



11/6/2013

Yless4u Submission to IPART

We have read the *IPART Review of Rental Arrangements for Communication Towers on Crown land Draft Report-April 2013*.

While it has made some substantial gains in the approach to costing these sites – our concern with the Draft Report is that it perpetuates a restrictive and debilitating regime that discriminates against rural and remote low population areas.

Our concerns relate to:-

- What is covered or not covered by the term Communications
- Discriminatory ‘packaging’ by Government agencies benefiting larger organisations
- What constitutes a tower?
- Is it the purpose or the structure that attracts the rental?
- Undermining of competitive neutrality
- Unintended consequences of the User Rebate Categories being proposed

What constitutes a tower and why telecommunications?

Prior to discussing the proposed categories, area density and pricing arrangements it is circumspect to consider what constitutes a ‘tower’ and more specifically a ‘Communications tower’.

While the IPART 2005 determination introduced a range of user categories, the 2013 Draft Report has reduced this number to a single user category with several levels of rebates.

It can be seen from the range of users, that IPART has defined ‘Communications’ as encompassing facilities that provide one way transmission of audio (AM & FM Radio) and video (TV), two way radio transmission (cellular mobile, fixed wireless - PTMP, backhaul PtP) and has also asked for comments on the inclusion or otherwise of SCAXs (Small Country Automatic Exchange).

On reviewing the background paper, the 2005 review and the recent Draft Report, it is difficult to establish the extent to which the term ‘Tower’ is used in the context of the IPART review. However, it is considered that towers would include terrestrial ‘above ground’ infrastructure that is capable of transmitting and potentially receiving a radio signal, in supporting the activities defined above.

The inclusion of SCAXs is more problematic in that it is a term which refers primarily to ageing analogue ‘Telephony Exchanges’. In more recent years, the role of the SCAX in providing telephony in rural areas has diminished. However, the role of the SCAX building envelope or ‘enclosure’ has been refreshed to house infrastructure capable of providing ADSL termination and cross connect services, fibre optic termination points, and where necessary, a high speed radio bearer to both receive and transmit the digital data stream for the provision of these services to end customers.



Above is a recently taken picture of a typical rural road intersection in NSW. All 'above ground' infrastructures in this photo, is on Crown Land.

There are two buildings/infrastructure enclosures in the foreground:-

- a SCAX - on the RHS
- a RIM - with a recent extension of 'TopHat' ADSL2+ infrastructure on the LHS
- an electricity pole of approximately 10metres in height just to the right of the RIM

The questions arising from this typical rural infrastructure layout are:-

- Is the SCAX compound and/or the equipment contained in the building a Communications Tower?
- Is the RIM shelter and/or the equipment contained within the shelter a Communications Tower?
- Is the electricity distribution pole a Communications Tower? – (Note both the SCAX & the RIM take an electricity service via the grid connected electricity pole)?
- Should the RIM be treated differently for classification purposes to a SCAX?

The items of 'above ground' infrastructure in this photo, are on Crown Land, and are used in the supply and reticulation of Communication Services as defined earlier.

Would the answers to these questions be different, if:-

- a radio antenna was visible and attached to the SCAX & RIM equipment shelters?
- a radio antenna was visible and attached to the electricity pole?

Further, would the type of communication classification be different if:-

- The SCAX building was on Crown Land on a mountain top? (with or without a radio antenna)
- The RIM enclosure was on Crown Land on a mountain top? (with or without a radio antenna)
- The electricity pole was on Crown Land on a mountain top? (by itself, with or without electricity wires connected to it, and/or to further poles down the mountain side)

Visual examples can be seen in the pictures below, which are predominately extracted from the publicly available and published document “*Low Impact Mobile Facilities*” prepared by the Mobile Carriers Forum for the Mobile Telecommunications Industry.



-Panel antennas co-located on a road sign
-Co-location on a water tank

The intent of the communications infrastructure attached to these structures unequivocally forms part of a telecommunications service. The antennae on these structures have varying degrees of camouflage to reduce visibility intrusion into the landscape.

Are these Telecommunication facilities to be classified as ‘Communication Towers’? Would a different classification apply if the three infrastructure items above were relocated to Crown Land on a remote rural hilltop?

CBD Streetscape ‘Communications Towers’



A colour matched “extension” to the traffic lights. Microcell on a CBD “smartpole”. co-location on street lights/poles.

In the CBD Streetscape samples shown above, the camouflaged items of infrastructure are clearly performing telecommunication functions. Under IPART’s proposed fee scheme, these items would be classified as CBD Sydney based ‘communication towers’ and hence attract an individual fee of \$32,000 per annum. If these items of infrastructure were removed and relocated to a rural remote mountain top, each item would attract a yearly fee of \$7,200.

However, it is likely that some sort of contractual arrangement would result to overcome the individual pricing – so the practice of ‘packaging’ for larger service providers unfairly discriminates against regional, rural and remote, as consideration is limited to rebates for local providers only.

Comments on categories, rentals and rebates

The classification and application of the new rental fees should be structured to avoid unintended consequences in already digitally disadvantaged rural and regional areas. The proposed fee structure is a further disincentive for smaller providers to use Crown Land locations in very low population density areas.

The BEM report cites that ‘small Low Density data carriers and infrastructure providers’ resent the impost of rentals after 2005. At the same time it also mentions that it has “limited market evidence for local service providers” hence suggests no change to the existing schedule. Yless4u’s business position since 2005 has been to avoid Crown Lands for this very reason.

In the Feb2013 submission by the Telco Authority – NSW Government also argues for a *“scheme that encourages investment and improvements to communications infrastructure rather than acts as a disincentive to progress”*.

Vertel – in Feb submission, also argues eloquently about the impost of the current rental regime at low density sites. *The impost of the rental fees, in relation to the site’s income generating capacity, has contributed to the withdrawal of infrastructure at Crown Land rural sites.*

Yless4u has the same concerns in 2013, as we did in 2007 and 2009, concerning the impost of unjustifiable rental fees on rural and remote locations. We described this in detail in our submissions to the NSW Government, Standing Committee on Broadband in Rural and Regional Communities.

Administrative difficulties in classifying an entity for rebate purposes and the unintended consequence on Competitive Neutrality of misallocation.

Budget Funded sector/Community Group Rebate eligibility

The definition of a ‘community group’ needs to be clear and unequivocal. On p. 41 of the Draft Report they are described as run on a ‘not for profit’ basis with social and community benefits. There are anomalies around some ‘not for profit’ structured companies that would throw into question their eligibility for rebates.

By way of example, the submission (Feb 2013) by ‘Countrytell’ claimed that it is a ‘budget funded entity’ delivering the NSW Government’s Broadband Community Development Fund (BCDF) program. This NSW Government program is administered and funded by the Department of Trade & Industry.

[REDACTED]

[REDACTED]

[REDACTED]

This example raises questions in the area of Competitive Neutrality policy depending on what recommendation is made to the Minister by the allocating NSW Government agency. Should the relevant agency recognise the BCDF program recipient as ‘not for profit’ then all Crown Land sites occupied under this program would be eligible for the full rebate offered to community groups in ALL location site densities. This would result in providing significant anticompetitive and ongoing commercial financial advantage to the entities involved in this or similar program delivery.

The proposed definition of ‘Local Service Providers’ will be administratively burdensome for rebates. This applies nominally for users ‘that exclusively operate or provide a service to communities in the low location category’. However, the requirement to provision a Point to Point Bearer which transits via a medium density location (e.g. Goulburn / Newcastle / HawksNest) would void the eligibility for rebates for the majority, if not all, users of this category.

There are unintended consequences with the rebates offered to ‘Budget funded agencies’. Applying such favourable treatment for budget funded agencies removes competitive neutrality especially for SMEs. The submission by the Department of Trade and Investment (DTI) argued against this favourable treatment for such agencies.

It is quite possible that in some cases the applicant is a NFP structure while assets are owned and operated by profit based organisation/s - or in some cases merging into such an entity. These need to be identified and ratified because of the possible misapplication of rebates for benefit in higher level sites – e.g. Newcastle.

Recommendations

Yless4u concurs with the option put forward by a number of respondents to the Feb’13 submission round and particularly that of ARCIA viz.

“the adoption of a geographic model similar to that used by the ACMA. Users in Sydney/Gosford/Wollongong are deemed High where Newcastle and surrounds is Medium and the rest of NSW Low. This works well for spectrum management and could also apply to land use.”

The Australian Communications and Media Authority (ACMA) rules are relatively simple and are zoned to occupancy type (industrial, residential, urban, and rural).

We propose that IPART adopt the ACMA Low Visual Impact guidelines, for the purposes of determining the fees associated with Crown Land occupancy in high, medium and low density areas. For purposes of geographical classification, IPART may wish to consider applying a population density geographical boundary surcharge, in accordance with the proposed Sydney density zone.