

12 February 2013

Review of communications towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Sir,

RE: Issues Paper: Review of rental arrangements for communication towers on Crown land

We refer to the above mentioned matter. Please find attached Vertical Telecoms Pty Ltd (Vertel) submission.

Look forward to your response.

Yours Sincerely

Andrew Findlay
Managing Director

REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATIONS TOWERS ON CROWN LAND

Vertical Telecoms Pty Ltd Submission: 12 February 2013

Overview

IPART has invited written comments and submissions in relation to the issues paper surrounding the Review of Rental Arrangements for Communication Towers on Crown Land.

We appreciate the opportunity to voice our opinion and we look forward to being part of the positive changes that will benefit the entire Telecommunications Industry within NSW.

Vertical Telecoms Pty Ltd (Vertel) is prepared to pay fair market rentals for its use of Crown Land, however the proposed methodologies that have been adopted to determine the fair market rates are debateable and to an extent inconsistent.

With regards to the Terms of Reference, specific issues that affect our business will be reported within this submission with the view of providing any further information and evidentiary support as required by the tribunal.

Current Fees (Standard and Strategic Sites)

The current level of IPART fees charged does not reflect the commercial reality of the market. We have been forced to terminate agreements on 21 of the 36 sites we once occupied that have been effected by IPART. In doing so we have lost a number of high profile customers who opted to either build their own towers on private land or collocate onto towers that were not affected by IPART and are more affordable.

We don't consider IPART an entity that would discourage small/medium businesses to embrace growth, however as stated above the fee structure in its current form is detrimental to our growth and stability as an organisation, and to that of small/medium businesses.

The same methodologies and principles should be considered when determining the market rental on both 'strategic' and 'standard' sites. Land is not sold or rented on the basis of capacity to pay or the potential profits from its usage but on the basis of fair/market rents determined by supply and demand.

We note IPART's view that a strategic site should be defined by the number of users (more than 8 is considered strategic) without considering what services are actually being delivered. With this in mind you will find that should the IPART scheme be implemented with a \$100,000 per annum IPART fee, it will make a number of 'strategic sites' commercially unviable for many businesses, and this would in turn would mean less revenue for the State.

Continuing with an inconsistent and above average rental structure, IPART should consider the impact this will have on the Australian economy. Loss of revenue will lead to loss of GST revenue and consequential reduction in company profitability and therefore a reduction of *Income Tax* payable. This could have a further impact in terms of job losses which will in turn impact *Payroll Tax*. In addition there would also be a reduction of ACMA fees payable as a result of the closure of the operation of many sites and the cancellation of customer network services.

Affected Services

The potential increase in costs will have a direct effect on the services that we deliver to our customers in particular regional areas. The majority of customers within these areas deliver essential services to the community and rely on two way radio networks to facilitate infield and fillet communications. We have been forced to decommission a number of these essential radio networks due to the prohibitive cost of operating the service relative to what users are prepared to pay. We do not believe that this is the NSW Government's intention, especially with radio being an essential service - particular during summer time with the threat of bush fires and the importance of having a 'non public' radio communication service that works during these times.

National Broadband Network (NBN)

The Terms of Reference require recommendations in relation to the potential inclusion of an additional classification for the NBN. We do not object to this, however would like to understand the rationale for this particular suggestion and the impact it may have on the rest of the industry. We also would like the tribunal to consider whether or not this could give the NBN a further advantage in the marketplace, by eliminating competition.

We note that in the 2005 review it was "considered that budget funded agencies were distinguished from government trading enterprises on the basis that budget funded agencies use communication networks to deliver core services". The NSW's Treasury response to the stakeholders objection to differential pricing was that "Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership". As the NBN is funded by the government would the addition of a category specifically for the NBN be discriminatory against other industry participants?

We appreciate the opportunity to present this submission and await further advice. Please see attached comments in relation to the 'List of issues for stakeholder comments'.

List of Issues for Stakeholder Comment

1. What has driven the increase in the number of sites, leases or licences since 2005? Will the demand for sites increase over the next 5 years?

Co User agreements have significantly contributed to the number of licences and leases since 2005. The demand for sites will only decrease. Our business has suffered losses due to and contributed to by IPART. Initially there may be a marginal increase, which can be attributed to necessity of service, however ultimately industry will (where possible) choose to collocate or in some instances build their own towers on privately owned land where negotiations will be on a site by site basis and the strategic value will be determined solely by the Licensee/Lessee.

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

IPART should also consider the categories to which they define the users, we note that Vertel has been categorised under "Telecommunications and Data carrier", with the likes of Vodafone, Optus and Telstra. Our services are not comparable to those of these companies. Telstra has approximately 32million customers, where Vertel and other organisations similar, have less than 2% of Telstra's customer base alone. IPART should consider alternative categories and have the flexibility to cater for businesses such as Vertel, that do not really fit into any of the existing nine categories. Alternatively, fewer categories could be considered if the rents are in line with market.

We service niche market commercial customers with two way radio or fixed wireless solutions, rather than being public carriers servicing the entire marketplace with mobile phone based technologies. Because of that the number of chargeable subscribers we have per service is minimal, often only being one, and thus the cost of access to the site can easily be prohibitive, even though the service may have strategic value to the community or region.

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?

Further to our comments above, a strategic site will always be difficult to define. In order to simply identify these sites, we would suggest a review of the equipment onsite to determine a fair and reasonable premium for occupation. IPART should consider land value and return on investment to ensure a fair market rent.

The term strategic has different meanings to different parties, ie: It may be strategic because it forms a link in a chain of communication, even though it has no value to the local region, it may be strategic to that region because of the importance of the service offered, eg: bushfire response, or it may be determined as strategic by IPART because it has the capacity to generate the most profit. We believe benefit to the community should be put ahead of profits since it is based on public land.

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

Depending on the site anywhere between \$2000 - \$10,000. The benefits may or may not outweigh the costs depending on the negotiated outcome.

5. Should the definition of strategic value 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?

It is our view that there is no benefit to the industry in not being able to negotiate each agreement site by site. Although there may be strategic value from IPART's perspective, it may not be so from our network or customers. Notwithstanding this, the method of determining strategic sites should be reviewed by looking at the 3G Networks and the value they add to the area.

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

In some instances we are required to have multiple agreements with adjacent owners in order to gain access the site which more than likely also incurs additional cost. IPART should also consider what the primary users charge the co users. In some instances 8 users may not be totalling \$35,243.00 in rent, and the site no longer remains commercially viable.

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

Yes.

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

Time is of the essence, land management agencies determination makes more commercial sense. We note that the definitions should be universal and the definition should be understood and adopted by all land management agencies.

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?

If IPART choose to use this method of determining fair market rates, we would suggest a valuation of the site, and determine a reasonable return, with additional consideration to the expense the facility owners have already outlaid to build the tower and continued maintenance.

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

Yes. The categories do not cover every type of user. Vertel can be categorised under at least three of these categories, depending on which arm of the business is focused on. We are confident in suggesting that Vertel would not be the only company in this predicament. IPART may like to consider having two categories and defining them by carrier or non carrier. It would then be up to the individual company to argue under which grade they would fall under. Our approach would be simple, any company that offers 3G services would be considered a carrier and all others would be considered non carriers. This should not be confused with the fact the user has a carrier license, which serves a different purpose. (We note that this is the way categories are defined by the Water Corporation in WA). Flexibility in determining categories must be a prerequisite to cater for the ever changing industry.

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

Yes, it could, however IPART may consider having subcategories and allowing the Licensee to negotiate on a site by site basis. Alternatively a more simplistic approach would have only 2 categories – Carrier and Non-Carrier. Carrier and Non-Carrier would really only relate to commercial organisations whereas it is necessary to differentiate them from Government and community services/charities.

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

IPART should consider the employment advantages, benefits to health and education as well as security (crime, bushfire, flood, aged care) that additional services and technology would bring to these regional areas, being a hindrance to advancing technologies should be eliminated and avoided under all circumstances to boost and stabilise the economy.

13. What is the relevance of the development of new technologies for the user categories that were defined in the 2005 Review? What changes to user categories would better accommodate changing technologies?

14. IPART should first decide whether they would prefer more or less categories to define the users. Alternatively, we would consider paying per piece of equipment that would be easier to administer and also keep track of the tower's capacity. We believe the latter is an important criteria since paying per piece of equipment on the tower incentivises the users to maximise the use of each service and thus reduce the need for additional tower structures which adversely affect the local environment. Hence the drive to force tower sharing by the mobile phone operators rather than have a multitude of towers covering a single area and serving the same purpose. Should the National Broadband Network be added as an additional user category or can it be accommodated within the current user categories?

Having a separate category for the NBN could be seen as discriminatory and unfair for potential competitors. It will not be beneficial to the community in that as it would appear that the government would simply be shuffling funds with no benefit to the community. One of the intentions of IPART as we understand it is to maximise returns for the public, our view is that it will have the opposite effect, should an additional category be developed just to accommodate the NBN, without fully accommodating other site users. By considering a separate category, is the intention to allow charging more or less than the rates offered to Government or community services? If the NBN is not included in one of the existing categories of either Government or community service it indicates the panel is considering the use to which the service is supplied as a determining factor for the rates, in which case this philosophy should then be applied to all users.

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

The implementation of IPART in 2005 has created considerable issues. It has caused us to reassess our network topology and as a result, reduce our exposure to IPART affected sites. In making this decision we have lost a number of customers, which in turn affects our revenue and in most instances further analysis is required to ensure commercial viability.

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

As Vertel is not categorised as an 'infrastructure provider' we have noticed that a number of our customers have opted to go onto infrastructure provider sites as they are able to provide the same service (in some instances) as we do at a discounted rate. We believe an organisation that provides it's own infrastructure should be classified as an infrastructure provider regardless of whether they also co-locate users on that infrastructure. It is commercially feasible that an organisation can have two business units operating, one in each camp, for which they are penalised under the current mechanism.

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?

As advised in our response to Question 16, we are losing business to infrastructure providers because of the discounted rates. An example from a customer's perspective is as follows:

Note: assumption that these sites have 8 users, and is an example only

SITE A	IPART FEES	Colocation Fees (1 300mm Antenna) per annum (co user fees not included)
Vertel	\$15,000 (\$1875.00 per customer)	\$4,000.00
Crown Castle	\$4,500 (\$562.50)	\$2,300.00
Variance		\$1700.00

18. Should rental rates for a 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?

IPART should consider charging Telstra per customer within these regions.