 2KY Broadcasters Pty Ltd trading as Sky Sports Radio (SSR) welcomes the opportunity to respond to IPART's review of rental arrangements for communication towers on Crown land.
2. SSR will only be making submissions in response to those parts of the IPART review which it considers relevant to the operation of its radio service which are questions 11, 12, 15, 16 and 17.

**Background**

Sky Sport Radio's narrowcast radio services

3. SSR provides a **narrowcast** racing radio service across NSW. It does this by using 37 high power open narrowcast services (HPONs) and 67 low power open narrowcast services (LPONs). It is classified as a narrowcast service provider under section 18 of the *Broadcasting Services Act 1992(NSW)*. Narrowcast services must comply with the strict limitations imposed by section 18 which states:
  - (1) *Open narrowcasting services are broadcasting services:*
    - (a) *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;..."*

4. 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);..”*

5. The restrictions imposed on SSR by this legislation mean that it can only operate a narrowcast racing radio service which can only appeal to horse racing enthusiasts. Therefore SSR is not able to operate or compete with a general commercial radio service which has the discretion to broadcast programs of its choosing and to appeal to a broad audience.

6. In addition to the restriction on the content of narrowcast radio services imposed above, narrowcast services are further limited as follows:

- (a) A **LPON** is a micro radio service with a transmitter about the size of a small briefcase with a whip antenna of about 2 metres. The service:
- is low powered being 1 watt in residential areas with a range of 2 km and 10 watts in non-residential areas with a range of 10km;
  - is outside the broadcast services band (BSB); and
  - currently has no guarantee of long term tenure as all licences for LPONs cease in December 2014.

(b) A **HPON** is a radio service which has an annual licence which must be renewed annually. A commercial radio broadcast in contrast does not have this limitation in tenure.

Effect of the cessation of a radio racing service by the Australian Broadcasting Service (ABC)

7. The ABC ceased broadcasting a radio racing service to regional Australia on 30 June 1998. It did so without consultation. In 1998/9 the House of Representatives Standing Committee on Communications, Transport and the Arts conducted an inquiry into the ABC’s decision to discontinue its radio racing

service. The enquiry found that the regional racing service was extremely important to regional Australia and the ABC's "decision to discontinue the service evoked a strong and passionate response from racing enthusiasts in regional and remote Australia"<sup>1</sup>.

8. 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 broadcasts<sup>2</sup>. SSR acquired its HPONs and LPONs during the period from 1993 to 2003 which filled the void left by the cessation of the ABC radio racing service in NSW. Therefore SSR is providing 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.

#### **Market rentals for standard site – user categories or occupancies**

*Q11. Are there implementation issues with the current categories of users of occupiers in general?*

*Q 12. Can the categories be reduced, for example, into 3 broad categories of commercial enterprises (including government businesses), budget funded sector and community based organisations? What user categories are used by lessors of communication tower sites?*

9. The difficulty in applying the code to the 2005 structure was that the 2005 user categories did not include a category for narrowcast radio services but tried to group narrowcast services into existing categories. In the case of SSR, IPART tried to fit it into the category of a commercial radio broadcaster which failed to take into account the restrictions placed on SSR by legislation. It appears that IPART was previously unaware of the existence of narrowcasting services. This is evidenced by paragraph 2.3 of the 2005 report which when summarising the categories of users on the communication tower sites makes no mention of narrowcast services.

<sup>1</sup> Regional radio racing service: an inquiry into the impact of the decision of ABC radio to discontinue its radio racing service by the House of Representatives Standing Committee on Communications, Transport and the Arts 1998/9 page, 2 paragraph 1.4.

<sup>2</sup> 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

10. The preferred submission by 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 only. LPON users should not be included in any category and therefore no IPART fee should be imposed on those users because of the miniature size of the LPON transmitter, the fact that they rarely pay any fee to the primary user, their severely limited usability and low power as well as their lack of security of tenure. If an IPART fee was imposed for LPON transmitters, SSR would immediately review and revise its distribution of its radio racing service to regional NSW.

11. The IPART fee imposed on the proposed HPON category should reflect the limited usability of the site by that user. Narrowcast services are restricted by legislation (in the case of SSR by being a racing radio service only) and therefore have a limited audience. They are not commercial radio broadcasters and should not be categorised as such. The IPART fee charged to HPON users should be significantly less than the fee paid by commercial radio broadcasters. In addition in the case of SSR, the fee should also take into account the role SSR plays in providing a radio racing service to regional and remote NSW which fills a void in radio broadcasting which occurred when the ABC ceased operating its racing radio service in 1998. Therefore the IPART fee should be imposed between the Budget-funded sector category and the Government radio broadcaster category as this reflects the limited usability of the site by SSR.

12. If IPART does not accept SSR's preferred submission and does not agree to increase the number of categories, then as an alternative SSR submits that the number of categories of current users of occupiers should remain unchanged. However the category for "Government radio broadcasters" should be extended to include "HPONs". HPON users should be added to the category of government radio broadcasters because this category reflects the limited usability of the site by both government broadcasters and HPONs. This is not SSR's preferred option because SSR submits that the legislative limitations on HPONs are far more onerous than those on government broadcasters as a government broadcaster is not limited in the content of its programs and the audience which it can attract in the same manner as SSR is limited.

13. The licence fees charged by owners to SSR for other telecommunication towers reflect the usability of a particular site and take the following into account:

- the location of the tower and its closeness to a population hub;
- the population located within the broadcast range; and
- the power of the particular HPON licence. The power for HPON licences ranges from 100 watts to 20kilowatts which means that the broadcast area

can range from 20 km to 100 km. The lower the power, the less the licence fee paid.

### **Market rentals for standard site - infrastructure providers and co-users**

*Q.15 What are implementation issues for applying a code to the 2005 structure for primary users, infrastructure providers and co-users?*

*Q16. What is the current market evidence on discounts being applied to infrastructure providers and co-users?*

*Q. 17 What are the reasons for continuing to apply discount to infrastructure providers and co-users? What would be the consequences of lowering or removing the discount for infrastructure providers and co-users from the current fee schedule?*

14. Some primary users on sites attempted to pass down the additional costs imposed on primary users by IPART on to the co-users. This is because the IPART licence arrangement where fees are imposed by the land owner on both the primary user and co-users is not the normal or standard arrangement for the industry. Normally the primary user negotiates a licence fee from the land owner for use of part of the land and this is the only licence fee that a landowner receives for that part of the land. The primary user is then free to sub-licence to multiple co-users at a fee negotiated directly between the primary user and the co-user which reflects the usability of the site by each co-user. Therefore the IPART fees for co-users imposed by IPART are an anomaly in standard licensing practice for communication towers in NSW.

15. In any commercial site, the licence fee paid by any co-user reflects the limited rights and limited space used by the co-user on the site. The fee acknowledges that the co-user is essentially only using part of the infrastructure and the fees are amended accordingly. The co-user rarely uses 50% of any particular structure because modern technology allows multiple users to operate from one tower. Therefore, the current market licence fee given to any co-user reflects this arrangement and is significantly less than the fee paid by the primary user. This means that the fee paid by the co-user is typically less than 50% of the licence fee paid by the primary user. In addition, the current market licence fee paid by the co-user to the primary user is the only fee paid by the co-user.

16. If the discount to co-users was removed or lowered this would have a significant negative financial impact for co-users. In the current arrangement the co-user fee is only reduced by 50%, even though there may be more than 2 co-users on the site. In some HPON sites a co-user may also require use of an additional telecommunications shed to store its equipment so may be paying additional licence fees to a primary user for the tower and another co-user for the shed and in addition paying the IPART fee.

17. Further the removal of the discount could result in the cumulative licence fees imposed on the co-user being substantially greater than the licence fees payable by the primary user. This is because the co-user would have to pay the full IPART licence fee in addition to paying the primary user for use of a small part of the equipment. The primary user has the ability to defray its costs by sublicensing parts of the tower or shed to numerous co-users. The co-user is not able to do so. So the co-user would be paying far more than the primary user but receiving less beneficial use. This is contrary to normal licensing practice for communication towers in NSW.

### **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 be fall between the Budget-funded sector category and the Government radio broadcaster category as this reflects the limited usability of the site by SSR.**
- 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 should be extended to include HPONs.**
- 3. LPONs should not be included in the categories of current users of occupiers but should be able to remain on sites without any payment of IPART licence fees.**
- 4. The 50% reduction in IPART licence fees for co-users should remain.**

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.