

Ref: BN13/486

Review of Communications Towers
On Crown Land
Independent Pricing and
Regulatory Tribunal
PO Box A290
QVB POST OFFICE NSW 1230

4 MAR 2013

Dear Sir/Madam

I am writing regarding the Independent Pricing and Regulatory Tribunal (IPART) Issues Paper, *Review of rental arrangements for communication towers on Crown land* and the request for comment on the issues it canvasses.

The Telco Authority is responsible for the overall management of radio communication services for the NSW Government. It works closely with NSW Government agencies for which radio communication is a critical requirement for their operation. These include those agencies that use the Telco Authority owned radio networks, as well as those that operate their own mobile radio services. Mobile radio users in NSW include transport agencies, electricity suppliers and public safety organisations, as well as a range of other bodies for which the use of radio complements their main work.

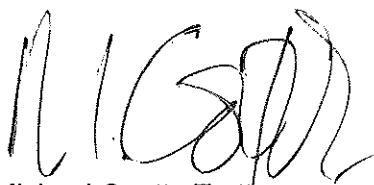
The enclosed Telco Authority submission provides comment on the various issues raised in the Issues Paper. The Telco Authority looks forward to participating at the round table discussion on these matters.

Given its role in the sector, the Telco Authority has access to data that may be of assistance to IPART in its deliberations on these matters. The collation and analysis of this data from disparate sources is complex. The Telco Authority expects that this material will be available for provision to IPART in advance of the round table proposed for mid-March.

Should you wish to discuss this submission further, I invite you to contact Mr John Albani, Manager, Policy and Governance on telephone 9372 8320 or via email at john.albani@services.nsw.gov.au.

Thank you for the opportunity to comment on this matter.

Yours sincerely



Michael Coutts-Trotter
Acting Managing Director



Telco
Authority

RESPONSE TO IPART ISSUES PAPER

Review of rental arrangements for communication towers on Crown land

February 2013

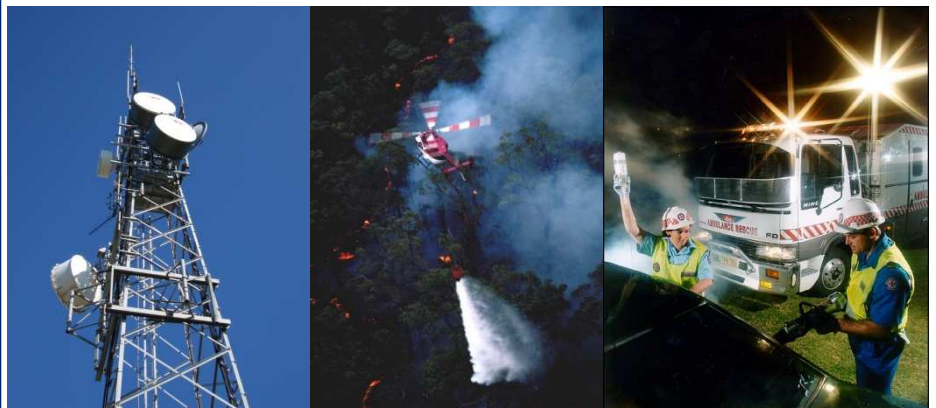


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1. EXECUTIVE SUMMARY

The Telco Authority performs an increasing role in the co-ordination of mobile radio services for and on behalf of NSW Government agencies as well as developing policy and strategy for Government mobile radio and related services. In addition, the Authority operates its own radio assets (including the Government Radio Network (GRN) and Mobile Data Radio Network) and so has an interest in this matter as both a lessor and licensee on Crown lands. The Telco Authority also plays a central role in assisting all NSW government radio operators in achieving improved levels of service delivery and a more cost efficient delivery of mobile radio infrastructure and services.

The Telco Authority, given its coordination role within the sector, is well placed to assess the overall impact of any potential changes to rental arrangements for communications towers on Crown lands, particularly for those agencies that operate their own wireless networks and use such facilities.

The NSW Government is operating in a tight budgetary environment. All agencies are being required to find efficiencies, cut internal and external redtape and make savings where appropriate. The introduction of the new pricing model for the GRN has already seen increased price and cost certainty, improved access and simpler administrative arrangements for the sector during this difficult environment. Any new recommendations from IPART in relation to communications towers on Crown land should build on these efficiency benefits. In the current environment, the Telco Authority considers that it is difficult to justify increasing rent schedules beyond standard price index levels.

On the issue of setting aside 'strategic sites' for which the market place would determine rent levels, the Telco Authority opposes this approach. The creation of 'strategic sites' will add another layer of complexity to the scheme. It will also create price uncertainty, particularly for sites with five to seven existing licensees, as licensees will have no control over when the site becomes a strategic site through the natural process of 'bracket creep'.

It is a characteristic of the existing market that prices are somewhat predictable. This relative certainty helps with planning and acts as an encouragement for investment. Investors in infrastructure are able to calculate their potential costs going forward with relative ease. The introduction of strategic sites will change this situation. Not knowing when a site will become 'strategic' and what this will mean for rents will create an environment of uncertainty which will subsequently lead to lower levels of investment.

The Telco Authority is also concerned that IPART's Issues Paper does not seek to canvass the economic benefits from the introduction of a rental arrangement scheme that encourages investment and improvements to communications infrastructure rather than acts as a disincentive to progress.

2. GENERAL COMMENT

2.1 Role of the Telco Authority

Under the Government Telecommunications Act 1991 and Premier's Memorandum 2010-16 the Telco Authority is responsible for the overall co-ordination of radio communication services for the NSW Government, including the development of a State-wide strategy that addresses:

- service standardisation;
- network rationalisation;
- centralised acquisition and maintenance of assets, including infrastructure; and
- the integration of conventional networks with the Telco Authority owned Government Radio Network to create a more interoperable system.

The Telco Authority works with a range of NSW Government agencies for which radio communication is a critical requirement for their operation. These include those agencies that use the Telco Authority owned radio networks, as well as those that operate their own mobile radio services. Mobile radio users in NSW include emergency services agencies, local councils, electricity suppliers and transport agencies, as well as a range of other bodies for which the use of radio complements their main work.

2.2 Telco Authority and asset and infrastructure management

Premier's Memorandum 2010-16 establishes the Telco Authority as responsible for the development of strategies to manage the State's infrastructure, including equipment located on communication towers. The Telco Authority has recently undertaken an audit of the infrastructure owned and operated by NSW agencies in order to determine what assets the Government currently owns, their location, where there is duplication or excess redundancy and the total costs of ownership to the NSW Government.

2.3 Network Consolidation – Land Management Powers

As noted above, under the auspices of Premier's Memorandum 2010-16, the Telco Authority has a significant role in leading the consolidation of radio assets held by the NSW Government. It is intended that appropriate network assets held by other agencies will be progressively vested in the Telco Authority and integrated.

To assist the Telco Authority in this role, the *Government Telecommunications Act 1991* provides a number of powers to the Authority in relation to vesting, the transfer of assets and the management and supervision of government telecommunications networks.

Of particular relevance to the IPART examination of rental arrangements for communication towers on Crown lands are the provisions set out in Division 2 and

section 28 of the Act. In particular, Division 2 allows for the Telco Authority to vest 'designated land'. In addition, section 28 allows the Telco Authority to compulsorily acquire land (including Crown land and land acquired by consent) for the purposes of the Government Telecommunications Network.

The Telco Authority has no current plans to use these powers and they are only mentioned in order to bring them to the attention of IPART given that the Government Telecommunications Act was not noted in section 2.4 of the Issues Paper.

2.4 Public Safety Mobile Broadband

As part of Commonwealth-State arrangements to develop a fully interoperable national public safety mobile broadband capability, the NSW Government is examining the development of a public safety broadband network, whether a government-owned stand-alone facility, a hybrid network or a full commercially run system.

Should public safety mobile broadband proceed it is likely to add to the amount of government owned radio infrastructure, with a portion of that expected to be situated on sites within Crown land.

3. SPECIFIC COMMENT ON ISSUES IN PAPER

3.1 Issue 1

*What has driven the increase in the number of sites, leases or licences since 2005?
Will the demand for sites, leases or licences continue to increase over the next five years?*

Response

From a Government user perspective, there are a number of issues that impact site needs and the licences and leases to use them. Firstly, the demands of a growing urban population, the movement of people into remote and regional areas and increasingly sophisticated radio equipment are driving demand for new sites, licences and leases. This is counter balanced by growing consolidation of government assets. In increasing levels, NSW Government agencies are working together to consolidate their infrastructure and co-use existing facilities.

The NSW Government operates radio communications facilities across 77 agencies from some 3421 sites within the state. Of these, 1795 sites are owned or part owned by Government. The Telco Authority has determined that 90% of radio infrastructure owned by the State is operated by the top 15 public safety and essential services agencies.

In the future, the potential roll-out of a public safety mobile broadband capability across NSW may result in the installation of more communications sites or the installation of equipment on a number of existing towers.

While the Telco Authority has limited visibility of the site demands of commercial operators, the rollout of 4G mobile telephone services and ever increasing demand for wireless and portable devices such as tablets and smart phones suggests commercial infrastructure to support the growing mobile telecommunications usage will continue to increase over time. Likewise, the rollout of the NBN, and its massive infrastructure requirements, will also increase overtime.

An area of existing demand that is likely to change over time is the use of microwave and other radiofrequency links. The increased use of cable and IP for backhaul and linking will result in fewer fixed radio links being required. The current IPART pricing model does include fibre connection. However, this pricing arrangement is slightly different to that for radio infrastructure.

3.2 Issue 2

Do you agree with IPART's proposed principles for this review? Are there other factors IPART should consider?

Response

The Telco Authority is generally supportive of the current principles proposed by IPART to guide its decision making. Having said this, it is noted that at present none of the principles are concerned with advancing or improving the economic benefits to NSW. Increased certainty and transparency in pricing is likely to encourage investment in vital infrastructure and the construction, maintenance and support jobs that flow on. Likewise, improving the reliability of communications networks, increasing the number of communications services to regional and remote communities and developing multiple communications channels will improve emergency management and responses to local disasters and incidents, reduce isolation for remote communities, ensure a robust and resilient communications sector and lead to economic growth, particularly in regional and remote areas. The potential for positive economic outcomes from encouraging investment in communications infrastructure can only be realised where the regulatory environment is favourable to this type of activity. For this reason, the Telco Authority supports the inclusion of a principle seeking to advance the economic benefits of any rental regime to NSW.

More generally, as alluded to in the Issues Paper, there will be instances and circumstances where the principles will not necessarily align. The Telco Authority is of the view that where two principles are in conflict or do not work co-operatively, that the Tribunal err towards the most cost effective approach, particularly for Government users. The licence fee costs of administering licence agreements are of significance to all NSW Government agencies using the Crown Land sites and present a large burden on agency operational budgets. This burden will only be compounded should additional costs be placed on licensees in terms of land valuations, etc in order to achieve a more accurate and/or higher market return.

Even for commercial users, the effect on investment decisions and capital expenditure from both higher rents (based on market return) combined with higher administrative costs (in the circumstances where IPART has given market return pre-eminence) may act as a disincentive to investment and lost potential revenue for the owners of Crown land.

The Telco Authority currently manages a relative small portfolio of some 200 radio sites with many of these being located on Crown Land but using commercially operated infrastructure. Following the 2005 IPART determination the commercial infrastructure operators significantly increased site licence fees for the use of radio infrastructure and cited IPART fees as being one major factor in the increase. This

also resulted in a fees creep on sites that were not Crown land, with the IPART set fees and increases forming the basis for pricing for other sites.

Given most of the proposed sites in question have infrastructure owned by commercial operators, it would seem logical that price increases will again be incurred on NSW government radio user agencies. Should IPART recommend the strategic site price negotiation model, it would seem reasonable that the commercial operators will again levy fee increases on all government radio services to recoup the additional fees paid to the Government land owners. This is perhaps an unintended but real consequence on any increase that must be considered, particularly given that over time it may actually lead to the Government paying more to commercial operators in infrastructure use fees that it receives from those same commercial operators in site licence fees.

3.3 Issue 3

Does the current definition of a strategic site adequately identify sites that have strategic value? What are the characteristics of a strategic site that should be included in the definition? Please provide examples of sites that have strategic value but that do not meet the current definition of a strategic site.

Response

The Telco Authority does not support the introduction of a 'strategic sites' category. At a basic level, the introduction of a specific strategic site category will result in increased complexity, higher administrative costs and increased rental costs, which will significantly affect budget funded state government agencies. While land owners may benefit from higher rents, these will be offset by their own increased costs and a potential loss of market as infrastructure owners seek alternate arrangements where available.

Of more concern is the likely impact on investment in radio infrastructure and the economic development of NSW. The measure, if introduced, would act as a disincentive to investment and create uncertainty for industry. Infrastructure owners will not be able to plan and make financial decisions for a given site with any level of certainty. Whereas the existing arrangements provide a clear understanding of how much the rent will be year on year, this would not be possible for a strategic site where infrastructure owners who have expended large amounts of money on their installations are placed in a difficult position when negotiating with a land owners once the site becomes 'strategic'. The uncertainty this creates, and the risks of an investment at a particular site no longer being economically viable once a site has 8 or more users, will act as a deterrent to investing in that specific location. To counter this, there is likely to be a proliferation of sites as infrastructure owners seek smaller sites that are less likely to grow in population. The unfortunate impact of this will be an increased cost in building, maintaining, supervising and administering a larger number of sites.

Finally, unless controlled through other means, there will likely be an environmental impact as infrastructure owners opt not to co-locate on heavily populated sites, instead opting for new sites. This will increase the number of sites and increase the number of visible towers and infrastructure.

3.4 Issue 4

What are the costs of negotiating rental agreements? Do the benefits of rental rates agreed through a negotiation process outweigh the costs?

Response

The Telco Authority does not consider that the costs of negotiating a rental agreement for a strategic site outweighs the benefits of a standardised process which delivers certainty, ease of use and reduced red tape, particularly for government bodies. For commercial operators, which are able to employ economies of scale to the process it may be an option, however, as Government users often have pre-determined budgets, limited resources to support the negotiation process and for which communications services are not their core business (and therefore they lack market intelligence and understanding), a clear, low cost, reduced red tape and easily understood process is preferable. Having to negotiate fees for new sites can result in delays in deployment and generally increase the costs for both parties time.

More importantly, the benefits, if any, arising from a rental negotiation process must also be weighed against any disincentives to investment that it causes. There are a number of economic benefits to regional and rural communities from the investment by telecommunications providers in site infrastructure. Not only are local residents and businesses the recipients of improved communications services, investment dollars are injected into the community both in terms of construction jobs and in order to maintain sites and installations. A complicated and expensive negotiation process acts to discourage investment by creating uncertainty, increased costs and gives pre-eminence to the dollar value benefits of a site over the potential benefits to the community and its economic development.

3.5 Issue 5

Should the definition of strategic sites be revisited to reduce the number of sites that would be subject to negotiation? If so, should an additional category be introduced in the fee schedule to capture the majority of strategic sites?

Response

The Telco Authority does not support the introduction of strategic sites. Having said this, should they eventually be implemented, the Telco Authority supports a reduction in the number of strategic sites that would be captured by the definition. Including around 10% of all sites in the definition means that it does not

just capture the premium, high commercial-value locations, but a much larger cohort of sites that would be subjected to unnecessarily high prices and higher administrative costs merely because of the size of the population of licensee.

The creation of a further category would also be counterproductive. There are already numerous categories that already capture all users. Adding an additional category will simply complicate the framework further and add another level of complexity to an already excessively complicated pricing structure.

3.6 Issue 6

What changes, if any, would you suggest to the factors to consider when negotiating strategic sites as recommended by IPART 2005?

Response

The Telco Authority does not support the introduction of a strategic sites category on the basis that such an arrangement would be counter-productive to the overall benefits of a scheme designed to be easy to implement.

Having said this, in relation to the 2005 principles set out by IPART, the Telco Authority is of the view that additional principles be added to increase fairness. In this regard, principles that take into account whether or not the land has another use beyond being suitable for communications infrastructure, and whether licensees maintain the site and its access at their own cost should be included. In a number of instances land that is available for communications sites has little or no other commercial value given its location and/or remoteness, and the remoteness means that the owners of the infrastructure of the site have to maintain the site and its access at their own expense. These mitigating circumstances, which if left out of any IPART recommendation, would effectively mean 'double dipping' by land agencies and act as a disincentive to further investment or asset and site maintenance.

3.7 Issue 7

What is the current market evidence on rentals by location? Does the market evidence still indicate that in general, higher rentals are charged for sites closer to metropolitan areas or population centres than regional and other areas?

Response

The closeness of a site to population areas still represents the largest factor in determining the level of demand for the installation of infrastructure and equipment at a particular site. Higher demand generally equates to higher rents. There are, however, other considerations that may impact on the demand for a site, and as a consequence its rental rates, such as its geographic location in surrounding terrain that is unsuitable for radio purposes. Other sites may

experience demand from tourists and visitors that seasonally visit a locations, such as water sports activities in and around dams and lakes owned by a catchment authority during summer time.

3.8 Issue 8

What are the implementation issues with applying the definition of high, medium and low location categories as per the 2005 Review? What are implementation issues specifically associated with the definition of medium locations applied by Parks and Wildlife and Catchments and Lands?

Response

The Telco Authority shares the concerns of some organisations that the use of the terminology 'as defined by local council' is problematic. While any system of delineating population density will be arbitrary, using easy to understand and calculate definitions will reduce uncertainty and complexity. The current definitions do not take into consideration the different methods used by local councils to estimate populations or the areas they are applied to. Likewise, as noted in the Issues Paper it fails to distinguish, for any given area, between those segments where there may be dense areas of population balanced by other segments of very low density such as a large town with an underpopulated fringe.

The Telco Authority recommends that IPART adopt the same definitions that the Australian Communications and Media Authority use to determine whether an area is a high density area or low density area for spectrum allocation purposes. This arrangement, which is already in use and understood by the sector, is simple, easy to understand and provides synergies between the two administrative systems (most infrastructure on Crown lands uses spectrum for radiocommunications).

3.9 Issue 9

Are there alternative definitions for location categories that are better supported by market evidence or are simpler to administer? What would market evidence support as thresholds for high, medium and low location categories?

Response

As noted in the Telco Authority's response to Issue 8 (see section 3.8 above), any attempt to re-define the categories used to determine high, medium and low location categories should bring about improved clarity and reduce complexity and uncertainty. The Telco Authority recommends that IPART adopt the same definitions that the Australian Communications and Media Authority use to determine whether an area is a high density area or low density area for spectrum allocation purposes. This arrangement, which is already in use and understood by the sector, is simple, easy to understand and provides synergies

between the two administrative systems (most infrastructure on Crown lands uses spectrum for radiocommunications).

3.10 Issue 10

Are there implementation issues with the current categories of users or occupancies in general?

Response

The current nine categories seem excessive given the size of the marketplace (ie nine categories covering only 1500 leases in total, and even fewer numbers of licensees. This excessive regulation leads to confusion and redtape, and as the Issues Paper proposes, could be reduced significantly. The Telco Authority supports a refined approach.

3.11 Issue 11

Can the categories of users be reduced, for example, into three broad categories of commercial enterprises (including government businesses), budget funded and community based organisations?

Response

While the current nine categories could be reduced by amalgamating certain groups with like minded interests, generally the continued separation of commercial users from those displaying a community benefit is supported.

In the case of Government users (budget funded sector), this cohort of organisations should be placed on the same level as community based organisations. The rationale for separating the budget funded sector into its own group away from commercial interests includes that it derives no commercial benefit from the use of sites with the services provided to support Government. It fails, however, to recognise the other benefits these organisations provide, including the social and community benefits and the benefits to the Crown land owners who, in an emergency, rely on Police and fire fighters and their supporting radio infrastructure to protect the land owners assets, land and people.

Consolidation of categories could, as IPART has proposed in the Issues Paper, be set out along commercial, budget sector and community lines, however, for the reasons set out above, the Telco Authority does not support any separation of budget funded users and the community sector.

3.12 Issue 12

On what basis would we calculate the amount of community service obligation for government businesses or concessions for budget funded and community based organisations.

Response

By separating the categories as outlined in the Telco Authority response to Issue 11 above, the need to develop a complex method of determining a community service discount becomes unnecessary. The rents charged for the community/government sector could be set at cost recovery or near cost recovery levels, while for commercial operators and government owned corporations various methods could be used to calculate the rents, including rates charged by the private sector or opportunity cost pricing respectively.

3.13 Issue 13

What is the relevance of the development of new technologies for the user categories that were defined in the 2005?

Response

Since 2005 there have been significant technological developments that will have an impact on future communication tower uses and rentals. In NSW, the upgrade of the Government Radio network to a nationally interoperable, trunked P25 system means that all agencies within the GRN footprint can use the network.

More broadly, advances in IP and the use of cable, and particularly fibre optic cable means that links and a radio network's backhaul can be moved away from radio infrastructure such as microwave to cable in populated areas or in locations where the use of cable is practical. These areas are likely to increase significantly as the NBN fibre is installed throughout the country.

Conversely, the increase in the use of smart phones, tablets and other portable wireless communications devices has increased the use of commercial telecommunications networks. The nature of these devices means that people also want to take the technology into more remote areas, such as the use of mapping apps while hiking through forests and national parks. It can be expected that this segment of the market will continue to grow exponentially.

The introduction of a public safety mobile broadband capability, which would see the rollout of mobile broadband services for use by public safety agencies is likely to increase over the next few years.

3.14 Issue 14

Should the National Broadband Network be added as an additional user category or can it be accommodated within the current user categories? Why?

Response

The Telco Authority opposes the creation of a separate category for the National Broadband Network in the interests of reducing complexity and having the simplest and easiest to implement framework as possible. In the next few years other forms of emerging technology are likely to emerge, such as public safety mobile broadband, and should a precedent be set for the NBN could result in a proliferation of categories. In addition, the creation of new categories in order to extract increased revenues from new industries may inhibit investment and innovation. As not all emerging technologies are backed by government funding (as with the NBN), transferring similar categorisations and rental models to those newer industries may in such circumstances be counter-productive.

3.15 Issue 15

What are implementation issues from applying the 2005 fee structure for primary users, infrastructure providers and co-users?

Response

The biggest impact for Government agencies and state-owned corporations from the implementation of the 2005 fee structure was an increase in the charges imposed by the commercial owners of site infrastructure. Increased fees charged under the IPART model were cited as one of the factors in substantial increases in charges for re-negotiated leases since 2005.

This was demonstrated in early 2009 when the Telco Authority was required to negotiate a market review with a major infrastructure provider for radio equipment on 32 sites. A lengthy negotiation process culminated in an increase radio antenna licence fees of 20% and microwave dish fees of 208% across the portfolio of sites.

3.16 Issue 16

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

Response

The use of discounts, as explored in section 3.17, is a welcome incentive to both build infrastructure and co-locate services. However, over the past eight years they have been progressively factored in to the pricing set by lessors. In effect their benefit has been neutralised over time.

3.17 Issue 17

What are the reasons for continuing to apply a 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?

Response

Discounts for infrastructure owners acts as an incentive to invest in the installation of equipment and improve infrastructure. It is noted that the discount of 30% is uniform across all infrastructure owners. The Telco Authority strongly recommends that consideration be given to increasing the discount for non-commercial infrastructure owners. In the case of community and amateur based infrastructure owners, it is understood from anecdotal evidence, that some of these organisations are struggling to meet both the site licence fees as well as the costs of site maintenance and infrastructure protection. For Government (budget sector) users, budgetary pressures mean that the capacity to build and maintain infrastructure in the face of increasing costs remains difficult and that this will continue to be the case for some time going forward.

Continuation or enhancements to the co-location discount, which maximises the use of existing facilities, is welcomed by the Telco Authority. However, care needs to be made to ensure that the benefits of the co-location discount are not lost when the number of users at a site reaches eight and site becomes a strategic site and subject to a different pricing methodology. This would be counter-productive and would make using alternate sites and locations more cost effective.

3.18 Issue 18

Should rental rates for Small Country Automatic Exchange (SCAX) sites come under the fee schedule for standard sites? If so, on what basis should we determine appropriate rental rates? Should SCAXs be considered as a separate category in the fee schedule?

Response

It is the Telco Authority's understanding that most SCAX facilities are small huts located on sites that provide telephony services to very small communities. They generally do not interfere with other infrastructure on a site. The imposition of site licence fees for these facilities is not recommended. SCAXs provide an important to service to remote and regional communities. It is understood that the profitability of such services is very low meaning any increase in costs would act as a disincentive to telecommunications carriers to provide such services. This would disadvantage people in those communities, and for this reason the Telco Authority does not support the introduction of a fee schedule for these types of infrastructure.

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